

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 11, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 11, 2003 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. Lynch, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director and Richard Kautz - Planner.

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 August 28, 2003 as circulated.

OLD BUSINESS

C/U #1497 – application of **BOBBY R. JONES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to construct, build, and repair wooden pallets to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 13.32 acres, more or less, lying northwest of Route 611, 1,500 feet south of Route 16.

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

Motion carried 4 – 0.

C/Z #1513 – application of **WINDMILL VENTURES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying east of Route 352 (Windmill Road), 0.4 mile south of Route 26, to be located on 34.09 acres, more or less.

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

Motion carried 4 – 0.

C/U #1502 – application of **WINDMILL VENTURES, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 34.09 acres, more or less, lying east of Route 352 (Windmill Road), 0.4 mile south of Route 26.

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

Motion carried 4 – 0.

C/U #1503 – application of **ELTON AND DONNA MURRAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a self-storage facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 40,923 square feet, more or less, lying north of Road 346 (Holts Landing Road), 210 feet west of Route 348 (Irons Lane).

The Commission discussed this application which has been deferred since August 28, 2003.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward C/U #1503, the application of Elton and Donna Murray, to the Sussex County Council with the recommendation that it be approved with the following conditions:

- 1) There will be no more than 67 self-storage units on the site.
- 2) All doors to the units will face into the interior of the site.
- 3) The eight-(8) foot metal security fence, which was erected by Delaware Electric Cooperative, enclosing the entire site will not be removed.
- 4) The entrance shall comply with all of DelDOT's requirements. The entrance shall remain the same. The gate will be moved back into the site.
- 5) Most of the site will be paved, especially between the buildings.
- 6) There shall be no outside storage.
- 7) Security lights will be installed, but will not impact neighbors or traffic on Road 346.
- 8) There will be no well or septic system on the site.

Motion carried 4 – 0.

C/U #1504 – application of **NARDO, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a B-1 Neighborhood Business District for expansion of Conditional Use No. 1290 (Ordinance No. 1323) for additional offices and storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 5.0 acres, more or less, lying south of Route 9, 0.5 mile west of Route 262.

Mr. Wheatley stated that he would not be participating in the decision on this application.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried with 3 votes to defer action until Mr. Johnson returns.

Motion carried 3 – 0. Mr. Wheatley not voting.

Subdivision #2003 – 14 - - application of **H.M. PROPERTIES, ROUTE 23, L.L.C.** to consider the subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 240.81 acres into 352 lots, located at the southwesterly corner of the intersection of Road 286 and Road 285.

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

Motion carried 4 – 0.

Subdivision #2003 – 15 - - application of **TLC REAL ESTATE SOLUTIONS, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 5.15 acres into 3 lots, located at the corner of the intersection of Hudson Street and Falls Road within Creek Falls Farm Subdivision.

The Commission discussed this application which has been deferred since August 28, 2003.

Motion by Mr. Wheatley, seconded by Lynch, and carried unanimously to grant preliminary approval and final approval, since no streets are being created, of Subdivision #2003-15 for TLC Real Estate Solutions, Inc., based upon the record and for the following reasons:

- 1) The Applicant is seeking to divide a parcel consisting of 5.15 acres within the existing Creek Falls Farm Subdivision into 3 lots.
- 2) The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it promotes the orderly growth of the County.
- 3) The Applicant has provided the required 51% agreement of the existing property owners within the Creek Falls Farm Subdivision.
- 4) The land is zoned AR-1, which permits low-density single family residential development of this type.
- 5) The proposed subdivision is generally in character with the existing subdivision. The Applicant has also agreed to retain the existing silos that are on the property, as the existing residents have requested.
- 6) The Applicant has advised that the existing pond located between Parcels B and C on the Preliminary Site Plan will be maintained by future lot owners.
- 7) The Applicant has advised that the existing driveway around the dwelling on Parcel A will remain.

Motion carried 4 – 0.

PUBLIC HEARINGS

C/Z #1514 – application of **DON CONAWAY** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 1.0 mile west of the “The Ditch” and 0.6 mile east of Route 58B, to be located on 1.43 acres, more or less.

Mr. Lynch announced that he would not be participating in review of this application.

Mr. Lank provided the Commission with copies of the site plan and photographs of the site that were submitted by the Applicant.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Fenwick Island Sanitary Sewer District; that the South Coastal Area Planning Study report identified long-term capacity concerns for the Route 54 interceptor line; that capacity is not available for all uses allowed under commercial zoning; that capacity is available for 15 EDUs if all existing structures are removed; that Ordinance No. 38 construction will be required; that both parcels are served with six-inch laterals; and that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required.

The Commission found, based on comments received from DelDOT, that the Department wrote two letters in reference to this application; one letter addressed to the County and one letter addressed to D. Stephen Parsons; that the Department is concerned about this application because they see it as encouraging more traffic in an area that has been identified as operating at unacceptable levels of service (E) during summer peak hours; that the Department feels that a Conditional Use application is more appropriate; that Mr. Parsons had indicated that his clients would rather request the rezoning and then place restrictions on the deeds to the property; and that if the County finds it appropriate to rezone the property with deed restrictions, the Department suggests that those restrictions should limit the use of the property to residential, with the restrictions removable or amendable only with the concurrence of DelDOT.

The Commission found that five (5) letters of support for the application had been received.

The Commission found that Steve Parsons and Don Conaway were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they propose to develop multi-family units on the site; that they propose to limit the number of units to 16 townhouse designed condominium units; that the site has been operated as a restaurant for many years and referenced five (5) different

restaurant names that utilized the site; that they propose to remove all of the structures located on the site; that there will be no depreciation of property values due to the quality of the proposed units; that the units will be valued for at least \$600,000; that traffic will be reduced; that there should be less sewer problems; that area residents in Keen-Wik and other subdivisions will appreciate the residential use rather than noise from outside restaurant activities; that there are no wetlands on the site; that density should be the choice of the applicant; that deed restrictions are proposed to limit the use; that they have utilized similar deed restrictions for other projects and that the deed restrictions were upheld by the Court of Chancery; that DelDOT has stated that they would issue an entrance permit for townhouses; that there are no active business activities presently operating on the site; and that they have a contract to purchase the site.

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.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried with 3 votes to defer action.

Motion carried 3 – 0. Mr. Lynch did not participate in the discussion or vote.

C/Z #1515 – application of **DON CONAWAY** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 1.0 mile west of the “The Ditch” and 0.6 mile east of Route 58B, to be located on 2.61 acres, more or less.

Mr. Lynch announced that he would not be participating in review of this application.

Mr. Lank provided the Commission with copies of the site plan and photographs of the site that were submitted by the Applicant.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Fenwick Island Sanitary Sewer District; that the South Coastal Area Planning Study report identified long-term capacity concerns for the Route 54 interceptor line; that capacity is not available for all uses allowed under commercial zoning; that capacity is available for 22 EDUs if all existing structures are removed; that Ordinance No. 38 construction will be required; that all parcels are served with six-inch laterals; and that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required.

Mr. Lank advised the Commission that the comments on this application from DelDOT are the same as the comments for C/Z #1514.

The Commission found that three (3) letters of support had been received for this application.

The Commission found that Don Conaway and Steve Parsons, Attorney, were present on behalf of Joseph Balsamo, the owner of the property, and stated in their presentations and in response to questions raised by the Commission that this application is similar to the application for C/Z #1514; that this site is improved by the Bay Café Restaurant; that they propose to develop the site with multi-family units; that the restaurant will be destroyed; that they propose the same type of deed restrictions as proposed for C/Z #1514; that the use is less impacting than the restaurant; that there will be less traffic; that there will be no adverse impact on property values; that there will be less impacts on the sewer system; and that the intended use is the same as described on C/Z #1514.

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.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried with 3 votes to defer action.

Motion carried 3 – 0. Mr. Lynch did not participate in the discussion or vote.

C/Z #1516 – application of **EAST BAY HOMES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-RPC High Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying northeast of Route 331 and 0.4 mile southeast of Route 339 and southwest of Indian River, to be located on 21.007 acres, more or less.

Mr. Lank announced that this application was withdrawn on August 12, 2003.

C/Z #1517 – application of **MICHAEL AND MARY MORTON** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Route 268 (Kings Highway), across from Route 268A, to be located on 16,227 square feet, more or less.

The Commission found, based on comments received from DelDOT, that the Department is concerned about this rezoning; that the Department has concerns regarding access to the property and see the rezoning, not the existing business, as creating a potential for more traffic in an area that has been identified as operating at unacceptable levels of service (E) during summer peak hours; that the Applicant will be allowed to continue using the existing horseshoe drive for the existing electric motor business; and that if the land use changes the existing horseshoe drive would be eliminated and replaced with one entrance.

The Commission found that Mary Morton was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that the electric motor business has existed for over 50 years; that commercial zoning will increase the properties value; that other properties along Kings Highway have been rezoned to commercial; that they plan on continuing the electric motor business; that the property has no residential value due to it's location; that they have no plans on expanding the business; and that expansion would be very limited due to the size of the property and the required setbacks.

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.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since the rezoning would not be detrimental to the community; since the use would be limited due to the setbacks; and since the use has existed for approximately 50 years.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS RELATING TO RESIDENTIAL USES IN THE B-1 AND C-1 COMMERCIAL ZONING DISTRICTS BY LIMITING SUCH USES TO 4 DWELLING UNITS PER ACRE, TO ELIMINATE SECTION 115-77.1 LARGE SCALE USES, AND MAKES OTHER TECHNICAL CHANGES TO ARTICLE X, B-1 NEIGHBORHOOD BUSINESS DISTRICT AND ARTICLE XI, C-1 GENERAL COMMERCIAL DISTRICT.

Mr. Lank provided the Commission with copies of comments received from the Office of State Planning Coordination.

The Commission found that Thomas Shafer of Shafer Consulting, a consultant for the County for the preparation of ordinances, was present and stated that the 2002 Comprehensive Plan Update recommends that the density be reduced in the commercial districts; that residential uses could be applied for as High Density Residential rezoning applications; that there are large commercial properties along Route One; and that there is a need to separate residential and commercial uses.

The Commission found that John Tarburton, Attorney, was present on behalf of Sergovic, Ellis, and Shirey, P.A. for their clients (Rehoboth Mall Limited Partnership, Coleman Bunting, Ronald Moore, and Hudson Homes) and stated that they are concerned about some of the wording, especially the word "established" in 115-77; that the word "established" should be better defined; that they are also concerned about the reference to 75,000 square feet; questioning if the 75,000 references footprint or floors; and added that Mr. Sergovic would like to offer some suggested language.

The Commission found that Richard Collins of the Positive Growth Alliance was present and submitted comments on how density affects open space in Sussex County; and added that this issue was one of the hot topics of discussion during the hearings on the Comprehensive Plan Update; that the Plan should not be altered; and that we have enough existing commercial property for all densities.

The Commission found that Mr. Shafer added that there is already a definition for "gross floor area" in the Ordinance.

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action and to leave the record open for written comments to the close of business on September 25, 2003.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ADD A NEW SECTION CREATING A C-2 LARGE SCALE COMMERCIAL DISTRICT.

Mr. Lank advised the Commission that comments in reference to this Ordinance from the Office of State Planning Coordination are included in the comments provided on the previous ordinance.

The Commission found that Thomas Shafer of Shafer Consulting, a consultant for the County for the preparation of ordinances, was present and stated that the 2002 Comprehensive Plan Update recommends that a new commercial zone be established for large commercial buildings; that the 75,000 references floor area; that mixed uses and warehousing are affected; and that the County needs guidelines for the layout of buildings.

The Commission discussed mixed uses, warehousing, the suggested 20% increase for parking; mechanisms for exceptions, and that guidelines should be in ordinance form, not policies.

The Commission found that Jerry Friedel of Davis, Bowen & Friedel, Inc., consulting engineers, questioned if the Ordinance will require rezoning to create a C-2 District; and added that the Ordinance will create complications when stores want to expand onto adjoining parcels; that there will be parking problems; that one parking space per 200 square foot of retail is adequate; and that redevelopment standards are needed rather than vacant large scale stores.

The Commission found that Christopher Weeks questioned if the C-2 District allows multi-family use.

The Commission found that Kevin Burdette of McCrone, Inc., consulting engineers, stated that the Ordinance should reference singular buildings and should be based on buildings per acre or per footprint, not floors; and questioned mixed uses.

The Commission found that Richard Collins of the Positive Growth Alliance stated that the Ordinance will discriminate against the East and West portions of the County; referenced the percentage of commercial and industrial zoning in the County; that any collection of buildings or floors will be affected; that existing business uses will be impacted; that the Ordinance drives more housing into C-1 Districts; that there is a need for more commercial area; that the Ordinance is a bad idea; that commercial districts will be utilized for residential uses; that there is no need for another commercial district; that big box stores are not causing any problems; and suggested that the Ordinance should be rejected.

The Commission found that Richard Kautz stated that the intent of the Ordinance is that the C-2 District should be located in Town Centers or Developing Areas per the Comprehensive Plan Update.

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

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

Motion carried 4 – 0.

OTHER BUSINESS

Bay Crossing MR/RPC Final Record Plan – Route One

Mr. Abbott advised the Commission that the final record plan is for 256 units; that 172 single family lots and 84 townhouse lots are proposed and permitted by the approved ordinance; that the final record plan is the same as the master plan that was approved by the Commission on October 24, 2002; that for the single family lots the developers are requesting front and rear yard setbacks of 20-feet and side yard setbacks of 6-feet; that for the townhouse lots the developers are requesting 10-foot front yard setbacks and 20-foot rear yard setbacks; that the setbacks are what was referenced on the master plan; that the minimum separation between the multi-family units will be 40-feet; that the landscaping plan has been submitted; that all agency approvals have been obtained; and that the record plan is suitable for final approval.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the record plan as a final.

Motion carried 4 – 0.

Dukes Property Preliminary Multi-Family Site Plan – Route 22 (Long Neck Road)

Mr. Abbott advised the Commission that this is a preliminary multi-family site plan for 79 units and 5,000 square feet of commercial or office space; that the site is zoned C-1 General Commercial; that the size of the parcel is 6.60 acres; that 79 units are permitted by the zoning code; that there are 2 buildings with 16 units, 2 buildings with 8 units, and 1 building with 7 units; that 262 parking spaces are required and proposed; that 58 spaces are located within the front yard setback and need a waiver from the Commission; that a swimming pool and pool house are proposed; that the setbacks and building separations meet the requirements of the zoning code; that central sewer will be provided by Sussex County and that central water is proposed; that the site is located in an AE8 flood zone; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Gerry Friedel of Davis, Bowen and Friedel, Inc. was present and submitted and discussed a booklet that contained a boundary and topographic survey, a site plan of the project, a letter from the Sussex County Engineering Department in reference to sewer capacity, a letter from DelDOT in reference to a traffic impact study not being required, and a letter from Environmental Resources, Inc. referencing that no wetlands are located on the site. Mr. Friedel advised the Commission that the parking along Long Neck Road could be revised and that a landscape plan will be submitted with the final site plan.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary and grant a waiver for the parking located within the front yard setback.

Motion carried 4 – 0.

WSFS Bank
Preliminary Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary site plan for a 1-story 4,200 square foot bank and a 3-story 20,000 square foot office building on 2.10 acres; that the site is zoned C-1 General Commercial; that the staff has received a letter of no objection from DelDOT in reference to the entrance location; that there is a right in only from Route One and that egress will be from the existing cross access easements located to the north and south of the site; that 121 parking spaces are required and proposed; that 16 parking spaces are located underneath the proposed 20,000 square foot office building; that 10 spaces are located within the front yard setback and need a waiver from the Commission; that the required 20-foot landscaped buffer along Route One is provided; that the setbacks meet the requirements of the zoning code; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that there are not any wetlands located on the site; that the site is not located in a flood zone; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Bob Christenson of Meridian Consulting Engineers was present and advised the Commission that Lingo Realty will own the property and that the bank and office space will be leased.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary and to grant a waiver for the parking within the front yard setback with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 4 – 0.

Meeting adjourned at 9:25pm.