

## MINUTES OF THE SPECIAL MEETING OF NOVEMBER 6, 2003

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 6, 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. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director and Richard Kautz - Planner.

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

### OLD BUSINESS

Subdivision #2001-12 – application of **DR. JAMES BEEBE** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 15.41 acres into 4 lots, located at the northeast corner of the intersection of Beebe Drive and Bundicks Drive within Beebe Farm Subdivision, on the east side of Road 285, 272 feet north of Road 287.

Mr. Abbott advised the Commission that this application received preliminary approval on May 24, 2001 for 4 lots; that the Commission granted one year time extensions on May 9, 2002 and April 24, 2003; that the final record plan is the same as the preliminary plan and meets the requirements of the zoning and subdivision codes; that all agency approvals have been received and that the record plan is suitable for final approval.

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

Motion carried 5 – 0.

Subdivision #2002-46 – application of **LEO DONOHOE AND THOMAS DONOHOE** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 1.87 acres into 5 lots, located south of Road 361, 600 feet southeast of Road 368.

Mr. Abbott advised the Commission that this application received preliminary approval on April 17, 2003 for 5 lots; that the final record plan is the same as the preliminary plan and meets the requirements of the subdivision and zoning codes; that all agency approvals have been received; and the record plan is suitable for final approval.

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



Motion carried 5 – 0.

Subdivision #2003-18 – application of **BOB REED** to consider the Subdivision of land in a B-1 Neighborhood Business District in Indian River Hundred, Sussex County, by dividing 21.90 acres into 24, lots, located southeast of Route 24, 375 feet west of Road 297 (Route 5).

The Commission referred back to this application that was deferred at the October 23, 2003 meeting.

Motion by Mr. Johnson, and seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval for this subdivision based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. This application is for an identical subdivision approved by this Commission. The prior approval lapsed under the sunseting regulations of Chapter 99 of the Sussex County Code.
3. This approval is subject to any of the conditions placed upon this Commission's approval of the prior identical subdivision.

Motion carried 5 – 0.

Subdivision #2003-19 – application of **NORTHERN STEEL INVESTMENTS, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 22.71 acres into 14 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 285, 2,251 feet north of Road 286.

The Commission referred back to this application that was deferred at the October 23, 2003 meeting.

Motion by Mr. Johnson, seconded by Wheatley, and carried unanimously to grant preliminary approval for this application based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. There are also other subdivisions with similar characteristics in the vicinity of this application.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision is integrated into the existing terrain and surroundings.

4. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems.
7. The cul-de-sac is necessary given the particular shape of the property. Also given the limited number of proposed lots, the cul-de-sac will not negatively affect the subdivision, traffic, or emergency vehicle access.
8. This recommendation is subject to the following conditions:
  1. The applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  2. The stormwater management system shall meet or exceed the requirements of the State and County.
  3. All entrances shall comply with all of DelDOT's requirements.
  4. There shall be reserved a 50 foot wide right-of-way area between the roadway shown on the Preliminary Site Plan and the perimeter boundary of the property for future interconnection with adjoining properties if they are developed with residential uses.
  5. The Restrictive Covenants shall include the Agricultural Use Protection Notice, if required.

Motion carried 5 – 0.

C/U #1508 – application of **RAY LEWIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit for extraction and removal of soil to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 86.74 acres, more or less, lying east of Route 413 and north of Route 419.

The Commission discussed this application which has been deferred since October 9, 2003.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to defer action to allow the Applicant time for agency reviews.

Motion carried 5 – 0.



C/Z #1519 – application of **ELMER G. FANNIN** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying on the southeast side of the intersection of Route 216A and Route 217, to be located on 32.48 acres, more or less.

The Commission discussed this application which has been deferred since October 9, 2003.

Mr. Wheatley stated that he would move that the Commission recommend denial of C/Z #1519 for Elmer G. Fannin to amend the Comprehensive Zoning Map from GR General Residential to AR-1 Agricultural Residential based upon the record made at the public hearing and for the following reasons:

1. The Applicant has simultaneously applied for a Conditional Use to establish a campground on this property. According to the Applicant, the only reason for this Change of Zone was because it is necessary for the campground Conditional Use. Since I will also be making a motion recommending a denial of the Conditional Use, I do not believe there is a basis for this Change of Zone.

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 denied for the reasons stated.

Motion carried 5 – 0.

C/U #1510 – application of **ELMER G. FANNIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a campground to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 32.48 acres, more or less, lying on the southeast side of the intersection of Route 216A and Route 217.

The Commission discussed this application which has been deferred since October 9, 2003.

Mr. Wheatley stated that he would move that the Commission recommend denial of C/U #1510 for Elmer G. Fannin for a Campground based upon the record made at the public hearing and for the following reasons:

1. The proposed campground is not compatible with the area. Although there is another campground nearby, a majority of the property in the general vicinity of the proposed campground has developed with GR zoning and single family residential uses. The remaining property is used for Agricultural purposes.



2. The County's Land Use Plan has designated the area to be a Low Density area. According to the Comprehensive Plan Update the allowable number of units should be based on  $\frac{3}{4}$  acre lot size, or clustering to  $\frac{1}{2}$  acre lot sizes. The proposed campground is not a low-density use, since it would result in approximately 277 lots on 32.48 acres, or more than 8 units per acre.
3. The Office of State Planning Coordination has objected to the Conditional Use proposal, given the density of over 8 sites per acre, including recreational amenities and buildings. The Office of State Planning Coordination has also stated that the proposal does not reflect the character of the surrounding area and that it would be an intense commercial/residential use that would not be compatible with lands in an area designated as "Rural".

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be denied for the reasons stated above.

Motion carried 5 – 0.

C/U #1511 – application of **ANTHONY L. FREEMAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a produce sales facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.91 acres, more or less, lying at the southwest corner of Route 277 and Route 275.

The Commission discussed this application which has been deferred since October 23, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1511 for Anthony L. Freeman to operate a produce sales facility based upon the record made at the public hearing and for the following reasons:

1. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The use as a produce sales facility promotes local agriculture and is desirable for the general convenience and welfare of the area.
3. This recommendation for approval is subject to the following conditions and stipulations:
  - 1) Sales shall only occur during daylight hours.
  - 2) The Applicant shall only sell produce grown by him or his family.
  - 3) There shall not be any permanent structures.
  - 4) There shall not be any entrance to the property from County Road 277.
  - 5) The Applicant shall comply with all DelDOT requirements, including entrance permits.



Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated above.

Motion carried 5 – 0.

C/U #1513 – application of **LINDA THURSTON AND KAREN NASH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a bakery to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.13 acres, more or less, lying south of Route 54 and 2,076 feet west of Road 389.

The Commission discussed this application which has been deferred since October 23, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1513 for Linda Thurston and Karen Nash to operate a bakery based upon the record made at the public hearing and for the following reasons:

1. The application is for an existing building, in which a bakery will be operated. For this reason, Final site plan approval is not required.
2. It will not adversely affect the neighborhood or adjacent properties. Because it will not focus on retail sales, there will not be a substantial increase in traffic.
3. This recommendation for approval is subject to the following conditions and stipulations:
  - 1) Hours of Operation shall be from 6:00am to 8:00pm.
  - 2) There shall only be one 2-foot by 4-foot sign on the building. No additional ground signs shall be permitted.
  - 3) There will be no expansion of the existing building for the bakery, for this reason, no final site plan approval will be required.

Motion by Mr. Lynch, seconded by Mr. Gordy, 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 above.

Motion carried 5 – 0.

C/Z #1520 – application of **DAVID REICHERT AND REBECCA LEBLANC** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a C-1 General Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northwest of Route 24, 1,400 feet northeast of Love Creek, to be located on 22,500 square feet, more or less.



The Commission discussed this application which has been deferred since October 23, 2003.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1514 for David Reichert and Rebecca LeBlanc, seeking a Change of Zone from MR to C-1 based on the record made at the public hearing and for the following reasons:

1. I do not believe that the application is consistent with the character of the surrounding property. All of the adjacent property is zoned either AR-1 or MR. While there is some limited B-1 zoning on the opposite side of Route 24, no lands are zoned B-1 or C-1 on the same side of the road as this application.
2. Although the Applicants stated that the intended uses are limited and would likely occur while the property is also used as a residence, a change of zone to C-1 would potentially allow more intensive uses that are not compatible with the surrounding area and roadways.
3. DelDOT has stated that it has concerns about this application because the change to C-1 potentially encourages more traffic in an area that has been identified as operating at unacceptable levels of service.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the reasons stated above.

Motion carried 5 – 0.

C/Z #1521 – application of **1<sup>ST</sup> STATE STORAGE COMPANY** 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 Georgetown Hundred, Sussex County, land lying 330 feet south of Route 9 and 800 feet east of Route 321, and being part of Lots 3, 4, and 5 within the Village of Saulsbury Switch Subdivision, to be located on 1.5891 acres, more or less.

The Commission discussed this application which has been deferred since October 23, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1521 for 1<sup>st</sup> State Storage Company for a change of zone from AR-1 to C-1 based upon the record made at the public hearing and for the following reasons:

1. The property that is the subject of this application is part of a larger tract of land that is The Village of Saulsbury Switch Subdivision.



2. The basis for this change of zone is to increase a limited portion of the existing C-1 district within the subdivision so that the district is consistent with the lot boundaries of the subdivision.
3. All property owners within the subdivision are on notice that the lots that are part of this application can be used for either commercial purposes or with multi-family dwellings. The Restrictive Covenants for The Village of Saulsbury Switch specifically states this, and the possible commercial use of these lots is also stated on the recorded subdivision plan.
4. This application will not have any effect on traffic since it only re-designates the location of existing C-1 District lines.
5. The neighborhood and other adjacent and surrounding properties will not be adversely affected given the relatively small size of the property that is the subject of this application.

Motion by Mr. Johnson, 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 reasons stated above.

Motion carried 5 – 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 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.

The Commission discussed this Ordinance Amendment which has been deferred since September 11, 2003.

Thomas Shafer of Shafer Consulting, Consultant to the County for the preparation of Ordinances, was present and stated that the Amendment was prepared in response to the 2002 Comprehensive Plan Update and that the Update recommended a density reduction from 12 units per acre to 4 units per acre.

The Commission discussed the proposed grandfathering provisions in the Amendment.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to table action on this Amendment until after the Commission makes a decision on the proposed C-2 Ordinance Amendment.



Motion carried 5 – 0.

After the Commission rendered a decision on the C-2 Ordinance Amendment, the Commission discussed this Ordinance Amendment.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action to allow the staff the opportunity to revise the text of the Ordinance.

Motion carried 5 – 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.

The Commission discussed this Ordinance Amendment which has been deferred since September 11, 2003.

Thomas Shafer of Shafer Consulting, Consultant to the County for the preparation of Ordinances, was present and stated that the Amendment was prepared in response to the 2002 Comprehensive Plan Update and that the Update recommended the creation of a zoning category for large scale buildings.

Mr. Wheatley stated that he is not in favor of creating another zoning classification for commercial and that the larger buildings are already referenced in the C-1 General Commercial District regulations.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Amendment be denied.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ALLOW AGRICULTURAL RELATED INDUSTRY AS A CONDITIONAL USE IN THE AGRICULTURAL RESIDENTIAL ZONING DISTRICT, TO DEFINE AGRICULTURAL RELATED INDUSTRY, AND TO DELETE CONFLICTING LANGUAGE.

The Commission discussed this Ordinance Amendment which has been deferred since September 25, 2003.



Thomas Shafer of Shafer Consulting, Consultant to the County for the preparation of Ordinances, was present and stated that the Amendment was prepared in response to the 2002 Comprehensive Plan Update and that the Update recommended that references to agricultural related industries be made a part of the Zoning Code.

Mr. Shafer added that he and Mr. Kautz met with representatives of the Department of Agriculture to discuss their concerns reported during the public hearing.

The Commission discussed the revisions suggested by the Department of Agriculture.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as revised.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ALLOW A BIOTECH INDUSTRY AND A BIOTECH CAMPUS AS A CONDITIONAL USE IN THE AGRICULTURAL RESIDENTIAL ZONING DISTRICT AND TO DEFINE BIOTECH INDUSTRY AND BIOTECH CAMPUS

The Commission discussed this Ordinance Amendment which has been deferred since September 25, 2003.

Thomas Shafer of Shafer Consulting, Consultant to the County for the preparation of Ordinances, was present and stated that the Amendment was prepared in response to the 2002 Comprehensive Plan Update and that the Update recommended that references to biotech industries and biotech campus' be made a part of the Zoning Code.

Mr. Shafer added that he and Mr. Kautz met with representatives of the Department of Agriculture to discuss their concerns reported during the public hearing.

The Commission discussed the revisions suggested by the Department of Agriculture.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as revised.

Motion carried 5 – 0.



OTHER BUSINESS

Americana Bayside MR/RPC  
Phase 3 Preliminary Site Plan – Route 54

Mr. Abbott advised the Commission that the phase 3 site plan includes 16 multi family units and 42 single family detached dwellings; that the layout is the same as the approved master plan; that 132 parking spaces are required and 141 spaces are provided for this phase; that the site plan is suitable for preliminary approval; and that final approval shall be subject to the review and approval by the Commission upon receipt of all agency approvals since this project is a residential planned community.

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

Motion carried 5 – 0.

The Retreat MR/RPC  
C/Z #1487 Final Site Plan – Road 277 and 283

Mr. Abbott advised the Commission that this is the final record plan for a 161-lot single family residential planned community; that the Commission approved the master plan on July 10, 2003; that the final record plan is the same as the master plan; that the record plan meets the requirements of the zoning code and that all agency approvals have been received.

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

Motion carried 5 – 0.

Good Earth Market  
C/U #1484 Site Plan – Route 26

Mr. Abbott advised the Commission that the site plan is for a 2,700 square foot retail store and greenhouses; that 14 parking spaces are required and 19 spaces are provided; that the setbacks meet the requirements of the zoning code; and that all agency approval have been received.

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



Motion carried 5 – 0.

Cool Spring Office Park  
Preliminary Site Plan – Route 9

Mr. Abbott advised the Commission that this is a site plan for a medical and general office complex; that the site is zoned C-1; that two 3,000 square foot buildings and an 8,000 square foot building are proposed; that the maximum building height will be 30 feet; that 54 parking spaces are required and 83 are provided; that spaces located within the front yard setback need a waiver from the Commission; that access to the site will be from a cross access easement located to the west of the site and approved by DelDOT; that on site septic and water are proposed; that the site is not located in a flood zone and there are not any wetlands on the site; that the setbacks meet the requirements of the zoning code; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals

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

Motion carried 5 – 0.

Delaware Cedar  
Revised Site Plan – Route One

Mr. Abbott advised the Commission that the revised site plan is for a 2-story 9,999 square foot office building; that the setbacks meet the requirements of the zoning code; that 50 additional parking spaces are required and provided; that 13 spaces are located within the front yard setback and need a waiver from the Commission; that the required 20-foot landscaped buffer is provided; that the staff has received a letter of no objection from DelDOT as required; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Subdivision #2002 – 24 - - Kuhn Family Sussex Partnership  
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension in order to obtain final approval; that the Commission granted preliminary approval for this application on November 14, 2002; and that this is the first request for an extension.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant a one-year extension.

Motion carried 5 – 0.

Boys and Girls Club of Delaware  
C/U #1417 Time Extension

Mr. Abbott advised the Commission that this is a second request for a time extension; that the Conditional Use was approved on October 16, 2001; that the Commission granted preliminary approval for the site plan on November 8, 2001; that the staff granted final approval for the site plan on December 19, 2002; that the Commission granted another time extension on December 19, 2002 retroactive to the original approval date; and that this request is due to a lack of funding at this time.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve a one-year time extension. It was noted that this is the last time extension the Commission has the authority to grant.

Motion carried 5 – 0.

Michael A. and Judith B. Poleck  
C/U #1462 Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Conditional Use was approved on November 19, 2002 for a dental office; and that this is the first request for an extension.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant a one-year time extension.

Motion carried 5 – 0.

Meeting adjourned at 8:30 P.M.