



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 31, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 31, 2012, 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. Michael Johnson, Mr. I.G. Burton, III, Mr. Martin Ross and Mr. Rodney Smith, with Mr. James Griffin – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to approve the Minutes of May 10, 2012 as amended. Motion carried 5 - 0.

OLD BUSINESS

CU #1930 – application of **PENN CENTRAL, LLC** to consider the Conditional Use of land in a B-1 Neighborhood Business District for a multi-family dwelling structure (3 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8,030 square feet, more or less, lying southeast corner of Pennsylvania Avenue (Road 51) and Bennett Road, and being Lot 3, Block 1 of Sussex Shores (Tax Map I.D. 1-34-13.15-159.00).

The Chairman referred back to this application, which was deferred on May 10, 2012.

Mr. Smith stated that he listened to the audio for the public hearing; that he has reviewed the file; and that he is not prepared to make a recommendation at this time.

Mr. Ross stated that he has no objection to a deferral of this application.

Mr. Johnson stated that he has some concerns about parking.

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

Subdivision #2011 – 5 - - application of **CEDAR CREEK PROPERTIES, LLC**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 88.44 acres into 192 lots (Environmentally Sensitive Developing District Overlay Zone), located south of Route 9, north and south of Road 285 (Beaver Dam Road), 0.4 mile southwest of Route One (Tax Map I.D. 3-34-5.00-176.00 and 177.00).

Mr. Abbott advised the Commission that this is the final record plan for a 192-lot environmentally sensitive developing district overlay zone subdivision application; that the Commission granted preliminary approval for 192 lots on June 23, 2011; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this Subdivision application as a final. Motion carried 5 - 0.

PUBLIC HEARINGS

APD #2012 – 1 – application of **A D & D FARMS, LLC** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for one (1) parcel of land totaling 215 acres, more or less, located south of Cedar Beach Road (Road 36) and northwest of Cedar Neck Road (Road 206), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation. (Tax Map I.D. 3-30-8.00-18.00).

Mr. Lank advised the Commission that this proposed Agricultural Preservation District contains 190 acres of cropland, 5 acres of woodland, 18 acres of farmland with structures, and 2 acres for residential use; that the cropland is used for growing grain and crops; and that the site is located in close proximity to several Agricultural Preservation Districts and Permanent Easements.

Mr. Lank also advised the Commission that the Department of Agriculture is reviewing the necessity for public hearings on this type of application.

The Commission found that Donald Mills and Annabelle Mills were present on behalf of their application and stated that they are proposing to put the farm in preservation; that the farm has been a family farm for at least 80 years; that they have 40 dairy cows; and that the farm is irrigated.

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

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this Agricultural Preservation District be approved. Motion carried 5 – 0.

APD #2012 – 2 – application of **HOME PLACE FARM, LLC** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for one parcel containing 214.97 acres, more or less, located on both sides of Road 38 (Primehook Road), south of Road 198 (Truitt Road) and west of Road 222 (Thirteen Curves Road) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation. (Tax Map I.D. 2-30-22.00-43.00).

Mr. Lank advised the Commission that this proposed Agricultural Preservation District contains 139.1 acres of cropland and 75.87 acres of woodland; that the cropland is used for growing grain and crops; and that the site is located in close proximity to several Agricultural Preservation Districts and Permanent Easements.

Mr. Lank also advised the Commission that the Department of Agriculture is reviewing the necessity for public hearings on this type of application.

The Commission found that there were no parties present on behalf of this application.

Mr. Johnson stated that the documentation provided shows that there are many other Agricultural Preservation Districts surrounding this application site and that the application is similar to other properties that have been approved.

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

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this Agricultural Preservation District be approved. Motion carried 5 – 0.

CZ #1716 – application of **BOX 64 SELBYVILLE, LLC** to amend the Comprehensive Zoning Nap from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 13.24 acres, more or less, lying west of Camp Road (Road 532) 2,800 feet south of Cannon Road (Route 18). (Tax Map I.D. 3-32-2.00-18.13).

Mr. Lank advised the Commission that this application was withdrawn on May 30, 2012.

AN ORDINANCE TO AMEND CHAPTER 115, SECTION 115-174 OF THE CODE OF SUSSEX COUNTY TO DEFINE WHEN CONSTRUCTION OR USE IS

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SUBSTANTIALLY UNDERWAY OR ABANDONED FOR THE PURPOSE OF DETERMINING THE PERIOD OF VALIDITY FOR A CONDITIONAL USE.

Mr. Lank summarized this Ordinance which sets a clear definition for determining whether “construction” or “use” is substantially underway with respect to a Conditional Use. The Ordinance does not affect the 3 year term, as extended by Ordinance No. 2208, only how to clarify and apply those time periods to a particular Conditional Use Permit.

The Commission discussed this proposed Ordinance Amendment.

Mr. Lank advised the Commission that if the Amendment is recommended for approval, the word “internal” needs to be spelled correctly.

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

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the spelling correction of “internal”. Motion carried 5 – 0.

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XX SECTION 115-194.1 TO INCLUDE REFERENCE TO SETBACKS AND BUFFERS IN THE CR-1 COMMERCIAL RESIDENTIAL DISTRICT.

Mr. Lank summarized this Ordinance which is actually a clerical amendment to correct the omission of the CR-1 District from the other districts listed in this section of the Code.

The Commission discussed this proposed Ordinance Amendment.

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

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as presented. Motion carried 5 – 0.

AN ORDINANCE TO AMEND CHAPTER 115, SECTION 218 OF THE CODE OF SUSSEX COUNTY TO CLARIFY VALIDITY OF AN RPC PRELIMINARY AND FINAL SITE PLAN.

Mr. Lank summarized this Ordinance which simply codifies the current practice of applying time periods set forth in the Subdivision Code to RPCs, which are primarily governed by the Zoning Code. The basis for this practice is found in Section 115-123, which defers to the Subdivision Code for procedures, standards and requirements which govern the subdivision of land for RPC development and approval. Although this amendment refers to Section 99-9.B and 99-40.A for the applicable time periods, any extensions granted by Ordinance No. 2208 would remain in effect, as that Ordinance specifically extended the validity of RPC site Plans.

The Commission discussed this proposed Ordinance Amendment.

Mr. Ross suggested that the County could consider not sunsetting project, but requiring that project that have not established that they are substantially underway will have to establish that they are compliant with current regulations and Codes; and that it does not look like the economy will be coming back any time soon.

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

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

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as presented. Motion carried 5 – 0.

OTHER BUSINESS

Millville Organic Center

A. CU #1913 Amended Condition

Mr. Abbott advised the Commission that this request was deferred at the May 10, 2012 meeting so that the entire Commission could participate in this discussion; that this is a request to amend Condition of Approval F, which states “There shall be no composting, grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for composting, grinding and processing shall be shown on the Final Site Plan.” To There shall be no yard waste composting operations, including storage, composting and curing within 300-feet measured horizontally from an occupied dwelling and within 25-feet of a property line. There shall be no yard waste grinding within the same setbacks previously stated within this

condition. These setbacks for yard waste composting operations, including storage, composting and curing yard waste grinding shall be shown on the Final Site Plan.”; that the applicants feel that the revised condition complies with DNREC’s guidelines for yard waste composting; and that the Commission was previously provided a copy of an e-mail requesting this amendment and a drawing showing what the site would resemble utilizing the existing condition.

Mr. Smith advised the Commission that he listened to the audio recording of the May 10, 2012 meeting in reference to this item and reviewed the Minutes of the May 10, 2012 and that he would move that the Commission revises Condition of Approval F to read “There shall be no yard waste composting operations, including storage, composting and curing within 300-feet measured horizontally from an occupied dwelling and within 25-feet of a property line. There shall be no yard waste grinding within the same setbacks previously stated within this condition. These setbacks for yard waste composting operations, including storage, composting and curing yard waste shall be shown on the Final Site Plan.”

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to revise Condition of Approval F as previously stated. Motion carried 5 – 0.

B. CU #1913 Site Plan

Mr. Abbott advised the Commission that this is the site plan for a composting operation; that the 11 conditions of approval are noted on the site plan; that if Condition of Approval F as stated in A above is amended, the site plan complies with the conditions of approval; that a landscaping plan for the area along the entrance road and Lots 12 through 18 of the adjoining subdivision has been provided; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan and the landscaping plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as a preliminary with the stipulations that final site plan approval shall be subject to the staff receiving all agency approvals and the final site plan being revised to include the amended condition of approval F as previously stated in item A. above. Motion carried 5 – 0.

Colony Pool Service, Inc. CU #1924 Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for a 6,250 gallon vertical storage tank located on the Sussex Shores Water Company site; that this conditional use was approved on April 3, 2012 with 8 conditions; that the conditions of approval are depicted and noted on the site plan; that the proposed tank is 10-feet in diameter and 15-feet in height; that a 14-foot by 14-foot, 6-foot high, chain link fence surrounds the proposed tank location; that an 18” by 24” sign will be installed on the fence containing emergency contact information; that the required 2 signs are proposed; that the proposed landscape plan includes arborvitae shrubs surrounding the north and east side of the fence at an average height of 6-feet; that the Office of the State Fire Marshal

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has granted their approval; and that the Commission was previously provided a copy of the site plan.

Mr. Smith advised the Commission that the County Council included the condition of a landscaping plan being required.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

Rehoboth Shores Campsite CU #1862 Site Plan – Long Neck Road

Mr. Abbott advised the Commission that this is the preliminary site plan for Phase 1 of the Nanticoke Shores Campground; that this conditional use was approved on June 21, 2011 and an amended condition was approved on April 17, 2012; that the conditions of approval are depicted on the site plan; that Phase 1 contains 182 seasonal campsites, a campground office and bathhouse and pool; that the site will be served by the Long Neck Sanitary Sewer District and the Lang Neck Water Company; that the typical campsites are 2,000 square feet; that each site proposes a 64 square foot shed which is permitted by code provided all sheds are uniform are size and appearance; that the required gated entrance is provided; that the perimeter of the site is surrounded by a berm and a landscape buffer and a fence as required in the conditions of approval; that the site plan complies with the zoning code; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan and the landscape plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve Phase 1 as a preliminary with the stipulation that final site plan approval for Phase 1 shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Riverside Plaza Parcel C Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for retail; that the site is zoned B-1 and contains 9.32 acres; that three buildings are proposed and contain 6,900, 7,000 and 50,713.35 square feet respectfully; that the building setbacks meet the requirements of the zoning code; that 324 parking spaces are required and 361 spaces are proposed; that 28 spaces are partially located within the front yard setback and are subject to site plan review; that other commercial uses in the area have parking within the front yard setback; that ingress/egress to this site is from a cross access easement over parcels A, B and D off of Route 24; that Sussex County will provide central sewer to the site and Tidewater Utilities will provide central water; that the site is not located in a flood zone and there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

Riverside Plaza

Parcel D Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for retail space; that the site is zoned B-1 and contains 8.80 acres; that three buildings are proposed and contain 15,200, 32,822 and 20,700 square feet respectfully; that the building setbacks meet the requirements of the zoning code; that 344 parking spaces are required and 355 spaces are proposed; that 17 spaces are partially located within the front yard setback and are subject to site plan review; that other commercial uses in the area have parking within the front yard setback; that ingress/egress to this site is from a cross access easement across parcels C and F, which are other lands owned by the developer; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the site is not located in a flood zone and there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

Riverside Plaza

Parcel E Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for retail/office space; that the site is zoned B-1 and contains 1.28 acres; that the proposed building contains 5,512 square feet; that the building setbacks meet the requirements of the zoning code; that 28 parking spaces are required and proposed; that 21 spaces are located on this site and 7 spaces are located on Parcel D, which is owned by the developer; that a shared parking agreement will be needed; that ingress/egress to this site is off of Route 5 and from a cross access easement across Parcel D, which is owned by the developer; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the site is not located in a flood zone and there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson stated that he thinks that this is a good example of shared parking since the adjoining Parcel D has 11 extra parking spaces and that the shared spaces are adjoining one another.

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

Chairman Wheatley turned the meeting over to Vice-Chairman Johnson.

Andrew and Samuel Phillips
1 Parcel and 50' Easement – Road 498

Mr. Abbott advised the Commission that this is a request to create a 15.0 acres, more or less, tract with access from a 50-foot easement; that the applicants are proposing to create the 50-foot easement over an existing 20-foot dirt road; that the proposed easement is across other lands owned by the applicants; that the proposed parcel is to be used as a poultry farm; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried 4 votes to none to approve this request as submitted as a concept. Mr. Wheatley was absent. Motion carried 4 – 0.

Vice-Chairman Johnson turned the meeting back over to Chairman Wheatley.

Massey Farms, Inc.
Lot and 50' Easement – Route 9

Mr. Abbott advised the Commission that this is a request to create a 0.77 acre lot with access from a 50-foot easement; that the owners are proposing to create the 50-foot easement over an existing driveway; that the proposed lot has a dwelling and accessory buildings located on it; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve this request as submitted as a concept. Motion carried 5 – 0.

Paul and Mechele Brennan
Parcel on 50' Easement – Road 84

This item was removed from the Agenda on May 22, 2012. A major subdivision application is required.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that public hearings are scheduled for next Thursday, June 7, 2012 at 7:00 p.m. in County Council Chambers, and that the Commission has a workshop

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meeting with the County Council on Tuesday, June 5, 2012 at 10:00 a.m. in the West Complex Building Conference Room.

Meeting adjourned at 7:10 p.m.