

MINUTES OF THE REGULAR MEETING OF DECEMBER 11, 2003

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as amended by deleting Item #5 from Other Business.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of November 6, 2003 as circulated.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of November 20, 2003 as amended.

OLD BUSINESS

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 pending receipt of comments from the State DNREC.

Mr. Lank summarized comments received from the State DNREC and James C. Reed, Attorney, relating to a meeting between the Applicant and the State discussing the project.

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1508 for Ray Lewis for excavation of a borrow pit based upon the record made at the public hearing and for the following reasons:

- 1) A need exists in the area for sand and gravel, and the materials will also be used by the Applicant in his septic installation business.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
- 3) Buffers will be established along all borders and around all wetland areas, and the wetland areas will be undisturbed.

- 4) The borrow pit will be an asset to the community in that the Fire Company hopes to install a dry hydrant in the pond once it is created, providing water access for fire protection.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) No materials shall be brought from off the site for processing, mixing or similar purposes.
 - 2) Water or a water truck shall be available to control dust from road traffic when conditions require.
 - 3) Any entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 - 4) The hours of operation for the business on this site shall only occur between the hours of 7:30am to 6:00pm Monday through Friday and 7:30am until 12:30pm on Saturdays. There shall not be any borrow pit activities on Sundays.
 - 5) No fuel shall be stored on-site for borrow pit operations.
 - 6) No stumps, branches, debris or similar items shall be buried on the site of the borrow pit.
 - 7) The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion.
 - 8) A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
 - 9) The Applicant shall comply with all State and County erosion and sediment control regulations.
 - 10) Markers and signs shall be placed at appropriate locations to designate pit areas.
 - 11) The borrow pit shall be surrounded by a densely landscaped unexcavated buffer strip a minimum distance of 100 feet from any street lines, 100 feet from proposed single family lots, 50 feet from all other property lines and 25 feet from all Federal wetlands. In addition, the borrow pit shall be at least 200 feet from any dwellings on property of other ownership.
 - 12) Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
 - 13) The Applicant shall also comply with all of the requirements set forth in Section 115-72B of the Sussex County Zoning Ordinance.

- 14) It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).
- 15) The Applicant shall comply with all requirements set forth in the State DNREC letter of November 19, 2003.

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

Motion carried 5 – 0.

C/Z #1523 – application of **CARD, 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 Lewes and Rehoboth Hundred, Sussex County, land lying east of Route 274 (Old Landing Road) and 0.74 mile south of Route 275 (Warrington Road), to be located on 115.3 acres, more or less.

The Commission discussed this application which has been deferred since November 13, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1523 for CARD, LLC and asked Mr. Robertson to read Mr. Johnson's reasons.

Mr. Robertson read that Mr. Johnson moves that the Commission recommend approval of C/Z #1523 for CARD, LLC based upon the record made at the public hearing and for the following reasons:

- 1) The project is located in a Development District according to the County's 1997 Land Use Plan, and is located within the Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update.
- 2) The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community. In the Old Landing Road area, there are already several MR projects on neighboring or adjacent parcels. These include The Villages of Old Landing, Breezewood, Cedar Valley, and the Warrington family farm. Other uses in the vicinity include Arnell Creek, The Landing, and the Old Landing Golf Course.
- 3) The project is located within the West Rehoboth Sanitary Sewer District and the Sussex County Engineering Department states that there is adequate capacity for the project as proposed.
- 4) Central water will be provided to the project by Tidewater Utilities, Inc.
- 5) According to DelDOT, any future development of the property will require completion of all entrance, intersection, roadway and multi-modal improvements

that is required by DelDOT. Also, DelDOT has stated that future development will need to be in compliance with the recommendations set forth in DelDOT's letter to Lawrence Lank dated June 12, 2003, and/or any other modifications that DelDOT may require.

Motion by Mr. Johnson, 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 stated above.

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 discussed this application which has been deferred since November 20, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1525 for Anderson Homes, LLC based upon the information contained in the record and for the following reasons and asked Mr. Robertson to read Mr. Johnson's statement.

Mr. Robertson read that Mr. Johnson recommends approval of this application for the following reasons:

- 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 2002 Comprehensive Plan Update.
- 2) The Office of State Planning Coordination has determined that the site is located in the "Community" or "Developing" area of the Strategies for State Policies and Spending document and that the State has no objections to the project.
- 3) MR zoning is appropriate for the site because medium density development is appropriate in areas where central water and sewer are available. In this case, sewer service will be provided as part of a County operated sanitary sewer district, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities, Inc.
- 4) With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.

- 5) The project is in an area that is highly developed, and this development is consistent with neighboring and adjacent properties. The Maplewood MR subdivision exists to the East; the Midway Acres subdivision and Hudson Homes C-1 property exists to the South; and the proposed Woods Cove HR-RPC project exists to the North.
- 6) This recommendation is subject to the following conditions:
 1. The maximum number of residential lots shall not exceed 95. The applicant has sought approval of 101 lots, with only limited open space or amenities. The applicant shall eliminate at least 6 lots from its project and use the area of the eliminated lots for more open space and amenities.
 2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's present and future determinations. As required by DelDOT, any bicycle, pedestrian or vehicular interconnections to this property provided in the HR-RPC project to the North of this property and the C-1 property to the South should be matched. This includes the right-of-way area for the future construction of the north-south local road, if required by DelDOT.
 3. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall be identified by the applicant as part of the Commission's site plan review.
 4. The Development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
 5. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 7. The Applicant, its successors and/or assigns, including a homeowners association that will be formed, shall operate the stormwater management facilities in a manner that is consistent with Best Management Practices (BMPs) as further described in the Applicant's documents submitted into the record.
 8. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
 9. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include curbs, sidewalks on both sides of the streets, and street lighting.

10. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
11. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00am and 6:00pm.
12. The Applicant shall cause to be formed a homeowners association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
13. The Applicant is encouraged to eliminate double frontage lots. If double frontage lots cannot be avoided, the existing lots with frontage on Dot Sparrow Drive and other internal streets shall not utilize Dot Sparrow Drive for lot access.

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.

Subdivision #2003-24 – 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.

The Commission discussed this application which has been deferred since November 20, 2003.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to allow the staff time to compare the subdivision plan to the Technical Advisory Committee report.

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.

The Commission discussed this application which has been deferred since November 20, 2003.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to give Mr. Robertson time to review the property line dispute and how it may affect a decision.

Motion carried 5 – 0.

PUBLIC HEARINGS

C/Z #1526 – application of **BAY FOREST, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying northeast of the corner of Road 347 and Road 349, to be located on 385.161 acres, more or less.

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the booklet included a Design Summary Introduction, an Executive Summary, references, plots and arials of existing conditions, the residential planned community concept, development infrastructure, traffic, social influences, economic impacts, recreational amenities, wetlands and habitat evaluations, groundwater monitoring program, a response to the Office of State Planning Coordination Request for Review letter, architectural exhibits, drawings and appendices on both the Bay Forest Club and the Bay Forest West projects. Additional Appendices submitted included a Preliminary Traffic Impact Study for Bay Forest Club, a Traffic Impact Study for Bay Forest Club, a Jurisdictional Determination Wetlands/Waterways Delineation Report, an Appendices Booklet, and a copy of the Millville and Holts Landing Planning Areas Facilities Plan and Environmental Assessment Final Draft.

The Commission found that the Technical Advisory Committee reviewed this project on November 19, 2003 and that the Technical Advisory Committee Report for this project is made a part of the record for these proceedings.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State had responded with comments on both projects, Bay Forest Club and Bay Forest West, and advised that both projects are located within an Environmentally Sensitive Developing Area of the Strategies for State Policies and Spending document; that State policy will be to seek a balance between resource protection and sustainable growth; that this area is under tremendous growth pressure and the State urges the County to consider the cumulative effects of development being approved for this area; that on October 3, 2002 State planners and agency staff met with the developer; that a response was sent on October 22, 2002 reflecting agency concerns; that the State recognizes that many of the parcels surrounding the property have already been rezoned to MR, however, the State has several serious concerns with the

development of these two parcels; that in reference to this Bay Forest Club project, the State DNREC questions the actual boundaries and acreage of the forested area; that the State DNREC is concerned about the fragmentation of the existing forest; that ecological research on forest ecology has demonstrated that fragmentation of this kind greatly impacts the function and value of forested communities; that some areas do not provide adequate buffer distance between developed areas and existing wetlands; that the State DNREC recommends a vegetated buffer of 100-feet from all tidal and non-tidal wetlands, even though they are well aware that the County's buffer requirements are less stringent; that multiple sources of nutrients continue to stress the water quality of the Inland Bays; that adequate buffers are one way to slow the runoff of excess nutrients into waterways that drain to the Inland Bays; that the proposed wetland creation areas will further reduce the buffer distance around some areas and decrease the existing buffer around other areas; that wetlands creation for mitigation purposes should be adequately buffered from nearby development and not lead to a decrease in the buffer distance between developed areas and existing wetlands; that 122 units and 4 single family lots are located entirely within the 100-year floodplain and others fall partially within the floodplain and could result in a large amount of impervious surface within the floodplain with the associated paved parking and sidewalk areas; that soil conditions vary and include well drained, somewhat well drained, moderately well drained, somewhat poorly drained, poorly drained, and very poorly drained soils; that most of the soils are fairly well drained that have limitations associated with rapidly permeable sandy surface and subsurface horizons and are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed; that in soils containing shallow water tables, these impacts are greatly intensified; that the applicants should be reminded that they must avoid construction/filling activities in those areas containing wetland associated hydric soils since they are subject to Federal regulatory provisions governing jurisdictional wetlands; that tidal wetlands are subject to even more stringent regulatory protection by the State; that this site contains significant acreage of tidal and non-tidal wetlands; that the applicants should contact the DNREC Division of Water Resources for information regarding the Total Maximum Daily Load program; that the State Historic Preservation Office has noted that an archaeological survey is pending under Section 106 of the National Historic Preservation Act; that an application is pending for the pedestrian bridge and that the State Historic Preservation Office will determine the Coast Guard level of participation in Section 106 and how it may influence the area to be surveyed as soon as the applicant provides this information to the State Historic Preservation Office; that the State Historic Preservation Office has noted that a previously recorded "cemetery" has miss mapped and is actually located outside of the project area; that an adjacent property owner knows of a couple of unmarked burials, but will not inform the State Historic Preservation Office of their locations and that the developer's consultants are working on getting that information from him so that they will not destroy the burials in accordance with the Delaware Unmarked Human Remains Act; that in reference to the Bay Forest West project the State DNREC has noted that the soils are mapped as well

drained, somewhat well drained and moderately well drained; that the soils may have limitations associated with rapidly permeable sandy surface and subsurface horizons; that such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed and that in soils containing shallow water tables, these impacts are greatly intensified; that they also are concerned about filling and construction in wetlands and forest fragmentation on this site; that a study sponsored by the National Science Foundation found that forest fragmentation lead to increased rates of Lyme disease infection in ticks; that the study reports that forest patches smaller than three acres averages three times the number of ticks than did larger fragments with infection rates that were as high as seven times greater and that as many as 80% of the ticks in the smallest patches were infected; that reforestation is primarily being done as buffer strips in areas that currently are farm fields and that this increase in trees does little to mitigate the loss of habitat that will occur due to clearing in the larger forest blocks; that the net disturbance to forest at this site, and the hundreds of species that populate it, will be much greater than the 4.82 acres indicated on the plan; that the State Historic Preservation Office advised that there is a potential historic property on the parcel and that the parcel is probability high for historic archaeological sites; that the structure and archaeological sites could be affected by the development; that the State Historic Preservation Office has stated that they would be happy to work with the developer to avoid any sites and resources that may exist; that in reference to both sites, the State offers the following comments: the Department of Education has noted that these two projects could generate an estimated 420 additional students for the Indian River School District and that the State recommends that the developer submit a package to the School District for informational purposes; that school transportation planning information was provided; that water well information was provided; that DelDOT comments are supported by the State; that based on comments from the State DNREC, the State is concerned about the environmental impacts these projects will have on the area; and that if the County determines, after reviewing the information and hearing testimony, that these rezonings should be approved, the State would ask that the County require the developer to work with the State DNREC to address their concerns as well as the concerns of the State Historic Preservation Office.

The Commission found, based on comments received from the Sussex Conservation District, that in reference to Bay Forest Club the soils are mapped as Borrow, Evesboro loamy sand, Klej loamy sand, Matawan sandy loam, Osier loamy sand, Rumford loamy sand, Tidal Marsh, salty, and Woodstown sandy loam; that the soil suitability varies from slight to severe limitations; that the developer shall be required to follow recommended erosion and sediment control practices and to maintain vegetation; that five of the soil types are considered of Statewide Importance; that two of the soil types are considered Prime Farmland; that six of the soil types are considered either Hydric, Hydric in small depressions or Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage

improvements due to the poorly drained soils; and that there may be jurisdictional wetlands on the site.

The Commission found that comments from DelDOT in reference to both projects, dated August 5, 2003, August 6, 2003, and November 25, 2003, have been received and offer conclusion and recommendations that are included and responded to by the Applicants in their Exhibit Booklet.

The Commission found that letters were received in opposition to the application from Margaret Hamm and Lillian M. Prado expressing concerns about drainage and flooding of Road 349 and Banksville Park Subdivision.

The Commission found that Fuqua and Yori, P.A., Attorneys on behalf of the Applicant, submitted a letter explaining the organization and operation of a property owners' association and other proposed deed restrictions.

The Commission found that John Stamato of Bay Forest, LLC was present with James Fuqua, Attorney, Tom Ford of Land Design, Inc., Consulting Land Planners, Kevin McBride of Morris & Ritchie Associates, Inc., Land Planners and Civil Engineers, and Bob Rodgers of Orth-Rodgers, Traffic Consultants and that they stated in their presentations and in response to questions raised by the Commission that the developments have been designed to be inter-related; that the homeowners in both projects may share amenities; that they plan to address all issues for both projects; that they studied the sites based on the 1997 and 2002 Comprehensive Plans and the Strategies for State Policies and Spending document; that they plan to extend and connect to Sussex County sewer; that the site is located within the Environmentally Sensitive Developing Area, a growth area supported by the Comprehensive Plan; that they are requesting a gross density of 2.1 units per acre; that both projects are being developed based on environmental sensitivity; that both projects are located north of Millville and Ocean View; that the Bay Forest Club, containing approximately 385 acres with 29 acres of State wetlands and 18 acres of Federal wetlands, proposes a variety of home types and 808 units; that the MR-RPC status would allow up to 1415 units; that Bay Forest Club proposes a net density of 2.49 units per acre and a gross density of 2.1 units per acre; that the Bay Forest West, containing approximately 104 acres with no wetlands, proposes a net density of 2.9 units per acre and a gross density of 2.17 units per acre; that the combined density of both projects equals 2.17 units per acre, the same basic density of AR-1 zoning; that the Applicant provided funding for County Engineering to study the area for expansion of the sewer district; that some failing septic systems exists in the area and the central sewer is needed; that wastewater capacity is available for the projects; that central water will be provided by Tidewater Utilities, Inc. and that on-site wells, water treatment and elevated tanks will be provided; that utility companies serving the projects will be Delaware Electric Cooperative for electrical service, Sharp Energy for propane,

Media-Com for cable, and Verizon for telephone; that on-site security will be provided on both sites; that there should be minimal impact on the Indian River School District; that there should be a positive impact on the economy for the area and the County; that a seasonal bus service will be available for drop-off and pick-up of residents within the projects to attractions in the area; that the Bay Forest Club is in an area of mixed residential zonings, including AR-1, MR, and RPC developments; that the projects are in close proximity to Bay Colony, Seagrass RPC, Denton Woods, Banks Acres and Banksville Park, Denton Manor, Mill Run, Whites Creek Manor, West Ocean Farms, Blackwater Village and Blackwater Cove, and Jim's Hideaway Campground; that shopping and medical facilities are in close proximity; that some B-1 and C-1 zoning are in close proximity; that the elevation of the site seems flat, but varies from 15-foot elevation to 2-foot elevation; that over 50% of the forest will be retained; that 12% of the site is available for parks and open play areas; that the projects are linked with a trail system; that community center, an observation deck and gazebo are proposed; that the Bay Forest Club will be developed in at least 4 phases; that the developer will fund planning for a pump station for the sewer district; that sidewalks will be provided on one side of the streets; that bike paths and natural trails will be provided and maintained; that clustering will be the development scheme; that the State DNREC has stated that the project, if constructed utilizing Best Management Practices will exceed the nutrient load reduction called for by the Total Maximum Daily Load criteria; that pedestrian bridges are proposed and that the bridges will be a minimum of 6-feet in height over mean high water so that the natural vegetation can grow below the bridges; that the Coast Guard does not consider the creek navigable; that no business or commercial activities are proposed; that they also propose a canoe/kayak club area which may include 4 pontoon boats; that the developers would not object to a restriction limiting the number of pontoon boats; that all concerns of the State DNREC and DelDOT will be complied with; that the developer has planned from the beginning to not exceed 2.1 units per acre and chose MR-RPC zoning to allow the 7,500 square foot lot size; that according to the Comprehensive Plans this is where development should take place; that central water and sewer will be provided; that the site is in a growth area; that the site is being developed with environmental sensitivity; that the project will help improve the area infrastructure; and that this type of project is encouraged in the Comprehensive Plan.

The Commission found that Mr. Fuqua submitted 20 proposed conditions for the Bay Forest Club project.

The Commission found that Donald Bobell, President of Whites Creek Manor Homeowners Association, stated that traffic is going to get worse, but that the developers contribution will help mitigate some of the necessary improvements to the infrastructure, and that the developers contribution to the sewer district will accelerate the improvements needed to provide public sewer to the area.

The Commission found that William Derrickson, an adjacent farm owner, stated that he has no objections to neighbors selling their property; that he is concerned about townhouses next to his property line and impacting his environment, his way of life, and his security; that his property has been in his family since the 1800's; that he has concerns about trespassing; that he is not opposing the development, but requested that a barrier (berm) be created to separate his property from the project; and was concerned that no one from the project has ever contacted him about the project.

The Commission found that Ed Honer of Collins Creek Estates stated that he is concerned about the loss of wildlife habitat that will occur with over 50% of the forest being removed leaving no place for the deer and turkeys.

The Commission found that there were 11 parties present in support of the project and 3 parties present in opposition.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to leave the record open for written comments until December 31, 2003.

C/Z #1527 -- application of **BAY FOREST, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying north of Road 349 (Old Mill Road), approximately 1,285 feet west of Road 347, to be located on 104.32 acres, more or less.

The Commission found that the Technical Advisory Committee reviewed this project on November 19, 2003 and that the Technical Advisory Committee Report for this project is made a part of the record for these proceedings.

The Commission found that the Exhibit Booklet submitted by the Applicant for C/Z #1526 for Bay Forest Club included information on this application and is made a part of the record for these proceedings.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitation for development; that the Fallsington soils have severe limitations; that the Woodstown soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the Evesboro and Fallsington soils are of Statewide Importance; that the Woodstown soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; that off-site and on-site drainage improvements may be necessary due to the increase in impervious

areas and the presence of small areas of poorly drained soils which may increase runoff; and that there may be regulated wetlands on the site.

The Commission found that the Office of State Planning Coordination comments on C/Z #1526 included comments on this application and are made a part of the record for these proceedings.

The Commission found that Fuqua and Yori, P.A., Attorneys on behalf of the Applicant, submitted a letter explaining the organization and operation of a property owners' association and other proposed deed restrictions.

The Commission found that comments from DelDOT in reference to both projects, dated April 21, 2003, August 5, 2003, August 6, 2003, and November 25, 2003, have been received and offer conclusion and recommendations that are included and responded to by the Applicants in their Exhibit Booklet.

The Commission found that the Natural Resources Conservation Service submitted similar comments to the comments of the Sussex Conservation District.

The Commission found that 199 form letters in opposition to this application had been received and that the letters referenced that the existing roads surrounding this area are not suitable for additional traffic; that there are no shoulders and these roads are dangerous for pedestrian and bicycle traffic; that there is no need to disrupt the current ecological environment; that it is a sensitive area with a large annual migration of herons each spring on this particular farm; that the loss of this large group of heron would adversely affect our eco-system; that spot zoning would be a nightmare for utility companies and would adversely affect the quality of life of adjacent landowners; and that with the approval of Bay Forest Club and the approval of two other large developments on Irons Lane, there is no need for Bay Forest West, since there are already hundreds of lots available.

Mr. Fuqua requested that all of the testimony on C/Z #1526 be made a part of the record for this application and submitted 18 proposed conditions for this application.

The Commission found that Mr. Stamato, Mr. Fuqua and Mr. Ford, representatives of C/Z #1526, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 227 single family lots are proposed; that 76% of the site is farmland; that 24% of the site is wooded; that no wetlands exist on the site; that the site is fairly level; that stormwater will be maintained on the site; that 70% of the wooded lands will remain; that propane will be provided on the site; that water service will be provided from the Bay Forest Club site; that 31% of the site will be maintained as open space and includes ponds, trails, and parks; that the

infrastructure will be the same as the Bay Forest Club; that drainage flows to Blackwater Creek; that the adjacent corner parcel is owned by Raymond Banks and his sons; and that the developer proposed to leave space available for 10-years for interconnection to adjoining lands and that if connection does not take place the space will convert to lots.

The Commission found that Russell Banks was present in opposition and stated that he was born on the farm and questioned the use of the farm road that crosses the farm; questioned the use of parcel "C"; and stated that he and his brother and sister started the petition letters in opposition to the project because their farms are on two adjoining tracts; that the family owns all of the land around the site; and that the use is out of character with the area around it.

The Commission found that Mr. Ford responded that the farm road will be realigned and left open for access to parties presently using the road; and that Parcel "C", a lot across Road 349, on the site plan will be retained by the Banks family.

The Commission found that two parties were present in support of the application and that nine parties were present in opposition.

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

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

Motion carried 5 – 0.

OTHER BUSINESS

The Peninsula MR/RPC
Phase 1B – Site Plan – Road 299

Mr. Abbott advised the Commission that this is a preliminary site plan for 262 single family lots: that the design is the same as the master plan that was approved by the Commission on July 24, 2003; that the developer is requesting that the setbacks be 20-foot front yard, 6-foot side yards, and 10-foot rear yards; that the Commission may allow lesser setbacks than what is normally required since this project is a residential planned community; 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.

Scott Aja of McCrone, Inc. advised the Commission that the setbacks that the developer is requesting are the same as Phase 1 and will be the same throughout the project for the single family lots.

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

Motion carried 5 – 0.

Bay Farm MR/RPC
C/Z #1474 – Master Plan – Road 299

Mr. Abbott advised the Commission that this is the master plan for a 660 unit residential planned community; that there are 190-10,000 square foot single family lots, 170-7,500 square foot single family lots, 228 detached condominium units, and 72 multi-family family units proposed and permitted by the approved Ordinance; that the developers are requesting 20-foot front yard setbacks along all streets that have a 50-foot right-of-way and 30-foot front yard setbacks along all streets that have a 60-foot right-of-way; that the side and rear yards will have the normal 10-foot setbacks; that a 3-acre neighborhood commercial center is proposed with a maximum 15,000 square foot building; that a 1.5-acre park and ride area is proposed; that a community center is also proposed; that the 16 conditions of approval are referenced on the master plan; and that each phase of the project will be subject to review and approval by the Commission upon receipt of all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the master plan as submitted.

Motion carried 5 – 0.

Baywood Greens
Revised Site Plan – Route 24

Mr. Abbott advised the Commission that this is a request to be exempt from the 42-foot maximum height limitation for a proposed structure that will house a water storage tank; that water storage tanks are not subject to height limitations; that the structure proposed to be built will be 58.5 feet from grade to the peak; that the use is located in a residential planned community and that the Commission may waive setbacks and height limitations to allow for design ingenuity; or the Commission may require the applicant to apply for a variance from the Board of Adjustment.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 3-1-1, with Mr. Allen opposed to the motion, and Mr. Wheatley abstaining, to approve the revised site plan and to permit the structure to be 58.5-feet in height.

Motion carried 3-1-1.

Baywood, L.L.C.
Commercial and Multi-family Site Plan – Road 22

Mr. Abbott advised the Commission that this is a site plan for 208 multi-family units and 31,000 square feet of commercial area; that the front yard setback for the commercial uses needs to be revised to 60-feet; that 155 parking spaces are required for the commercial area and 158 spaces are provided; that the multi-family parking has been designed to have 2-spaces per unit; that 3-spaces are required unless the Commission finds it excessive; and that the plan could be approved as a concept.

Rob Tunnell was present and advised the Commission that he was under the impression that there was a provision in the zoning code that permits age restricted development to have two parking spaces per unit; that this will be an age restricted development; and that the commercial uses have more parking than what is required.

Mr. Robertson advised Mr. Tunnell that the zoning code does not reference age restricted developments and that the Commission may reduce parking requirements if they feel that the parking requirement is excessive.

Mr. Tunnell advised the Commission that age-restricted is older than 55 years old.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 4-0-1, with Mr. Wheatley abstaining, to approve the site plan as a concept, and to permit the multi-family units to have 2-parking spaces per unit.

Motion carried 4-0-1.

Royal Farms
Commercial Site Plan – Route 24 and Route 5

This Item was removed from the agenda on November 25, 2003.

Sussex West
C/U #1198 – Revised Site Plan – Route 9

Mr. Abbott advised the Commission that this is a revised site plan to allow for a model homes display area; that the model home display area would be for 3 model homes, that the use would be an accessory use to the existing manufactured home park; that the display area would be located to the west of the community center and park office; that the use was not referenced on the original Conditional Use application; and questioned if the Commission will approve the revised plan as submitted; or is an amended Conditional Use application required.

The Commission discussed this request and felt that another Conditional Use application should be applied for since the use is not the same as what was originally applied for.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to deny the revised site plan.

Motion carried 5 – 0.

Jon Mumford
Lot and 50-foot Right-of-way – Road 338

Mr. Abbott advised the Commission that this is a request to widen an existing woods road to a 50-foot right-of-way and to create a parcel with access from the right-of-way, and that there is an existing culvert in place.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve this request.

Motion carried 5 – 0.

Richard Schaubach
3 Lots and 50-foot Right-of-way – Route 26

Mr. Abbott advised the Commission that this is a request to widen an existing black topped driveway to a 50-foot right-of-way and to create 3 lots with access from the right-of-way; that the proposed parcels will be 7.11 acres, 4.7 acres, and 1.16 acres, and that the Commission can approve the request as submitted or require a public hearing for a major subdivision.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the request as submitted.

Motion carried 5 – 0.

Kenneth Hudson and Lora Collins
2 Lots – Carter Drive – Route 17

Mr. Abbott advised the Commission that this is a request to create a 1.47 acre lot with access off of Carter Drive; that the residual lot will also be 1.47 acres and has an existing dwelling located on it; and that the owners of the four lots that have access off of Carter Drive have signed the record plan indicating that they have no objections to the 2 lots having access from Carter Drive.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the 2 lots.

Motion carried 5 – 0.

Virginia Stamper
Revised Subdivision – Route 9

Mr. Abbott advised the Commission that this is a request to relocate a lot from the east side of a private 50-foot wide road over to the west side; that there are currently 4 lots in the subdivision; that 4 lots will remain; and that the application for the fifth lot will become void.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the revised subdivision.

Motion carried 5 – 0.

Meeting adjourned at 11:00pm.