

MINUTES OF THE REGULAR MEETING OF JULY 25, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 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 Mr. Oates – Zoning Inspector II.

Motion by Mr. Wheatley, seconded by Mr. Johnson, 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 July 11, 2002 as amended.

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

PUBLIC HEARINGS

C/U #1459 – application of **CENTER FOR NEUROLOGY, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for medical offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.16 acres, more or less, lying southeast of Route 24 and approximately 2,100 feet northeast of Love Creek.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the “Environmentally Sensitive Developing” area of the Strategies for State Policies and Spending Document where the State seeks a balance between resource protection and sustainable growth; that the parcel is also located within a Management Investment Area according to the DelDOT Long Range Transportation Plan where DelDOT believes that investments in transportation infrastructure need to be managed carefully; that they are places where DelDOT is willing but not eager to invest capital improvement funds; that the State continues to be concerned about additional development in this area because they feel it is encouraging more traffic in an area that has been identified as operating at unacceptable levels of service; that the State Historic Preservation Office has noted that there is a high potential for prehistoric archaeological resources on or near the site; that there is a historic property near the site and another across from the site; that development of this property could have adverse visual effects on these resources; that the State asks that the County consider the cumulative effects on the development in this area; and that if the application is approved, that the County require the developer to work with the State Historic Preservation Office to minimize the impact on the historical resources in the area.

The Commission found, based on comments received from DelDOT, that even though the State does not recommend that the County require a traffic impact study because the parcel only contains 2.162 acres and the proposed medical offices would not be large enough to be considered an intense use, the State is concerned about the application; and that the State sees it as encouraging more traffic in an area that has been identified as operating at unacceptable levels of service.

The Commission found that a letter was received from Elinor W. Hughes of Briarwood Estates expressing concerns relating to traffic and traffic accidents; that she is not opposed to medical offices at this location, but feels that a smaller complex would be more appropriate and would provide more green space and less pavement.

The Commission found that seven (7) letters of opposition were received expressing concerns about traffic, traffic accidents, congestion, traffic safety, the size of the proposed complex and parking lot, run-off, the impact on wells from run-off, noise from the proposed MRI trailer, depreciation of property values, medical waste handling, and the lack of funding to improve Route 24. The letters were sent by Randolph and Lillian Greener, Amy Czyzia, Joy Basinski, Myron A. Savacool, Anne Mitchell, Susan A. Sparks, and Mark Trotter.

The Commission found that a letter with attachments was received from Eugene Bookhammer on behalf of the Bookhammer Estates Property Owners' Association expressing concerns about the impact on the Subdivision, traffic, the size of the complex and parking lot, the MRI trailer, and the loss of open space and environmental protection. The attachments included photographs of traffic on Route 24 at noon June 19, 2002 and 4:00 p.m. July 10, 2002, photographs of an MRI trailer, a sales promotion site plan for Bookhammer Estates depicting 12 lots sold of the 19 lot being developed, a copy of the Declaration of Restrictive Covenants, Conditions, Easements, and Remedial Clauses for Bookhammer Estates, sales sheets for a home on lot #17 within Bookhammer Estates, and a copy of the proposed site plan depicting the location of the MRI trailer.

The Commission found that two (2) letters of opposition were received just prior to the opening of the meeting expressing similar concerns to the previous letters. The letters were submitted by Patricia Meade Wien and Robert and Marie Waizenegger.

Mr. Lank stated that all of the letters are now a part of the record for this application.

The Commission found that Dr. Robert Varipapa, Dr. Paul Peet, Dr. Peter Coveleski, and Rob Immett of Charles D. Murphy Associates, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that a joint entrance is proposed with the existing glass blowing facility on the adjoining parcel; that two (2) office buildings are proposed, a 2-story 4,032 square

foot structure and a 2,976 square foot structure; that 78 parking spaces are required; that they propose to provide 80 parking spaces; that 54% of the site will be impervious surface; that a stormwater management pond is proposed next to the entrance; that a stormwater management plan has been submitted to the Sussex Conservation District; that representatives of DelDOT have stated that it may be necessary to create a turn lane to improve access to the entrance; that they do not anticipate any problems getting approval from the Office of the State Fire Marshal; that a 5-foot wide landscape screening buffer is proposed along the west and south sides of the parking lot; that 15-feet of right-of-way was dedicated to the State in 1999 and should be adequate for any road improvements along the front of the parcel; that a need exists in the area for this service; that they performed a zip-code verification and found that the majority of their patients come from the Millsboro and Angola areas; that approval of this site would reduce travel time for those patients; that the area has many business and commercial uses and referenced a marina, offices, arts and crafts studio, appliance sales, small engine repair, and produce sales; that the site was chosen because of its size and location; that the Center needs room to grow; that there are 13 doctors associated with their group; that 5 of the doctors practice in the general area; that they anticipate that only 1 to 3 doctors will be on the site at any one time; that since the County population is growing the need for the doctors will grow; that they anticipate that the office will only generate a small traffic load since their practice is by appointment only, therefore spreading the traffic out; that normal business hours are from 8:00 a.m. to 5:00 p.m. five (5) days per week, with no weekend or nighttime hours; that all emergency calls would be taken at hospitals; that they are willing to meet with the Historic Preservation Office to resolve their concerns; that they do not intend to erect a large sign, only an internally lighted 32 square foot sign; that they do not plan on having security lighting on the parking lot after 8:00 or 9:00 p.m.; that the MRI trailer will be on the site for approximately 8 hours per week; that the MRI trailer is moved on schedule to and from their offices in Dover, Milford, and Middletown; that the buildings have been designed larger than needed so that they can show future expansions; that they would be willing to delete the 1-story structure which would automatically reduce the required parking; that the MRI trailer is a one-year old unit that is heated and air-conditioned and magnetically protected; that the unit is very safe and quiet; that their office in Milford, located in an industrial park, is 1.5 years old; and that the 2-story structure will have administrative office and doctors offices on the second floor and examination and waiting rooms on the first floor.

The Commission found that the applicants submitted a photo tour booklet of the site and the business uses in the area.

The Commission found that the applicants submitted 14 letters from residents in the area expressing their support of the application, and a petition in support containing approximately 148 signatures obtained at their office.

The Commission found that JoAnn Cassidy, one of the current owners of the site, spoke in support of the application and stated that she had received approval to build a bed and breakfast inn on the site; that the area along Route 24 has changed; that business and commercial uses exist all along Route 24; that a doctor's office is a weekday day time use that would be much preferred over other commercial and business uses; and that the use would be consistent with the existing commercial and business uses.

The Commission found that Eugene Bookhammer, developer of Bookhammer Estates, Deborah Appleby, Jeannie Greenhaugh, Mary Nichols, and Curtis Wright, of the 16 people present in opposition, expressed concerns about traffic, traffic congestion, traffic accidents, the size of the facility and parking lot, parking of the MRI trailer, the impact on property values, other objections stated in the letters of opposition; that the use is not compatible with the residential subdivision adjoining; that the glass blowing studio and this site were created prior to the subdivision; that the other business uses in the area are small low traffic generators; and that the glass blowing studio was built to resemble a barn to blend in with the community.

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

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

Motion carried 5 – 0.

C/U #1460 – application of **D. ANGLE Y RUMMEL** to consider the Conditional Use of land in an AR-2 Agricultural Residential District for placement of a manufactured home to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 15,038 square feet, more or less, lying west of Road 288 and being west of West Conley Circle and being more specifically Lot 17 within Conley Chapel Village Subdivision.

The Commission found that prior to the meeting the applicant provided a packet of information for the record containing a settlement sheet, a copy of the deed, a plot, a location survey, an appraisal, a memo from the Assessment Division, a copy of a request for a variance, a letter from Richard E. Berl, Jr., Assistant County Attorney, to the Planning and Zoning Department, a letter from the Planning and Zoning Department to Fuqua & Yori, PA, a reference to C-Grading of a manufactured home, a memo from the Assessment Division to James A. Yori, Attorney, a copy of a Pawnee Homes, Inc. Standard Specifications, a cross section of the applicant's home, a landscaping plan for the site, a copy of Section 115-IV of the Sussex County Code, a copy of a letter from John W. Davidson to the applicant, and 3-pages of pictures of homes in the subdivision.

The Commission found that a violation notice was sent to the applicant on February 7, 2002.

The Commission found that a petition in opposition to the application was received from the homeowners within the Conley Chapel Village Subdivision. It was noted on the petition that 100% of the homeowners were opposed to the application.

The Commission found that a letter in opposition was received from Bob and Darlene Holt, homeowners in Conley Chapel Village Subdivision, expressing concerns about depreciation of property values.

The Commission found that D. Angley Rummel and James A. Yori, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that Ms. Rummel has been a resident of Sussex County since 1974; that she sold her home in Seaford in 1999 and purchased a Pawnee Home in Rehoboth Shores, a manufactured home park; that after living in the park for a year she purchased the lot and planned on moving the unit to the lot; that she was directed to the Assessment Division by the Planning and Zoning Department to find out what was necessary to convert the home to a Class-C designation; that the home was moved in one piece to the site in December 2001 by John Davidson of East Coast Structural Movers, Inc.; that Mr. Davidson did not get a permit to move the home onto the lot since he was not the masonry contractor; that she went to the Planning and Zoning Department to get the permit and found that the home could not be placed in Conley Chapel Village Subdivision since it is a manufactured home; that the Assessment Division will give the unit a Class-C designation since the unit will be placed on a solid foundation; that the home has drywall and hardwood floors; that she has been living with friends since December 13, 2001 and has had to move four times; that the home is appraised as a modular; that since moving the home into Conley Chapel Village Subdivision three homes have been sold; that she intends to landscape the lot based on the landscaping plan; that there have been no recorded restrictions found for the Conley Chapel Village Subdivision; that the metal chassis can be removed; that the applicant has obtained a conventional mortgage; that the use is a residence, not a mobile or manufactured home; that several homes have been moved into the subdivision in sections; that a stone driveway is proposed; and that a certificate of title existed when she purchased the unit.

The Commission found that Mr. Yori submitted four suggested conditions, which included: 1) The house shall be placed on a block foundation pursuant to Sussex County Building Code. 2) The metal chassis shall be removed from the house. 3) The applicant shall surrender the title to her home to the Department of Motor Vehicles pursuant to the Sussex County Assessment Division C-Grading for Manufactured Homes. 4) The applicant shall landscape her property pursuant to the Landscaping Plan prepared by John Weist, which was submitted as part of the record.

Mr. Lank advised the Commission that when the home was permitted in Rehoboth Shores Manufactured Home Park it would have been a mobile or manufactured home since modular and site constructed home are not permitted in manufactured home parks.

The Commission found that John Davidson of East Coast Structural Movers, Inc. was present and stated that the unit sits on I-beams; that the unit is similar to a Nanticoke Home; that Pawnee Homes are basically the same as Nanticoke Homes; and that there are little to no differences in the unit from a modular unit.

The Commission found that Bonnie Barnage, a friend of the applicant, Dan Watson, a tenant on the adjoining lot within Conley Chapel Village Subdivision, and Virgil Brown, a lot owner within Conley Chapel Village Subdivision spoke in support of the application and stated that the applicant is very honest; that she has been homeless since December 2001; that the process has created an emotional and financial hardship on the applicant; that some of the homes in the subdivision are less attractive; that the only eyesore is seeing the unit sitting on supports and not a foundation; that the unit must not cause depreciation of property values since a vacant lot recently sold for \$37,000; and that the unit is attractive.

The Commission found that David Greenhaugh, Karen Greenhaugh, Scott Keffer, and Samantha Morris, residents within Conley Chapel Village Subdivision spoke in opposition to the application and expressed concerns that the Zoning Code provides for certain uses in the subdivision and that a manufactured home is not a permitted use; that the Code has been written to protect the landowners; that the oppositions petition voices the opinion of all of the lot owners; that the unit has a title and was designed and built as a manufactured home; and that removing the I-beams does not change the unit.

Mr. Schrader described the Class-C designation.

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

Motion by Mr. Johnson to approve the application with the four suggested stipulation submitted by Mr. Yori. There was no second to the motion. Mr. Johnson withdrew the motion.

The Commission discussed the application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 5 – 0.

SUBDIVISION #2002-13 – application of **SMOKEY HOLLOW, LLC** to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 67.24 acres into 9 lots, and a waiver from the street construction requirement, located north of Road 390, 2,132 feet northeast of Road 390-A.

Mr. Lank advised the Commission that this Subdivision had previously been approved by the Commission as Subdivision #2000-18; that on March 1, 2001 the Commission decided that the streets may be constructed with $\frac{3}{4}$ " crushed and compacted stone at 240 lbs. per square yard; and that the preliminary approval was voided because the applicant failed to apply for an extension of time prior to the expiration date.

Mr. Lank advised the Commission that comments were received from members of the Technical Advisory Committee for the committee meeting of June 19, 2002 from DelDOT, DNREC, the Delaware Health and Social Services, the Natural Resources Conservation Service, Sussex County Addressing of the County Assessment Division, and Mr. Schrader in reference to the Deed Restrictions.

Mr. Lank advised the Commission that the representatives of the applicant provided copies of a letter of time extension from DelDOT for the entrance construction, a memo from M.C.H. Construction advising that they do not have easement on the property, and copies of approvals from the Office of the State Fire Marshal.

The Commission found that Paul West of Vista Design Group, Inc. was present on behalf of the applicant to answer any questions.

The Commission found that William Neydon and Darren Jones, area residents, were present in support of the application and stated that they have no objections; that the applicant has been a good neighbor; that the applicant has a nice home on the property; and that there are no mobile homes proposed.

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

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary with the requested waiver.

Motion carried 5 – 0.

SUBDIVISION #2002-14 – application of **J. & Y. PARKER FAMILY, L.P.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 3.82 acres into 6 lots, located north of Road 331, 640 feet southeast of Road 339.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on June 19, 2002 and that the Technical Advisory Committee Report for the meeting is a part of the record for this application.

Mr. Lank read a letter from David S. and Donna L. Saunders, adjacent property owners, expressing concerns about limiting single family use of the lots, piers and docks, and a possible marina.

The Commission found that Jack Parker and Charles Adams of Adams-Kemp Associates, Inc. were present and stated that the Town of Millsboro is going to supply water and sanitary sewer to the site; that the entrance has been constructed to State specifications; that wetlands have been delineated; that the 100-year flood requirements only impacts the waterfront lots; that the Town of Millsboro was considering annexation of the site and intended to approve 13 multi-family units on the site and 4 home sites; that the annexation never took place; that a home has been constructed on lot #2; that the community will be gated; and that the street name will be changed per the approval of County Addressing.

The Commission found that Tim Hodges, Mr. Parker's son-in-law, spoke in support of the application and advised the Commission that his home is located on lot #2.

The Commission found that David and Donna Saunders were present with concerns since Mr. Parker is a businessman and may change his plans in the future, and added that they are opposed to a marina being built near their lot. Mrs. Saunders provided Mr. Lank with a copy of a response from DNREC in reference to the marina denial and references to limitations of docks and piers for family members.

The Commission found that Mr. Parker added that he has approval for 4 boat slips, not a marina; that DNREC considers any more than 4 boat slips as a major marina; and that a fence has been placed along the Saunders property line.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Subdivision as a preliminary.

Motion carried 5 – 0.

SUBDIVISION #2002-15 -- application of **JIM PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 29.80 acres into 3 lots, located southeast of Road 410, 1,558 feet southwest of Road 409.

Mr. Lank advised the Commission that the proposed subdivision actually contains 4.5835 acres of the 29.80 acres.

Mr. Schrader advised the Commission that he has not yet reviewed the deed restrictions.

The Commission found that Jim Parker was present and stated that he is purchasing lots 11 and 12 from Marshall Lewis; that Mr. Lewis is retaining lot 13 for a relative; that the restrictions will be the same as lots 7 through 10 of the Lewis Subdivision; that 5 homes have been built on the first 10 lots; and that lot 13 will not be subdivided.

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 the points and issues raised during the public hearing.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the subdivision subject to receipt of the entrance location approval from DelDOT, and receipt of Mr. Schrader's approval of the deed restrictions.

Motion carried 5 – 0.

OLD BUSINESS

C/Z #1474 – application of **A.A.S.C.D. VENTURES** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a GR General Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southwest of Bay Farm Road (Route 299), north of Trinity Road (Route 299-A), and on both sides of Legion Road (Route 298), to be located on 303 acres, more or less.

The Commission discussed this application which has been deferred since July 11, 2002.

Mr. Lynch stated that he would move that the application be approved with reasons, passed out his reasons, and asked Mr. Schrader to read his recommendation. Mr. Schrader read that Mr. Lynch recommends that the application be approved for the following reasons: 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Sussex County Comprehensive Plan. 2) The site is located within an area designated by the State as an Environmentally Sensitive Developing Area according to the Strategies for State Policies and Spending Document where the State seeks a balance between resource protection and sustainable growth. 3) MR Zoning is appropriate for the proposed project site because medium density residential development is appropriate in areas where central sewer and central water are available. 4) The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large-scale development as a means to create superior living environments, providing for open spaces, and the use of design ingenuity while protecting existing and future uses. 5) The subject property is in an area between Oak Orchard and Long Neck that has developed with residential projects with densities similar to or greater than the proposed project. The proposed project is in character with the nature of the area. 6) this recommendation is subject to the following conditions:

- The maximum number of units shall not exceed 660 dwelling units comprised, as follows:
 - 160 Single family lots (10,000 square feet minimum)
 - 144 Single family lots (7,500 square feet minimum, age restricted)
 - 192 Condominium units
 - 164 Multi-family units, age restricted
- Residential building permits shall not exceed 100 per year.
- Commercial floor area shall not exceed 15,000 square feet within this project. The sale of petroleum products and the sale of alcohol are not permitted.
- Site plan review shall be required for each phase of development.
- The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include rolled curbs and sidewalks, street lighting, and street trees spaced every 50'. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design.
- All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT or in accordance with any further modification required by DelDOT.
- The development shall contain a "Park & Ride" parking and pick up facility available to the public at a location to be determined by DART and subject to site plan review by DelDOT and the Planning and Zoning Commission. These improvements shall be completed within two (2) years of the issuance of the first building permit.

- Within one (1) year of the approval of the master plan, the applicant shall coordinate with the State, County, and other local emergency planning offices in the development and implementation of an emergency evacuation procedure for the project.
- Recreational facilities, e.g., tennis courts, swimming pool, community building, pathways, tot-lot, and multi-purpose field, shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
- The RPC shall be served by an existing or an extended Sussex County sanitary sewer district.
- The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated Federal wetlands or open space areas.
- Wetlands shall not be included in individual lots. Federal wetlands shall be maintained as non-disturbance areas.
- No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved based on the above reasons.

Motion carried 5 – 0.

OTHER BUSINESS

- 1) Shore Thunder Cheerleading
Site Plan – Route 9 and Road 446

The Commission reviewed the site plan for a 8,400 square foot building to be used as a cheerleading practice facility.

Mr. Lank advised the Commission that the membership will be private and not operated commercially; that parking and setbacks meet the requirements of the Zoning Code; that the site contains 2.32 acres and is zoned Agricultural Residential; that approvals have been received from DelDOT, DNREC, and the Office of the State Fire Marshal; that approval has not yet been received from the Sussex Conservation District; that the site plan is suitable for preliminary approval; and that final approval may be subject to the staff receiving the approval from the Sussex Conservation District.

The Commission found that Robert Horsey of Shore Thunder Cheerleading, and Jeff Clark of Land Tech. LLC were present and stated that Shore Thunder Cheerleading is a non-profit organization; that the Sussex Conservation District has reviewed the application and responded with corrections; and that the corrections have been made and the plans resubmitted to the Sussex Conservation District.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving the approval from the Sussex Conservation District.

2) Pot Nets Bayside
Relocation of 11 lots – Route 22

The Commission reviewed a promotional site plan depicting 3 areas within Pot Nets Bayside for the relocation of 11 lots.

Mr. Lank advised the Commission that all of the lots meet the requirements of the Zoning Code; that approval of the relocation of lots will bring the total number of lots up to 1,512; and that the maximum number of original lots was 1,591 pursuant to a decision of the Sussex County Board of Adjustment.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the relocation of 11 lots as submitted.

Meeting adjourned at 10:38 p.m.