

MINUTES OF THE REGULAR MEETING OF NOVEMBER 20, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 20, 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, Mr. Johnson, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Richard Kautz – Planner, and Ms. Mowbray – Zoning Inspector III.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as amended by deleting Other Business Items #2 and #7.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of November 13, 2003 as amended.

OLD BUSINESS

C/U #1508 – Ray Lewis – 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.

Mr. Lank advised the Commission that representatives of the application met with State DNREC officials on Monday, November 17, 2003 and that official comments from the State have not yet been received.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to defer action pending receipt of comments from the State DNREC.

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 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.

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

Mr. Kautz described the revisions made to the Ordinance Amendment based on previous discussions of the Commission.

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 revisions to the Ordinance be approved as amended.

Motion carried 5 – 0.

PUBLIC HEARINGS

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

Subdivision #22003-24 – application of **SMALL WONDER, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 32.72 acres into 34 lots, located south of Road 207, 600 feet east of Road 214.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on July 16, 2003 and that the report of that meeting will be made a part of the record for this application.

Mr. Lank provided the Commission with a revised plan of the project reported to be revised to comply with Technical Advisory Committee comments.

The Commission found that Bob Ross of Small Wonder, Inc. and John VanSickle of Davis Bowen & Friedel, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they have revised the subdivision plan to show 33 lots, rather than 35; that the streets will be dedicated to public use and built to State standards; that stormwater management will be on-site; that one entrance has been deleted from the plan; that the two proposed entrances are existing and serve the immediately adjacent lots as access; that the immediately adjacent lots are improved with dwellings; that forested buffer easements have been provided along the Hall property to the east and the Green Tree Farms, Inc. property to the south; that interconnection to those properties has also been provided; that septic feasibility has been granted by DNREC; that the lots contain at least 0.75 acre each; that the lots will be served by private on-site wells and septic; that they have not proposed to install any street lighting or sidewalks; and that the buffers and stormwater management areas will be maintained by a Home Owners Association.

The Commission noted that there was some confusion due to the difference in the subdivision plots being reviewed.

The Commission found that Joe Warnell, President of Green Tree Farms, Inc., was present in support and stated that Mr. Ross builds a fine home; that the subdivision will be an asset to Lincoln and his property; and that a need exists for quality homes in the Lincoln area.

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

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action for additional time to review the revised plans and with the understanding that the record shall remain open for written comments until December 11, 2003.

Motion carried 5 – 0.

Subdivision #2003-25 – application of **RICH MOONBLATT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 6.16 acres into 3 lots, and a waiver from the forested buffer requirements, located west of Road 233, 2,646 feet southeast of Road 234B.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on July 16, 2003 and that the report of that meeting will be made a part of the record for this application.

Mr. Lank advised the Commission that DelDOT, based on a letter dated August 18, 2003, has no objections to the subdivision.

The Commission found that Richard Moonblatt was present with John Sergovic, Attorney, and Mark Davidson of Design Consultants Group, L.L.C. (DC Group) and that they stated in their presentations and in response to questions raised by the Commission that Mr. Sergovic was present to discuss a waiver from the forested buffer requirement to allow the proposed street to be located in the same area; that by allowing the street to be placed along the property line, it will eliminate the removal of existing trees that would be required to create the right-of-way and then planting a buffer strip with immature trees; that they are attempting to keep the road within the non-wooded area of the site; that the entrance is located in the middle of the 150-foot wide frontage; that street plans have been submitted to Sussex County Engineering; that the State Fire Marshal has approved the plans; that site evaluations have been approved for each lot by the State

DNREC; that the street will be paved per County specifications, not crusher-run; that the lots are heavily wooded with cleared underbrush; that the U.S. Fish and Wildlife Service was concerned about possible Del-Mar-Va Fox Squirrels, but is no longer concerned; that streets lights have been erected on the site, but are not hooked up to utilities; that the sign on the site and a web-site exist for information on the proposal; that stormwater management was intended in an existing pit between lots 4A and 4B and has been proposed for relocation to the rear of the site; and that they have no intent to create an interconnection to the adjoining acreage north of the site, and that if interconnection is required, it will be provided.

The Commission noted that there was some confusion due to the difference in the subdivision plots being reviewed.

Mr. Davidson offered to submit revised site plans.

The Commission found that Ralph and Cecilia Vines were present in opposition to the application and stated that there is a property line dispute over part of the site; that the site contains very low lands which occasionally floods; that they are concerned about water runoff onto their lands and lands of others; that their properties are tilled; and that they are concerned about the loss of woodlands and wildlife.

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

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

Motion carried 5 – 0.

C/U #1514 – application of **TANYA LEWIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail car sales lot to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.24 acres, more or less, lying northeast of Route 404 (Seashore Highway), 300 feet southeast of Road 589 (Woodenhawk Road).

Mr. Lank summarized comments received from DelDOT, the Office of State Planning Coordination, and the Sussex Conservation District.

Mr. Lank provided comments in opposition and pictures provided by Joseph and Mildred Buzzone, adjoining property owners.

The Commission found that there were no parties present on behalf of this application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied based on a lack of record of support for the application since no one appeared on behalf of the application.

Motion carried 5 – 0.

C/Z #1524 – application of **PATRICK TELL** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying south of the intersection of Road 297 and Road 312 at Oak Orchard, to be located on 19,256 square feet, more or less.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Oak Orchard Sanitary Sewer District; that the design of the system did not anticipate zoning changes to commercial in this residential area; that the proposed system connection charge rate is \$1,156.00 per EDU; that sewer service will become available to these parcels when system construction is completed approximately May 2005; and that conformity to the Preliminary Engineering Report or undertaking an amendment will be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that the State would appreciate the County considering the comments offered by State agencies while reviewing this application; that the State Historic Preservation Office has noted that the buildings the applicant would like to convert are potentially historic; that the County should require to owners to preserve the architectural features that convey the buildings historic character; that if the owners plan to rehabilitate the buildings in a way that preserves their historic character, they can call the State Historic Preservation Office for assistance; that DNREC noted that the soils in the vicinity of the site are mapped as Evesboro, which may be excessively well-drained and have limitations associated with rapid permeability and little nutrient adsorption capacity; that such soils are conducive to nutrient leaching via groundwater and surface runoff into the adjacent Indian River Bay; that if additional buildings are planned the owner should contact DNREC to understand any Total Maximum Daily Load Issues; and that the applicant will need to obtain an entrance approval for access to any proposed business uses.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the applicant may be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that the soils are considered of Statewide Importance and Hydric in small depressions; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant submitted a letter from Myrtle H. Haines, the present owner of the property, advising those interested that one of the buildings contains four apartments; that the building was remodeled in the years 1954-1955 from a building containing a store on the entire first floor and apartments on the second floor; and that the building has contained four apartments since that time.

The Commission found that Patrick Tell was present, presented a brochure, and stated in his presentation and in response to questions raised by the Commission that this was a commercial site dating back to 1900; that 4 out of 6 buildings have been totally restored; that Brian Page, a former County Historian, stated that this project is the finest restoration project going on in the State; that the site contained a commercial pier and dancehall; that he applied for C-1 General Commercial to allow for continued use of the structures with the hope of converting some of the structures into a restaurant, bed and breakfast or motel, coffee shop and/or gift shop, with a complete restoration of the pier and gazebo; that completion of the project will not be until sewer is available in 2005; that C-1 General Commercial was granted for the site of the Serpentina Restaurant in 1998; that he and partners have renovated over ten properties in the Oak Orchard area; that he owns several parking lots in the immediate area; that the shed on the site was used for boat motor repairs; and that he is willing to register the buildings as historic properties.

The Commission found that Al Richards, a resident of Oak Orchard, was present in support of the application and stated that he has done a lot of the restoration on the buildings to preserve the property and that the improvements can only create a positive impact on the community.

The Commission found that John Ferguson was present in support of the application and stated that he has visited and/or lived at Oak Orchard since 1935; that he supports any improvements that preserve the sites along the Indian River; and that he supports this application.

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

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved since the site has been historically used for commercial purposes; since the uses would be in character with the surrounding area; and since no adverse traffic impacts are anticipated.

Motion carried 5 – 0.

C/Z #1525 – application of **ANDERSON HOMES, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Road 275 (Plantation Road) and 600 feet northwest of Route 24, to be located on 32.75 acres, more or less.

The Commission found that prior to the meeting the Applicants submitted a Exhibit packet which included site data, a site location map, a copy of a letter from Tidewater Utilities, Inc. to Ramesh C. Batta referencing water service, a copy of a letter from Ramesh C. Batta Associates, P.A. to Mike Izzo, County Engineer, referencing future sewer connection, a copy of a letter from Environmental Research and Consulting, Inc. to Ramesh C. Batta in reference to a wetlands reconnaissance of the site, a copy of a letter from Ramesh C. Batta to Anderson Homes, LLC referencing final DelDOT Traffic Impact Study comments, a copy of DelDOT comments relating to the final DelDOT Traffic Impact Study, and a copy of Ordinance No. 1528 for Change of Zone No. 1454, lands of Elmer Fannin, the adjoining property rezoned to HR-RPC on March 19, 2002.

The Commission found that the comments received by the Department from DelDOT were the same as the comments in the exhibit packet.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not within a County operated and maintained sanitary sewer and/or water district; that wastewater capacity is available to the project; that Ordinance No. 38 construction will be required; that the proposed System Connection Charge Rate is \$3,369.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer; that there is no sewer service available to the site at this time; that the project is adjacent to the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; and that conformity to the West Rehoboth Planning Study and an amendment being prepared by the developer of adjacent parcel 57.3 will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as four types of Sassafras sandy loam or loam which have slight limitations for development; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the soils are considered either Prime Farmland or of Statewide Importance; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located in the "Community" or "Developing" area of the Strategies for State Policies and Spending document; that the State has no objections to this application; that the State would like the County to consider the following agency comments; that DelDOT recommended certain improvements from the developer in their July 31, 2003 letter on the Traffic Impact Study; that there is a high probability for prehistoric and historic archaeological sites within the parcel; that the owners should contact the State Historic Preservation Office to determine the best ways to avoid such sites; that the soils on the site may be considered suitable for development and have limitations associated with sandy surface and subsurface horizons that have somewhat rapid water permeabilities with little or no consequent phosphorus/nitrogen adsorption capacity; that the soils are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed and are further intensified in those soils containing shallow water tables; that there is a Total Maximum Daily Loads program in this basin and that the owners should contact DNREC for further details about this nutrient reduction program prior to any construction activities; that the developer should meet with or submit a packet to the Cape Henlopen School District regarding the development and the potential impact it may have on area schools; that the owners should consider school transportation planning methods in locating bus stops; and that the developer should provide walking and bike paths for the use of multi modes of transportation.

The Commission found that letters of oppositions were received from Bill and Joan Deaver and from Michael Tyler, President of the Citizens Coalition, Inc. expressing concerns about density; the smallness of the lots compared to the lots within Midway Acres and Aydelotte Estates; that the project is not in character with the area; the lack of parking, amenities, wooded buffers, and open space in the project; the loss of sewer capacity; negative impacts on traffic; and that the project should be developed as it is zoned (AR-1 Agricultural Residential).

The Commission found that Steve Anderson of Anderson Homes, L.L.C. was present with James Fuqua, Attorney, and Ramesh C. Batta of Ramesh C. Batta Associates, Inc. and that they stated in their presentations and in response to questions raised by the

Commission that they propose to develop the 32.75 acre site with 101 single family dwellings; that the streets will be private and built to County specifications; that building setbacks will meet or exceed the minimum for a MR Medium Density Residential District; that they propose to establish two park areas; that the park areas are not planned to be developed until homeowners decide on the type of improvements; that the average lot size is 9,782 square feet; that the gross density is approximately 3 units per acre and is less than the County Engineering determination when planning for sewer capacity; that the smaller lots are located along the north side of the site adjacent to a proposed multi-family project; that the larger lots are located along the south side of the site adjacent to existing residential lots; that Tidewater Utilities, Inc. proposes to supply central water; that the County proposes to provide sewer service; that the developer is committed to complying with DelDOT requirements; that pedestrian connections will be provided to the adjoining project to the north; that no negative environmental impacts are anticipated; that stormwater management will be maintained on site; that no State or Federal wetlands exist on the site; that the site is outside of the 500-year floodplain; that no negative impact is anticipated on the local school district; that medical and shopping facilities exist in close proximity to the site; that the site is located within a "Community" or "Developing" area according to the State Strategies; that the site is located within an Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update; that the area is highly developed; that Maplewood MR Subdivision and commercial zonings exist to the east; that Midway Acres Subdivision and the Hudson Homes C-1 site exist to the south; that the proposed Woods Cove HR-RPC project is intended to be built to the north; that Plantations Road and farmland exist to the west; that the letters from the Deaver's and Michael Tyler are their opinions and are lacking in facts since they do not reference that Hudson Homes property could be developed with 12 units per acre, that the Woods Cove project has been approved for approximately 6 units per acre, and that the Maplewood project contains approximately 3.6 units per acre; that a walking trail is proposed around the stormwater management pond; that the pond may be smaller in size once the final design of the project is completed; that typically a homeowners association is established upon completion of 75% of the sales of the lots; that sidewalks were originally intended for one side of the streets, and that sidewalks will now be provided on both sides of the streets per a request made by DelDOT; that street lighting will be provided; and that landscaping will be provided throughout the project.

The Commission found that Mr. Fuqua submitted a color rendering of the project and some proposed conditions for approval.

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

Motion carried 5 – 0.

OTHER BUSINESS

DC Group, LLC

C/U #1412 – Revised Site Plan – Road 252

Mr. Lank advised the Commission that DC Group proposes a 1,442 square foot addition to their engineering offices; that the setbacks meet the requirements of the Code; that the site plan can be approved as revised or the Commission may require an amended Conditional Use application; and that there was no previous opposition to the prior application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the revised site plan. Final approval shall be subject to receipt of all required agency approvals.

Motion carried 5 – 0.

Full Tilt Marine

Revised Site Plan – Road 22

Mr. Lank had advised the Commission at the announcement of the agenda that this item of business had been removed from the agenda.

Pusey Rentals, LLC

C/U #1420 – Time Extension – U.S. Route 13

Mr. Lank advised the Commission that Pusey Rentals, LLC is requesting an one-year time extension for this Conditional Use; that one time extension has already been granted; and that this is the last time extension that the Commission can consider.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to grant a one-year time extension and that the time extension shall be valid through October 30, 2004, the anniversary of the original approval date.

Motion carried 5 – 0.

Adams Pit

4 Parcels and 50' Right-of-way – Revised – Route 20

Mr. Lank advised the Commission that the proposal contains four (4) relocated parcels on an existing 50' Right-of-way off of Route 20.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the concept as submitted.

Motion carried 5 – 0.

James E. and Jann C. Cox

Parcel and 50' Right-of-way – Road 291

Mr. Lank advised the Commission that this concept proposes to create a 1.4 acre parcel with access from an existing 50' wide easement; that the remaining acreage would contain 4.55 acres; and that this will be the 3rd lot with access from the easement.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the concept.

Motion carried 5 – 0.

Elizabeth Himes

2 Lots on 50' Right-of-way – U.S. Route 13A

Mr. Lank advised the Commission that this concept proposes to add two (2) additional lots with access from a 50' Right-of-way; and that these two lots are in addition to a lot approved by the Commission on October 23, 2003.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the concept.

Motion carried 5 – 0.

Janet Rigan and Ashley Linton

2 Lots and 50' Right-of-way – Road 288

Mr. Lank had advised the Commission at the announcement of the agenda that this item of business had been removed from the agenda.

David Brickman
Lot and 50' Right-of-way – Road 388

Mr. Lank advised the Commission that this concept proposes to create a lot with access from a 50' Right-of-way off of Road 388; that the main parcel may have met its maximum for the creation of minor lots; and that the Commission may approve the concept as submitted or require a public hearing a major subdivision.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to deny the concept as a minor subdivision, and noting that the applicant has the right to apply for a major subdivision application.

Motion carried 5 – 0.

Robert Wotring
Conceptual Parking Plan – Route One and Route 9

Mr. Lank provided the Commission with a letter from Vince Robertson referencing his review of the lease.

Mr. Robertson stated that he has concerns about the applicants ability to utilize the DelDOT property for long term; that it may take the applicant months to get agency approvals; that it would then take months for the applicant to build the project; and that DelDOT could void the lease after two years.

Mr. Gordy stated that he would move that the Commission reject the conceptual parking plan that Robert J. Wotring submitted for the Five Points Plaza; that the plan would allow parking for the expansion of the Plaza to be located on land leased from DelDOT; that the Lease with DelDOT that Mr. Wotring submitted is for a term of 7 years; that DelDOT can terminate the Lease with 2 years' notice; that this essentially makes the Lease a 2-year Lease; that if DelDOT terminates the Lease after Mr. Wotring expands his commercial buildings, they would become nonconforming, creating an undesirable result; that the Lease is not assignable and cannot be sublet, therefore, the additional parking area is not transferable to any subsequent owner of the commercial land.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to deny the conceptual parking plan.

Motion carried 5 – 0.

Meeting adjourned at 10:40 PM