



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF AUGUST 25, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 25, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Vice Chairman Johnson presiding. The following members of the Commission were present: Mr. Michael Johnson, Mr. Rodney Smith, Mr. I. G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of August 11, 2011 as amended. Motion carried 4 - 0.

PUBLIC HEARINGS

C/U #1909 – application of **THOMAS P. COLLINS** to consider the Conditional Use of land in GR General Residential District for a beauty shop to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 5.0 acres, more or less, lying southeast of Shawnee Road (Route 36) 365 feet southwest of Calhoun Road (Road 621).

The Commission found that the Applicant submitted a survey/site plan showing the existing improvements on the property and the proposed shop with related parking.

The Commission found that DelDOT provided comments in the form of the Support Facilities Report, dated June 1, 2011, which reference that a traffic impact study is not recommended and that the current Level of Service “B” of Shawnee Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated August 21, 2011, which reference that the site is located in the Western Sussex Planning Area #1; that an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Thomas P. Collins was present and stated in his presentation and in response to questions raised by the Commission that his wife has operated a beauty salon in the City of Milford for 19 years; that they do not want to go through any additional rental increases; that they feel that having the salon near their home would be more cost beneficial and more effective for the business; that they will continue to reside on the premises; that homes border their property on both sides and agricultural activities occur on the south side; that he is not aware of any objections from his neighbors; that the salon will have one full-time employee besides his wife and a possible part-time employee; that they applied for the salon on the acreage, rather than attempt to subdivide the property; that the salon will be located towards the front of the lot and will have 2 or 3 chairs; that seven parking spaces are proposed and should be adequate to serve the use; that business hours will not exceed 8:00 a.m. to 6:00 p.m. six days per week with no Sunday hours; that they would like a small sign to establish their location and that the sign will not exceed 32 square feet per side; that they are currently outside of any annexation or growth area for the City of Milford; that private on-site well and septic will be utilized; that they may provide one tanning bed in the future; that the only retail sales will relate to the services rendered; and that there are several business and commercial uses in the area, i.e. convenience stores, auto repair and sales, cabinet shop, etc.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1909 for Thomas Collins for a beauty salon based on the record made at the public hearing and for the following reasons:

- 1) The use is limited to a beauty salon which is very nearly a home occupation. The Applicant will continue to reside on the property.
- 2) The use will have little or no impact on the neighborhood or traffic.
- 3) No parties appeared in opposition to this application.
- 4) This recommendation is subject to the following conditions:
 1. The use shall be limited to a beauty salon and the types of uses that typically occur in such a facility, such as limited retail sales, tanning, etc.
 2. One lighted sign, not to exceed 32 square feet in size per side shall be permitted.
 3. The site shall also comply with all the parking requirements contained in the Zoning Code.
 4. The hours of operation shall be limited to 8:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 3:00 p.m. on Saturdays.
 5. There shall be no more than 2 employees in addition to the Applicant and his wife.
 6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

C/U #1910 – application of **CHARLES BOEHM** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a hot dog vendor to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 39,176 square feet, more or less, lying southeast corner of Long Neck Road (Route 22) and Julia's Lane, 1,300 feet east of Banks Road (Road 298).

The Commission found that the Applicant submitted a survey/site plan showing the existing improvements on the property and the proposed vendor stand location.

The Commission found that DelDOT provided comments in the form of the Support Facilities Report, dated August 6, 2010, which reference that a traffic impact study is not recommended and that the current Level of Service "D" of Long Neck Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated August 21, 2011, which reference that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project if the use does not exceed approximately 1.0 EDU; that the EDU Assessment for the proposed use is not known at this time; that the proposed use may exceed sewer system design assumptions, however it is not expected that the EDUs will have an adverse impact on the sewer system for the foreseeable future; that the system design assumption for the parcel is 1.0 EDU reflecting a residential zoned parcel less than one acre; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is #3, 612.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel's frontage on Julia's Lane; that conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that Charles Boehm was present and stated in his presentation and in response to questions raised by the Commission that he intends to continue operating a hot dog vendor cart; that the cart is setback 40 feet from the right-of-way of Long Neck Road; that 3 or 4 parking spaces are available for parking; that most of his patrons come from the retail bait and tackle shop on the site and the Shorts Marine site to the west; that the cart is removable and that he hauls the cart to and from his home to the site; that originally he operated the cart seven days per week and that he has found that Thursday through Sunday is enough; that he normally is available from 10:30 a.m. to 4:00 or 5:00 p.m. on a seasonal basis; that the cart measures approximately 6-feet by 7-feet; that he does not occupy the cart; that he stands outside and next to the cart; and that he occasionally takes the cart to community events.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1910 for Charles Boehm for a hot dog vendor based upon the record made at the public hearing and for the following reasons:

- 1) The use as a mobile hot dog vendor cart is very limited and will not adversely affect the neighborhood or traffic.
- 2) The use is consistent with the retail uses that currently exist on the property.
- 3) No parties appeared in opposition to the application.
- 4) The use is temporary in that the cart is removed each night, and only operates seasonally.
- 5) This recommendation is subject to the following conditions:
 1. The hot dog cart shall not be permanently located at the site and shall remain mobile.
 2. The Applicant shall comply with all Health Department recommendations governing the sale of food and beverages.
 3. The hot dog cart shall be parked in the location shown on the preliminary site plan, at least 40 feet from the right-of-way of Long Neck Road.
 4. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

C/Z #1707 – application of **DOROTHY SOMERVILLE** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 31,980 square feet, more or less, lying southeast of Route 26, 200 feet westerly of Irons Lane (Road 348).

The Commission found that the Applicant submitted a survey/site plan showing the existing improvements on the property and the related parking.

The Commission found that DelDOT provided comments in the form of the Support Facilities Report, dated May 31, 2011, which reference that a traffic impact study is not recommended and that the current Level of Service “E” of Route 26 will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated August 21, 2011, which reference that the site is located in the Beaver Dam Planning Area; that an on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service at this time; that when the County provides sewer service, it is required that the on-site septic system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Dorothy Somerville was present and stated in her presentation and in response to questions raised by the Commission that she is an antique dealer; that she lives in one portion of the house and displays antiques in the other; that DelDOT is taking a portion of her front yard and that her property will no longer look residential due to the close proximity of her house to the right-of-way of Route 26; that she has had a Conditional Use for the antique store for approximately 12 years; that the neighboring property to the east is zoned B-1

Neighborhood Business and is occupied by the A.C. T. Thrift Shop; that the neighboring property to the west is residential; that the property across Route 26 is partially zoned C-1 General Commercial and is occupied by the Hudson General Store; that other business uses exist in close proximity to the west and east, i.e. auto repair, auto parts sales, pottery, etc.; that she has signed an agreement with DelDOT for approximately 34 feet of her front yard for right-of-way; that residential use is not an appropriate use now at this location; and that her well will have to be relocated to the rear.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1707 for Dorothy Somerville for a change of zone from AR-1 to B-1 based on the record made at the public hearing and for the following reasons:

- 1) The Applicant has been in business as an antique dealer for 12 years at this site. The Change in Zone will be consistent with the historic use of the property.
- 2) There are other business and commercial zonings and uses in the vicinity, including other retail businesses and an auto repair shop.
- 3) B-1 Zoning is appropriate for this location along Route 26.
- 4) No parties appeared in opposition to this application.
- 5) Due to an eminent domain condemnation the future size of the parcel will limit the possibility of more extensive uses on the property.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1708 – application of **RITE AID OF DELAWARE** to amend Comprehensive Zoning Map 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 Indian River Hundred, Sussex County, containing 20,000 square feet, more or less, lying west of Route 24, 200 feet south of the intersection of Route 5 and Route 22 (Long Neck Road).

The Commission found that the Applicant provided an Exhibit Booklet on August 12, 2011 which includes a copy of the Rezoning Application form, a copy of the Deed to the property, a resume for Richard F. Polk, Professional Engineer with Vista Design, Inc., a copy of the 1868 Beers Atlas Map showing the location, a copy of the State Strategies Map showing the location as being located in Level 2, a hydrological soils map with related text, a Wetlands Report from ERI Environmental Resources, Inc. indicating that there are no Federal or State Wetlands on the site, an existing zoning map with legend, a site location map showing connection to the proposed Route 24 – Carillion Square project, a copy of a Davis, Bowen & Friedel, Inc. response to PLUS, dated August 1, 2006, a copy of the PLUS application form, a copy of PLUS response, dated August 26, 2006, and the original PLUS comments, dated May 25, 2006, a photograph of a Rite-

Aid Pharmacy, a copy of DelDOT comments, dated June 1, 2011, a reference to Post Zoning Utility Services, and suggested Proposed Findings of Fact for this application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated June 1, 2011, which reference that a traffic impact study is not required, and that the current Level of Service "E" will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided in the form of a memorandum, dated August 21, 2011, which reference that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for this project; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,612.00 per EDU; that there is no sewer service to the parcel at this time; that conformity to the North Coastal Area Planning Study and Amendment No. 1, Expansion Area No. 1, Long Neck Sanitary Sewer District Planning Study will be required; that the parcel is in the Sewer District and connection is mandatory; that sewer service is not available to the parcel at this time; that in order to receive sewer service, an extension of mainline sewer from the east side of Route 24 must be completed before the parcel can connect; that the County does not have a schedule at this time to provide sewer service to the parcel; that Rite Aid of Delaware could undertake an extension of mainline sewer to the parcel in accordance with sewer planning in the area; that the extension of sewer service to the parcel would be at the expense of Rite Aid of Delaware; that the County requires design and construction of the collection system to meet County Engineering Department's requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; and that a checklist is provided for preparing sewer concept plans.

The Commission found that Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A. was present on behalf of the application with Rick Polk, Professional Engineer with Vista Design, Inc., and Sue Beckett, Real Estate Representative for Rite Aid of Delaware, and that they stated in their presentations and in response to questions raised by the Commission that this application is a proposed expansion to an existing C-1 General Commercial property; that the rezoning will be consistent with the character and trend of development in the area; that the site independently measures 100-feet by 200-feet; that C-1 General Commercial borders the site on two property lines; that there are no wetlands on the site; that there is no forest land on the site; that the soils are appropriate for commercial use; that the site is located in the Environmentally Sensitive Developing District Overlay Zone; that a Rare and Endangered Species Report has been prepared and that none were found on the site; that there are no historic buildings on the site; that the intent of the application is to expand the Carillon Square Center site; that the site provides additional square footage for parking and driveways to serve a larger pharmacy; that no other additional retail square footage is proposed in the overall Carillon Square Center; that State Planning has advised that an additional application to PLUS is not necessary since the square footage is not being expanded overall; that central water will be provided by Tidewater; that sewer service will be provided by the County; that the two existing entrances on the site will be closed; that access to the site will be through the Carillon Square Center; that the site borders a residential lot to the north and that the Carillon Square Center site is located to the south and west of the site; that a bank, a McDonalds, and shopping areas exist to the east across Route 24;

that there are nine Rite Aid Pharmacies in Sussex County with 139 employees; that the proposed use is a relocation of the existing smaller pharmacy in the Food Lion Shopping Center to the north; that this pharmacy will have 25 employees once opened; that Rite Aid of Delaware bids out their projects for local contractors; that Rite Aid of Delaware is ready to start construction; that access to the site is from Route 24, a major highway collector roadway; that with the expansion of the property, the Carillon Square Center will contain 54,600 square feet of retail; that all entrances will be built prior to any request for Certificates of Occupancy; and that the pharmacy will have adequate storage space in the building and will not need pod storage units outside.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1708 for Rite Aid of Delaware for a change of zone from AR-1 to CR-1 based upon the record made at the public hearing and for the following reasons:

- 1) This rezoning is basically in-fill. The property is surrounded by Route 24 on one side and existing C-1 zoning on two sides.
- 2) CR-1 zoning is appropriate for this area of Route 24. There are a variety of existing commercial uses and zonings, including two shopping centers, fast food stores, a bank, and other retail, business, and commercial uses in close proximity.
- 3) The change in zone will not adversely affect the neighborhood or traffic.
- 4) The site will be served by public water.
- 5) The site will be served by Sussex County sewer, subject to the Applicant's compliance with the requirements of the Sussex County Engineering Department.
- 6) The ultimate use of the property will be subject to all DelDOT requirements.
- 7) CR-1 zoning is appropriate under the County Zoning Code, since CR-1 zoning is designed to provide for a wide variety of commercial and service activities serving a wide area, and that such uses shall be located where a general mixture of commercial and service activities now exists.
- 8) No parties appeared in opposition to the application.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

OTHER BUSINESS

Bayside Mini-Storage

Preliminary Commercial Site Plan – Zion Church Road (Route 20)

Mr. Abbott advised the Commission that this is a preliminary site plan for a mini-storage facility located on 3.03 acres; that the site is zoned CR-1 Commercial Residential; that eleven 2,499 square foot buildings and a 2,000 square foot building are proposed; that an approximately 200

square foot office building is also proposed; that outside boat and RV storage is also proposed; that 4 parking spaces are proposed and are located within the 60-foot front yard setback and are subject to site plan review; that the setbacks meet the minimum requirements of the Zoning Code; that a gated fence is proposed; that sewer will be serviced by Sussex County; that water will be provided by Artesian Water Company; that there is no disturbance to the wetlands; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of this site plan, and that final approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Coastal Towing
C/U #1852 Site Plan – Road 283

Mr. Abbott advised the Commission that this is a site plan for the addition of auto sales to an existing auto repair site; that the Conditional Use for the auto sales was approved on September 21, 2010 with 4 conditions of approval; that the conditions of approval are noted on the site plan; that the area for display of autos is 20-feet by 95-feet as permitted by the approved Ordinance; and that DelDOT has issued a Letter of No Objection for the entrance.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant final approval of this site plan. Motion carried 4 – 0.

Mid-Atlantic Property Ventures, LLC
C/U #1571 – Revised Site Plan – Route 24

Mr. Abbott advised the Commission that this is a site plan for a 640 square foot addition to an existing 9,310 square foot doctor's office; that the setbacks meet the requirements of the Zoning Code; that the conditions of approval for C/U #1571 do not prohibit any future expansion; that in reviewing the Minutes of May 13, 2004 there were no parties present in opposition to this application; and that if the Commission is favorable towards the revision, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the revised site plan subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Subdivision #2005-91 – Highland Development Corp.
Ferry Cove Subdivision – Amended Condition

Mr. Abbott advised the Commission that this application received preliminary approval on February 20, 2007 with 17 conditions; that the Commission granted numerous time extensions; that with the adoption of the recent time extension ordinance by the County Council, preliminary approval for this project is now valid until January 1, 2013; that this is a request to modify Condition #10 which reads "Within one (1) year of the issuance of the first residential building permit, the Developer shall construct a community swimming pool and community center, trails

and community pier with no more than four (4) boat slips”, and proposed to read “Before the issuance of the two hundred fifty eighth (258th) residential building permit, the Developer shall construct a community swimming pool and community center, trails and community pier with no more than four (4) boat slips”; that 391 total lots were approved; and that as proposed by the Developer, construction of the amenities would begin prior to 66 percent of the approved homes being built.

The Commission discussed this proposal and questioned if there should be a number, a date, or a time limit, and that they need to be consistent when making such a condition.

There was a consensus of the Commission that they should defer for further consideration and discussion with the entire Commission.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to defer action for further consideration with all Commissioners present. Motion carried 4 – 0.

Meeting adjourned at 7:30 p.m.