



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 17, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 17, 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 Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. I.G. Burton, III, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Agenda as revised by removing Item 4 of Other Business from the Agenda. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of November 3, 2011 as circulated. Motion carried 5 - 0.

OLD BUSINESS

C/U #1913 – application of **JEREMY W. SMITH** to consider Conditional Use of land in AR-1 Agricultural Residential District for yard waste and composting facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.01 acres, more or less, lying west of Road 347 (White's Neck Road) 1,850 feet south of Road 349 (Old Mill Road).

The Commission discussed this application which has been deferred since October 27, 2011.

Mr. Smith questioned if the access road to the site could be relocated since it was not a part of the boundary described in the ordinance for the application.

Mr. Robertson stated that the ordinance for the application defines the location of the access and that the Applicant's proposal to relocate the access is not a part of the legal description, and that the Commission cannot impose conditions on an area outside of the boundaries of the legal description.

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

PUBLIC HEARINGS

C/U #1914 – application of **STEVEN KREBS AND BARBARA KREBS** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a barbeque prep and sales to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.5 acres, more or less, lying northeast of Route 20 (a.k.a. Road 382) approximately 1,100 feet northwest of Road 384.

The Commission found that on June 24, 2011 the staff received comments from DelDOT in form of a Support Facilities Report and that the report advised that a traffic impact study was not recommended, and that the current Level of Service “C” of Road 382 (Zion Church Road) will not change as a result of this application.

The Commission found that on November 15, 2011 the staff received comments from the County Engineering Department Utility Planning Division which reference that the site is located in the Johnsons Corner Sanitary Sewer District; that capacity is available for the proposed Conditional Use; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is estimated to be \$4,861.00 per EDU; that a 6-inch sewer lateral has been provided along the parcel’s frontage on Zion Church Road; that the proposed use shall not connect to the existing septic system; that conformity to the South Coastal Area Planning Study – 2005 Update and the Preliminary Engineering Report for the Johnson’s Corner Sanitary Sewer District will be required; that central sewer service became available to the parcel on June 15, 2011 and connection to the system is mandatory; that the existing septic tank must be properly disconnected from the existing uses and abandoned; that the existing sewer lateral may not be adequate for the proposed and existing uses; that additional information must be provided by the Applicant to make a determination; that if a lateral upgrade is required, it would be at the property owner’s expense; and that a concept plan is not required.

The Commission found that on November 2, 2011 the staff received comments from the Sussex Conservation District which reference that there are 2 soil types on the site; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that there are no storm flood hazard areas affected; that it will not be necessary for any off-site drainage improvements; that it may be possible that on-site drainage improvements will be required; and that the Tax Ditch located on the southeast corner of the property may be affected.

The Commission found that the Applicant had provided letters in support from Russell L. Corhrt, a resident of Swann Estates, Christine Phillips, Branch Manager of PNC Bank, and the Honorable Gerald W. Hocker, State Representative (38th District).

Mr. Lank provided the Commission with a copy of the site plan submitted by the Applicant, and a copy of Ordinance No. 2087 for Conditional Use No. 1795, the application of Steven Krebs/Kreative Garden Center, for commercial greenhouses and a retail garden center that had existed on the site, and summarized the Conditions of Approval for Conditional Use No. 1795. It was specifically noted that Condition of Approval No. 1 referenced that “Barbeque, shed sales and other uses not incidental or similar to the permitted uses will require a separate public hearing”.

The Commission found that Steven Krebs was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he started the garden center in 2002; that he received his original Conditional Use (C/U #1795) approval in 2009; that the recent economy has sent his garden center down hill; that he is closing the garden center, and is now proposing a barbeque prep and sales facility, a honky-tonk; that he will be preparing barbeque foods for takeout and on-premise sales, and hopes to provide a catering service in the near future; that he has been in contact with DelDOT representatives for the preparation of his entrance and site plan; that business hours will be from 11:00 a.m. to 8:00 p.m. six (6) days per week, and that he will be serving lunch and dinner; that he is preparing to connect to the County sewer before opening for business; that he will be remodeling a 700 square foot office and a 900 square foot sales building by connecting the two buildings into one restaurant building with a porch overhang at the entrance; that the office building will become the kitchen, and the sales building will become the serving and seating area; that he will not exceed 24 seats for patrons based on DelDOT recommendations; that no outside seating is proposed; that outside lighting will be directed toward the building and away from Zion Church Road; that dumpsters and grease containers will be screened from view by fencing; that the grease and oils will be picked up and handled by a licensed hauler; that he anticipates one delivery per week; that he will have four (4) employees at the beginning and proposes two (2) additional part-time employees in the future; that he proposed to utilize the existing stone and gravel parking lot for parking; that adequate space is available on the site for parking; that signage will meet the Zoning Code; that he has a passion for cooking; that he may need an area on the site for the future parking of trailers relating to the future catering service; that he is planning on using one (1) delivery vehicle; that he is going to discontinue the existing Conditional Use for the greenhouses and garden center; that Public Health requirements will be met; that public restrooms will be provided; and that he has no objection to a restriction that does not permit alcoholic beverages.

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

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV RELATING TO WIND TURBINES AND WINDMILLS IN SUSSEX COUNTY.

Mr. Lank summarized the Ordinance Amendment and added that the Synopsis references that the Amendment establishes regulations for allowing more than one wind turbine on a lot less than five acres, and the maximum number of wind turbines on a parcel of over five acres.

The Commission discussed the Ordinance Amendment.

Mr. Robertson stated that the Zoning Ordinance required action by the Board of Adjustment on windmills and wind turbines; that a few months ago the Commission and the County Council held public hearings on amendments to the Zoning Ordinance due to legislation by the State; and that this Ordinance Amendment provides for corrections to that previously adopted amendments relating to the number of turbines permitted.

Mr. Lank referenced and summarized sections of Ordinance No. 2213, adopted by County Council on September 13, 2011, and added that the County Council has discussed wind turbines on several occasions with representatives of the wind turbine industry, and found that the current ordinance limited the number of wind turbines to one (1) and was concerned that the limitation restricted someone with a farm un-necessarily, and had asked for the preparation of this Ordinance Amendment.

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

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

OTHER BUSINESS

Clarksville RV and Boat Storage
CU #1828 Site Plan – Route 26

Mr. Abbott advised the Commission that this is a site plan for RV and boat storage located on an 8.34-acre parcel; that the site is zoned AR-1 and the conditional use was approved on May 11, 2010 with 11 conditions of approval; that the 11 conditions of approval are noted or depicted on the site plan; that an existing building on the site will be converted to an office; that the landscape plan refers to Crape Myrtle trees to be planted 25-feet apart; that existing on-site septic and well will be utilized; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

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

Juliane Olbers
CU #1840 Site Plan – Route 24

Mr. Abbott advised the Commission that this is a site plan for custom embroidery labeling, screen-printing, vinyl sign printing and cutting, trophy labeling and custom marketing accessories business located on 10,615 square feet; that the site is zoned AR-1 and the conditional use was approved on August 12, 2010 with 11 conditions; that the 11 conditions of approval are noted on the site plan; that the existing dwelling on the site will be converted to the business; that existing on-site septic and well will be utilized; that 4 parking spaces are proposed; that there are no wetlands on the site; that if preliminary approval is granted, final approval could

be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson advised the Commission that the Commission recommended that this application be denied.

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

Chipotle Mexican Grill Revised Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised site plan for a 2,032 square foot restaurant; that this item was deferred at the October 13, 2011 meeting; that the setbacks meet the minimum requirements of the zoning code; that the developers are requesting that the required parking calculations be based on 5 spaces per 1,000 square feet of gross leasable area; that this would be the same as when the outlets were constructed; that the ordinance now requires 6 parking spaces for buildings or groups of buildings exceeding 75,000 square feet; that at 5 spaces per 1,000 square feet of gross leasable area, 1,236 spaces would be required; that at 6 spaces per 1,000 square feet of gross leasable area, 1,483 spaces would be required; that this is a difference of 247 spaces; that the developers are requesting that the spaces be restriped to 9-foot by 20-foot; that one section of the Code permits the spaces to be 162 square feet and another section requires 200 square feet; that there is a section in the Code where the Commission may waive the requirements if they feel that they are unreasonable and excessive; and that the Commission was previously provided a copy of a letter from the developer and a copy of the site plan.

Mr. Johnson advised the Commission that he feels that restriping of the parking spaces will result in them being too small; that he feels that 9-foot wide spaces will create safety hazards and possible damage to vehicles; and that he is not opposed to allowing the parking calculations to be based on the 5 spaces per 1,000 square feet of gross leasable area.

Andrew Moriarty, P.E. with the Timmons Group based out of Raleigh, North Carolina, was present and advised the Commission that the Zoning Code permits 9-foot by 18-foot parking spaces; that they are proposing to restripe the existing spaces to 9-feet by 20-feet; that the proposed parking adjacent to the proposed restaurant is proposed to be 9-feet by 18-feet; that by restriping the spaces, an additional 74 spaces will be gained; that the restaurant is an accessory use to the shopping center; that 30 spaces are being displaced; that if the spaces are required to be 10-foot by 20-foot, an additional 45 spaces would be required to be constructed to the rear of the site; and that the developers are trying to limit impervious area to reduce run-off.

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

Ten Pin, LLC Preliminary Site Plan

This item was removed from the Agenda on November 16, 2011.

Metropolitan Community Church
Preliminary Site Plan – Road 275

Mr. Abbott advised the Commission that this is a site plan for a 4,128 square foot, 107 seat church located on 2.10-acres; that the site is zoned AR-1; that the setbacks meet the requirements of the zoning code; that 27 parking spaces are required and 28 spaces are proposed; that 14 spaces are located within the front yard setback and are subject to site plan review; that the applicants would like to retain as much of the wooded area as possible; that the applicants are requesting that the parking area be improved with stone at this time; that a 6-foot high stockade fence is proposed along the adjacent property lines where parking is to be located; that on-site septic is proposed and that central water will be provided by Tidewater Utilities; that there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson expressed concerns about parking within the front yard setback; advised the Commission that there have been 2 recent conditional use applications approved in the area that prohibited parking within the front yard setback; that there are no other projects with parking in the front yard setback along this road; that it is the intent to keep this area residential as much as possible; and that there appears that there is adequate room to relocate the parking out of the front yard setback.

Byron Jefferson, P.E. and Shila Hayden, Board Member were present on behalf of this request and advised the Commission that the church expects to grow in the future and that they would have adequate room to add onto the rear of the church; that they would like to preserve as many trees as possible; that they had to dedicate 20-feet of right of way to DelDOT; and that the church will not have as much of an impact on traffic as other uses would.

Motion by Mr. Johnson, seconded by Mr. Ross and carried 4 votes to 1, with Mr. Smith opposed, to approve the site plan as submitted as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 1.

Service Energy/Poore's Propane
Revised Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a request to install one 36,000 gallon below grade propane storage tank on a C-1 zoned site; that site is used as an office for Service Energy/Poore's Propane; that Paradee Oil Company operated the site as a bulk storage facility for gas and kerosene; that the above ground tanks were removed in 2003 and were never replaced; that the applicants are requesting that the Commission consider this request as an accessory use to the property based on its past use; that if the request is denied, the applicants could apply for a conditional use; and that the Commission was previously provided a copy of the engineer's letter and a copy of an aerial photograph.

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

Judi Folmsbee
CU #1765 Amended Condition – Road 226

Mr. Abbott advised the Commission that this is a request to delete 2 conditions of approval; that this conditional use for 3 multi-family units was approved on June 9, 2009 with 5 conditions; that Condition 2 states “The units shall only be occupied by the Applicants and their family members.”; that condition 3 states “In the event the real estate is sold or transferred, this Conditional Use shall terminate.”; that since the 2 conditions originated at the Commission level, the Commission may amend the conditions; that the applicant is requesting that the conditions be deleted; that at the public hearing, no parties appeared in support of or in opposition to this application; and that the Commission was previously provided a copy of the letter from the applicant and copies of Minutes from the January 22, 2009 and February 12, 2009 Commission meetings.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny the request as submitted and to waive the fee if the applicant chooses to file an amended conditional use application. Motion carried 5 – 0.

Phil A. and Lynn R. Riche
Parcel and 50’ Easement – Road 589

Mr. Abbott advised the Commission that this is a request to create a 76.12-acre parcel with access from a 50-foot easement; that the owner is creating 3, “by-right” lots with road frontage off of Road 589; that the residual land totals 95.00-acres with 76.12-acres being located in Sussex County; the remaining acreage is in Kent County; the owner is proposing to create the 50-foot easement over an existing driveway that is located on existing Lot 4; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

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

ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a copy of the 2012 Schedule for public hearings for the Planning and Zoning Commission and the Sussex County Council for the hearings that relate to Ordinance Amendments, Change of Zones, and Conditional Uses.

Meeting adjourned at 8:05 p.m.