



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF JANUARY 22, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 22, 2004 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, Mr. Abbott – Assistant Director, and Richard Kautz – Planner.

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of January 8, 2004 as corrected.

OLD BUSINESS

C/Z #1528 – application of **CADBURY SENIOR SERVICES, INC.** 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 on the northerly side of Road 267 (Gills Neck Road), ¼ mile east of Road 268 (Kings Highway), to be located on 95.2 acres, more or less.

The Commission discussed this application which has been deferred since December 18, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1528 for Cadbury Senior Services, Inc. based upon the information contained in the record and asked Mr. Robertson to read Mr. Johnson's recommendation.

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

- 1) The proposed development's location is appropriate for MR-RPC zoning. The purpose of the MR zoning district is to provide medium-density residential developments in areas expected to become generally urban in character and where central water and sewer may be available.

- 2) The purpose of an RPC is to encourage large scale developments using design ingenuity to create superior living environments while protecting existing and future developments and achieving the goals of the Comprehensive Plan. This application is consistent with the stated purpose of an RPC zoning designation.
- 3) The proposed development is in accordance with the 2002 Comprehensive Plan Update in that:
 - A) The development is located in a designated growth area being the Environmentally Sensitive Developing Area and is adjacent to a municipality, the City of Lewes. The development is also consistent with the State of Delaware Strategies for State Policies and Spending document in that it is located in an area designated as the “developing area” immediately adjacent to a “community area”, the City of Lewes, where development is appropriate.
 - B) The development will be served as part of the Sussex County sewer district and by a central public water system.
 - C) The residential unit density proposed is consistent with the density recommended by the Plan.
 - D) The development is designed and incorporates appropriate features to protect and preserve the adjacent and nearby natural environment, through its stormwater management system design and its berm and buffer adjacent to the Mitchell farm.
 - E) The development site is consistent with the Plan’s future land use map, and is consistent with existing development patterns and the nature of the area.
 - F) The development is in accordance with the historic preservation element of the Plan in that the development will have no negative impact on any critical historic districts or sites.
 - G) The development is in accordance with the recreation and open space element of the Plan in that on-site recreational facilities and walking trails will be provided.
 - H) The development will provide a complete range of housing for current and future residents on Sussex County, particularly older Sussex residents. The Plan notes that the population of Sussex County is significantly older than the average age of Delaware residents. There is a need for this type of development to serve the needs of County residents.
- 4) The requested change of zone promotes the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants as follows:
 - A) Adequate fire and police protection are available nearby.
 - B) The character of the area is appropriate for the proposed development.
 - C) Adequate central water, County sewer facilities and capacities, and adequate utility services are available and that, with the conditions placed upon this project, there will be no adverse impact on nearby properties.
 - D) Shopping areas on Route One, Savannah Road, and downtown Lewes are conveniently accessible from the site.

- E) Natural resources will be conserved and there will be no adverse environmental impact. County sewer and central water will be provided and stormwater management will be designed in full compliance with the requirements of all State and County agencies, insuring protection of the natural environment. The adjacent Mitchell farm will be protected by a buffer and berm. Mr. Johnson does not believe that development will impair the City of Lewes water supply by virtue of its stormwater management design.
- 5) The Office of State Planning Coordination reviewed the application and supports its approval.
- 6) The Lewes Fire Department and Cape Henlopen School District indicated no objection to the application.
- 7) The development combines a continuing care community and a non-age restricted development providing a wide range of housing options in an intergenerational community.
- 8) The development is located adjacent to the City of Lewes, which is the location of the Beebe Hospital and numerous medical offices to meet the needs of the development's residents.

This recommendation is subject to the following conditions and stipulations:

- 1. The maximum number of units shall not exceed the following as shown on the applicant's site plan.
 - Parcel A (Retirement Community):
 - 48 single and duplex units
 - 84 apartment units
 - Health care center with 80 assisted living and skilled nursing rooms
 - Parcel B (Residential):
 - 80 single family lots
 - 105 townhouse and duplex units
- 2. Site plan review shall be required for each phase of development.
- 3. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street, and street lighting. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design on the project.
- 4. All entrance, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT in it's letter of July 1, 2003, or in accordance with any further modification required by DelDOT.
- 5. Recreational facilities, including tennis courts, swimming pool, community buildings, pathways, and trails shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
- 6. The RPC shall be served by an existing or an extended Sussex County sanitary sewer district.

7. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
8. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
9. The applicant shall cause to be formed a homeowners association to be responsible for the maintenance of the streets, roads, buffers, stormwater management facilities, and other common areas in the residential section of the development (Parcel B).
10. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
11. Construction, site work, grading and deliveries of construction materials, etc. to the property shall only occur during the hours of 7:00am to 6:00pm, Monday through Saturday, After the 1st Certificate of Occupancy is issued, Saturday hours shall be limited to the hours between 7:00am and 12:00 noon.
12. A berm shall be installed along the Zwaanendael Farm boundary to ensure that runoff is either eliminated or limited to pre-development conditions. The berm shall also be designed to prevent any negative impact upon agricultural uses on the Zwaanendael Farm property.
13. The Developer shall construct a physical barrier, whether fencing or natural, to prevent foot or pedestrian traffic onto the Zwaanendael Farm property.

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 and with the conditions stated. Motion carried 5 – 0.

C/U #1518 – application of **ATLANTIC AUCTION CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for self-storage and a professional office to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.799 acres, more or less, lying at the northwest corner of Route 17 and Road 353.

The Commission discussed this application which has been deferred since January 8, 2004.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1518 for Atlantic Auction Co., Inc. to operate a self storage facility and office based upon the record made at the public hearing and for the following reasons:

- 1) The project is located in the Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties and community.
- 3) The use as a self-storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the Route 26 area.
- 4) This recommendation for approval is subject to the following conditions and stipulations:

1. There shall not be any building contractor's or subcontractor's offices or workshops within the project.
2. There shall not be any storage of building materials or other construction materials within the project.
3. Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties.
4. No outside storage, except for boats or RV's, shall be allowed on the premises.
5. A landscape buffer of Leyland Cypress or similar vegetation shall be installed and planted along the border of the project adjacent to any residential properties so that the self-storage facility is screened from view from any adjacent residential property.
6. The site plan shall be subject to approval of the Planning and Zoning Commission.
7. The perimeter of the storage area shall be fenced with 2-gates as shown on the site plan. Access to the gates by tenants of the self-storage facility shall only be between 6:00am and 9:00pm.
8. The driveway and parking areas outside of the storage area shall be paved.
9. Stormwater management shall be maintained on site.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1519 – application of **INLAND BAYS, L.L.C.** to consider the Conditional Use of land in an MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less, lying north of Route 360 (Fred Hudson Road), 1,360 feet east of Road 357 (Cedar Neck Road).

The Commission discussed this application which has been deferred since January 8, 2004.

Mr. Lynch stated this he would move that the Commission recommend approval of C/U #1519 for Inland Bays, LLC based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is appropriate for the site because residential development of this type is appropriate in areas where central water and sewer are available. In this case, there will be central sewer provided by the Sussex County Cedar Neck Sewer District. Water will be provided by the Sussex Shores Water Company.
- 2) The Conditional Use is for a property that is zoned MR in an area that has developed with residential properties similar to the proposed project. These include the Salt Pond RPC, and the Courts and Lakes at Old Mill. Other zoning in

the area include MR and GR residential with some Conditional Uses for multi-family dwellings.

- 3) The project will be served or benefited by amenities that are on-site. These amenities include a swimming pool, tennis court and community building.
- 4) With the stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 5) This recommendation for approval is subject to the following conditions:
 1. The maximum number of residential units shall not exceed 48 units.
 2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 3. Recreational facilities and amenities including a swimming pool, tennis courts and community center, shall be constructed and open to use by residents of the project within 2-years of issuance of the first building permit for the project.
 4. The project shall be served as part of the Sussex County Cedar Neck Sewer District in accordance with Sussex County Engineering Department standards.
 5. The project 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, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
 7. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission. Site plan review shall include a landscape plan showing the proposed tree and shrub landscape plan.
 8. The existing Poplar trees along the westerly property line shall be retained as part of a buffer from Bethany Lakes.
 9. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Rolled curbs and sidewalks shall be installed along all streets.
 10. Construction, site work, grading, and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur between the hours of 7:00am and 6:00pm, Monday through Saturday.
 11. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.
 12. The roadway shown on the Preliminary Plan shall be relocated and redesigned to loop around the development and also to minimize or eliminate any roadway along Bethany Lakes.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/Z #1529 – application of **DOUGLAS W. BROCKWAY** to amend the Comprehensive Zoning Map from a GR General 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 west of Road 288 (Wil-King Road), 4,100 feet north of Route 280-B, to be located on 1.67 acres, more or less.

The Commission discussed this application which has been deferred since January 8, 2004.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1529 for Douglas W. Brockway, seeking a change of zone from GR to C-1 based on the record made at the public hearing and for the following reasons:

- 1) I do not believe that the application is consistent with the character of the surrounding property. All of the adjacent property is zoned either AR-1 or GR.
- 2) Although the Applicant stated that the intended use is limited, a change of zone to C-1 would potentially allow more intensive uses that are not compatible with the surrounding area.
- 3) If the Applicant should choose to reapply for a change of zone to AR-1 with a Conditional Use, I recommend that the Application Fee be waived.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

Subdivision #2003-4 – application of Homestead, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 122.60 acres into 81 lots, located east of Road 384, 960 feet north of Road 382.

Mr. Abbott advised the Commission that this application received preliminary approval on July 24, 2003 for 81 lots; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the Zoning Ordinance and the Subdivision Ordinance; and that all appropriate agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to grant final approval of this Subdivision. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1520 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for wells and a control building for a public utility to be located on a certain parcel of land lying and

being in Lewes and Rehoboth Hundred, Sussex County, containing 4,676 square feet, more or less, lying northeast of Route One and being southwest of Wilson Lane within Greystone Manor Subdivision.

Mr. Lank advised the Commission that he did not request comments from DelDOT since the access to the site is from an interior street.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations for development and considered Prime Farmland; that the Applicant will be required to follow recommended erosion and sediment control practices during construction; 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 County Engineering Department Planning and Permits Division, that the site is not located in a County operated or maintained sanitary sewer district and cannot be annexed because it does not adjoin an existing district, as required by Delaware law, and that the County does not have a schedule to include the parcel in a future expansion.

The Commission found that Brian Lynch of CABE Associates and Gerald Esposito, President of Tidewater Utilities, Inc., were present and stated in their presentations and in response to questions raised by the Commission that Tidewater supplies central water to the Greystone Manor Subdivision; that the subdivision is not built out yet; that fire protection requirements will be met; that the Homeowners Association owns the site and granted an easement to Tidewater for the wells and control building; that a concrete building with shingled roof is proposed; that noises should be minimal; that there are no plans for the construction of an elevated water tower on the site; that the tower near the Home Depot on Route One will serve the site and area; that the facility will be visited once per day by Tidewater staff; that the driveway will be paved; that landscaping will be provided; that no fencing is planned; that the Homeowners Association will retain ownership of the site; that the proposed diesel powered electrical generator to the rear building will only be utilized during emergencies; that a monitoring well has been located at the end of the cul-de-sac; and that they will have to meet all regulations relating to well-head protection required by DNREC.

The Commission found that Lou Shultz, present on behalf of the Greystone Manor Homeowners Association, stated that there is a need for adequate water for the subdivision, and requested that the Homeowners Association be provided the opportunity to review the building plans for the structure prior to issuance of any building permits.

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. Motion carried 5 – 0.

C/U #1521 – application of **STORAGE EQUITY PARTNERS, LP, II** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a self-storage facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.17 acres, more or less, lying east of Private Road (west of Crab Barn Restaurant), and 1,100 feet south of Route One.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that there are no objections if there is little or no water usage associated with this project; that if more capacity is required, additional information should be provided and a capacity review completed before approval; that the current System Connection Charge Rate is \$3,369.00 per EDU; that the parcel is served along its frontage on a private road; that a 6-inch lateral has been provided near the site's northwest corner; and that conformity to the West Rehoboth Planning Study will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras loam which has slight limitations for development and is considered Prime Farmland; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; 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, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found that a letter was received from Linda Cresmer, the owner of Summerpatch Mobile Home Park, voicing no objections to the application.

The Commission found that Robert Witsil, Attorney, Jeff Clark of Land Tech, Henry Mac Walker, a managing partner, and Judy Schurmer, manager, were present and stated in their presentations and in response to questions raised by the Commission that they would like to expand the existing Rehoboth U-Store facility with two climate controlled storage buildings; that the site is surrounded on three sides by mobile home parks; that a need and demand exists for this type of storage unit; that the two buildings will contain approximately 25,000 square feet; that the existing fencing will be expanded to contain this site; that the existing stormwater management facility is adequate to serve the expansion; that Atlantic Resource Management has reviewed the site and has reported that there are no jurisdictional wetlands on the site and that no additional nutrient loads will be generated by the planned construction; that there should be no negative impact on traffic; that they anticipate approximately 8 or 9 additional trips per day for the new units; that as many trees as possible will be retained to the rear of the buildings for a buffer; that

approximately 6-feet will be cleared along the rear wall of the building for maintenance; that the existing home on the property is not intended to be a part of the facility; that there is no intent for any future expansions to the facility; that the site is located within the Environmentally Sensitive Developing Area of the 2002 Comprehensive Plan Update and the Developing Area of the State Strategies document; that the best place to locate additional storage facilities should be an expansion of an existing facility; that two-thirds of the units will be climate controlled; that the proposed buildings measure 50' by 240' and 60' by 210'; that interior drives will be gravel and stone with some paving; that all State Fire Marshal regulations will be complied with; that security lighting will be against the buildings; that there will be no elevated pole lighting; that no additional signage is proposed; that the buildings will be one story engineered steel buildings; that gate access hours will be from 7:00am to 9:00pm; that office hours are from 9:00am to 5:00pm; and that driveway lanes between buildings will be at least 30-feet in width.

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. Gordy, and carried unanimously to defer action. Motion carried 5 – 0.

C/Z #1547 – application of **ROBERT G. SANDO, JR.** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying northeast of Route One, 150 feet southeast of Road 234 (Deep Branch Road), to be located on 19,500 square feet, more or less.

The Commission found, based on comments received from DelDOT, that the Department reviewed this site for rezoning to commercial; that the Department would prefer that the County consider this application under the Conditional Use process, limiting the property to exactly what is proposed; that a traffic impact study is not recommended; that the Department has concerns regarding access to this property; that rezoning would conflict with Department goals for the Department's Corridor Capacity Preservation Program; that rezoning would also be inconsistent with the Strategies for State Policies and Spending document; and that the Department would recommend denial of any rezoning to commercial.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations for development and is considered Prime Farmland; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; 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 Robert G. Sando, Jr. and Kevin Burdette of McCrone were present and stated in their presentations and in response to questions raised by the Commission that the Applicant resides on the premises; that DelDOT has voiced no objections to a Conditional Use application; that the Applicant is proposing a computer business from his residence; that the map and photographs submitted depict the business and commercial activities in the area; that a petition in support of the application, containing eight (8) signatures, has been submitted for the record; that signage will be erected on the site if approved; that there are no plans to expand the structure; that the business is operated from the basement; that one or two visitors are anticipated per day; that most of the Applicant's business is conducted at clients business locations or homes; that the Applicant purchased the site in November 2002 and has operated the business since occupying the structure; that the Applicant thought that he was operating a home occupation business; that there are presently no employees; that a gas filling station, a gift shop, an auto repair and used car sales lot; and an art gallery are in close proximity to the site; and that business hours are planned from 9:00am to 5:00pm Monday through Saturday, with no Sunday hours.

The Commission found that Mr. Burdett submitted a copy of the petition and map and photographs for the record.

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

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action. Motion carried 5 – 0.

C/U #1548 – application of **ROBERT G. SANDO, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a computer repair and sales of computers and parts to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 19,500 square feet, more or less, lying northeast of Route One, 150 feet southeast of Road 234 (Deep Branch Road).

Mr. Lank advised the Commission that the comments received from the Sussex Conservation District and DelDOT are the same comments as those received for C/Z #1547, and that all comments stated on C/Z #1547 should be made a part of the record for this application.

The Commission found that Mr. Burdett stated that all of their comments made on C/Z #1547 can be made a part of the record for this Conditional Use application and added that the Applicant would have no objections to a limitation or stipulation that the use be limited to the "repair and sales of computers and accessories".

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

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action. Motion carried 5 – 0.

C/Z #1530 – application of **CLOVERLAND FARMS DAIRY, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying on the northwest corner of the intersection of Routes 25, 5 and 297, to be located on 3.66 acres, more or less.

The Commission found, based on comments received from DelDOT, that the Department does not recommend that a traffic impact study be required since the application is for a convenience store with fueling stations; that the Department does have some concerns about the application; that they see it as contributing to traffic in an area that has been identified as operating at unacceptable levels of service and not consistent with the Strategies for State Policies and Spending document which references that this site is in a “Rural” area and across from the Environmentally Sensitive Developing Area; that approximately two-thirds of the future traffic that would utilize the store would be pass-by traffic according to available data from the Institute of Transportation Engineers Trip Generation Handbook for convenience stores with gas pumps.

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 and is considered of Statewide Importance and Hydric in small depressions; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; 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, based on comments received from the Office of State Planning Coordination, that the site is located within a “Rural” area according to the Strategies for State Policies and Spending document; that the State cannot support additional commercial development in the area; that if the County determines that the rezoning is in compliance with the 2002 Comprehensive Plan Update, the Office offers the following comments from State agencies for consideration: The State Historic Preservation Office has commented that the Nanticoke Museum is a National Historic Register site known as the “Harmon School”; that construction of a convenience store with gas pumps could have an adverse negative impact on the National Historic Register site; that if development continues, it is suggested that the pumps be moved to the northwest side of the property or along Mount Joy Road and that some landscaping be provided along Route 24 to minimize any effects to the National Historic Register site; that if any unmarked human remains are discovered during construction, the developer should contact the State Historic Preservation Office; that the soil type is conducive to nutrient leaching via ground water and surface water to nearby waterways; that the site is located

adjacent to receiving waters of the Inland Bays which are designated as waters having Exceptional Recreational and Ecological Significance (ERES) and are recognized as special assets of the State, and are protected and/or restored, to the minimum extent practicable; to their natural condition; that reduction of nitrogen and phosphorus loading will be needed; that a full nutrient budget should be prepared by the Applicant; that the developer is strongly encouraged to employ Best Management Practices (BMPs) such as stormwater management and/or riparian buffers to mitigate nutrient runoff into adjoining streams and watercourses; that the Applicant will be required to obtain entrance approval from DelDOT; that DelDOT has determined that it will be widening Route 24 to a three-lane cross-section and adding shoulders on Mount Joy Road; that both of these improvements will require strips of land being dedicated to public use; that the widening along Route 24 will need to avoid the Nanticoke Museum and will make it necessary to take to widening from this site; that the Applicant will be required to submit site plans to the Office of the State Fire Marshal; and that in conclusion, the State does not support this rezoning, and that if the County should consider rezoning the site, the County should consider the State agency comments regarding this application.

The Commission found that the Applicant submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet is made a part of the record for this proceedings.

The Commission found that Frank Shilling, representing Royal Farm Stores, John Sergovic, Attorney, and Zack Crouch and Dawn Riggi 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 the site was originally utilized for a service station; that in 1984 the site was approved for an ice plant; that across Route 24 from the site is the Nanticoke Museum, a community use, and a large B-1 District; that a strip shopping center exists on the southeast corner of the intersection of Route 24 and Route 5 and Road 297; that a church, a community use, and warehousing in a C-1 district, exists across Road 297; that the intersection has been designated for business, commercial, and community uses; that they propose to develop an under-utilized parcel with a convenience store that will serve the area; that they are requesting rezoning of 3.66 acres, not the entire 7.5 acre tract; that the residual acres will be used for open area and sanitary sewer disposal; that the proposed stormwater management pond was increased in size to assist DelDOT in their drainage of future improvements to Route 24; that the proposed use will eliminate an obsolete flat roof masonry building with a well landscaped convenience store; that the under utilized or abandoned prior business use is proposed to be upgraded to service the convenience shopping needs for the growing population in the area; that development of this parcel will make the entire intersection devoted to non-residential uses; that the proposed use is compatible with existing uses; that the site is located within 600-feet of the mapped Environmentally Sensitive Developing Area, pursuant to the 2002 Comprehensive Plan Update, which placed it within that Developing Area; that the guidelines for non-residential uses are "limited to neighboring shopping and business to serve the rapidly expanding population"; that the proposed use precisely meets this guideline, as the use will provide convenience neighborhood shopping at an intersection already devoted to business and community uses; that DelDOT comments are in error since the site is within the boundaries of the Environmentally Sensitive

Developing Area; that the site was selected since it is in a growing area; that the use will absorb existing and pass-by traffic; that the Applicant will meet or exceed all of DelDOT requirements; that Tidewater Utilities, Inc. will provide central water to the site; that a site evaluation has been approved by DNREC for a low pressure system or sand mound for the site; that they have implemented the design criteria for the Route One Highway Corridor by adding greater setbacks and landscaping into the design of the project; that the site plan and building will be similar to the recently opened Bridgeville Royal Farm Store; that DelDOT is in the design phase for the proposed improvements to Route 24, which includes through lanes, center turn lanes, bike lanes, and improved shoulders; that DelDOT has agreed to the entrance locations on Route 24 and Road 297; that the landscaping will include all native species; that the Applicant will be doing a Phase I study of environmental issues for leaking underground storage tanks; that the existing dwelling and garage will be removed from the site; that the use should be a much better neighbor than the previous uses and will be compatible due to the design and landscaping; that construction activities will occur between the hours of 7:00am and 3:00pm weekdays and some Saturdays; that the store will be open 24 hours per day; that a pedestrian signal is in the plans for the intersection; that the Applicant has no interest in utilizing the access off of Road 297 between the Wright properties to serve the project; and that all private easements will be respected.

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

The Commission found that Mary Street, Charles Wright, and Tee Norwood, residents of the area, raised questions in reference to pedestrian traffic, noise from diesel trucks, lighting, buffer landscaping, and the private access near the Wright properties.

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.

Subdivision #2003-29 – application of **WATERSIDE, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 31.87 acres into 36 lots, located 1,050 feet north of Route 26, 1,870 feet east of Road 349.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 20, 2003 and that the report will be made a part of the record for this application; and that on January 20, 2003 the applicants submitted an exhibit booklet that contains a Waterside Site Plan, Waterside Plan Data, a copy of a tax map of the area, a Memorandum Of Understanding with Murray's Haven Property Owners Association, and a copy of the Murray's Haven subdivision plot.

The Commission found that James Fuqua, Attorney, Lauren Alberti, Realtor, and Gejza Csoltko, Engineer, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site is located

in a growth area based on the State Strategies Map; that the site is located in an Environmentally Sensitive Development Area based on the County's Comprehensive Land Use Plan; that the site contains 31.78 acres; that the site is zoned MR Medium Density Residential and that this zoning permits 4 units per acre; that 36 lots are proposed; that the gross density is 1.13 lots per acre; that the average lot size is 11,979 square feet; that Tidewater Utilities Inc. has submitted a letter that they are capable and willing to provide central water to the site; that a central wastewater system provided by Sussex County is proposed; that a recreational area is provided; that private streets with streetlights and sidewalks is proposed; that a 50-foot buffer from the State Tidal Wetlands has been provided; that the subdivision is consistent with the nature of the area; that the Murray's Haven Property Owners Association has agreed to an easement for access to the site; that the proposed subdivision will have different deed restrictions than those of Murray's Haven; that DelDOT will require entrance improvements; that no community pier or boat launching facility is proposed; that the developers will put in the sewer as soon as possible; that the project will be a benefit to the community and Murray's Haven; that the residents of Murray's Haven may use the recreational amenities if they so desire; and submitted proposed findings of facts and proposed conditions of approval.

The Commission found that John Habler, President of Murray's Haven Property Owners Association was present in support of this application and advised the Commission that there has been a lot of give and take in negotiations between the property owners and the applicants; that the two sides have agreed upon the issues and that there is a Memorandum of Understanding between the two sides; and that there have not been any negative responses from the property owners.

The Commission found that Joe Conaway was present in support of this application and advised the Commission that he represents the sellers of the property, that this has been a long process; and that the proposed subdivision will enhance property values in the area.

The Commission found that no one appeared in opposition to this application.

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval based on the record from the public hearing and for the following reasons:

- A. The subdivision's location is appropriate for the proposed development in that:
 - 1. The land is zoned MR which permits medium density single family residential development at a density of appropriately four (4) lots per acre. Waterside's density of 36 lots on 31.87 acres of land is a gross density of approximately 1.13 lots per acre.
 - 2. The subdivision is in character with numerous other residential developments currently located in the area.

3. The site is located in close proximity to Route 26, which contains a concentration of business and services.
 4. The subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
 5. The subdivision is consistent with the historical trend of residential development in the area.
- B. The subdivision is in compliance with the Sussex County Subdivision Ordinance in that:
1. The site design integrates the development's location on the site so as to have a minimal impact on wetlands.
 2. Due to the existing nature of the site, no significant grade changes are anticipated and the developer intends to protect any mature trees outside of the roadway and house site areas.
 3. Central water and county sewer will serve the subdivision.
 4. The stormwater management system will meet or exceed the requirements of the State and County.
 5. The use of the county sewer system and stormwater management system will maximize ground water recharge and erosion and sediment control measures will comply with State and County requirements.
 6. Entrances will comply with the requirements of DelDOT.
 7. The subdivision will contribute significant revenue to the local School District through school taxes.
 8. The development does not adversely affect area waterways or other natural features.
 9. The development will not adversely affect the environment in that the county sewer will be constructed and central water will be provided by a public water company.
 10. The Murray's Haven Property Owners' Association has appeared and spoke in favor of the subdivision and also stated that they received no negative comments from any of the Murray's Haven Property Owners.
- C. Preliminary approval is subject to the following conditions:
- The applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - The stormwater management system shall meet or exceed the requirements of the State and County.
 - All entrances shall comply with all of DelDOT's requirements.
 - A system of street lighting shall be provided by the applicant, and the location of the streetlights shall be shown on the final site plan. The streetlights shall be maintained by the applicant or a successor Homeowners' Association as part of the common elements of the subdivision.
 - Sidewalks shall be provided on at least one side of the subdivision streets.

- Applicant, its successors and assigns shall comply with the terms and conditions of the Memorandum Of Understanding entered into between applicant and The Murray's Haven Property Owners Association.
- Revised subdivision name, street names and addressing shall be subject to the approval of Mapping and Addressing

Motion carried 5 – 0.

OTHER BUSINESS

Lewes Church of Christ

Preliminary Site Plan – Road 264 (Oyster Rocks Road)

Mr. Abbott advised the Commission that this is a site plan for a 20,242 square foot church in an AR-1 Agricultural Residential District; that access to the site is off of Road 264; that there is not ingress/egress to Route One; that the setbacks meet the requirements of the zoning code; that the proposed height of the building is 49-feet plus a 16-foot cross; that the maximum height limit for churches is 75-feet; that the maximum seating capacity of the church is 890 seats; that 223 parking spaces are required and 230 spaces are proposed; that there are 16 spaces located within the front yard setback and that they need a waiver from the Commission; that wastewater will be an on-site septic system; that Tidewater Utilities will provide central water; that there are not any wetlands located on the site and the site is not located in a flood zone; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

Gordon Mead and Mike Wigley of Davis Bowen and Friedel, Inc. were present and discussed the proposed site plan and building design.

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

Motion carried 5 – 0.

Pep – Up, Inc.

C/U #1194 Revised Site Plan – Road 376

Mr. Abbott advised the Commission that Mr. Pepper would like to add 6 60,000 gallon propane storage tanks to a bulk propane storage facility; that there are currently 6 30,000 gallon tanks on the site; that the conditional use application was approved on September 9, 1997; that the approved ordinance and application does not limit the number of tanks permitted; and questioned if the Commission will approve the revised site plan or if they feel that another conditional use application is required.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to deny the revised site plan as submitted. It was the consensus of the Commission that the applicant be required to file another conditional use application since the additional tanks will double what is already existing.

Motion carried 5 – 0.

Brent and Nancy C. Rhue

3 Parcels and a 50' Right of Way – Route One (Coastal Highway)

Mr. Abbott advised the Commission that this is a request to create 3 2.96-acre lots with access from a 50-foot right of way; that each parcel is 250-feet by 516-feet; that the owner proposes to widen an existing 12-foot dirt lane to a 50-foot wide right of way to serve as access to the three parcels; that the proposed parcels will be given to the owner's children; and the staff has received a letter of no objection from the Delaware Agricultural Lands Preservation Foundation since the proposed parcels are part of an Agricultural Preservation District.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the 3 parcels and 50-foot right of way as submitted.

Motion carried 5 – 0.

Gordon E. Riner

Lot and 50' Right of Way – Road 331

Mr. Abbott advised the Commission that this is a request to subdivide a 3.27-acre parcel into 2 lots with access from a 50-foot right of way; that there is an existing 30-foot right of way and the owner will dedicate an additional 20-feet to widen the right of way to 50-feet; and that the new lot will be $\frac{3}{4}$ acre.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the request as submitted.

Motion carried 5 – 0.

Delano R. Hudson

Parcel and 50' Right of Way – Route 17

Mr. Abbott advised the Commission that this is a request to subdivide a 100.00-acre parcel into a 50.76-acre parcel and a 47.73-acre parcel with access from a 50-foot right of way; and that the owner proposes to widen an existing dirt road to the 50-foot right of way.

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

Motion carried 5 – 0.

Meeting adjourned at 10:25 P.M.