



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE SPECIAL MEETING OF MARCH 4, 2004

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 4, 2004 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00pm 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, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the Agenda as revised by considering C/U #1525 as the first public hearing and C/U #1527 as the second public hearing. Subdivision #2003-35, Subdivision #2003-36, C/U #1524, and C/U #1526 shall follow.

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

### PUBLIC HEARINGS

C/U #1525 – application of **KAY A. WILKERSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a produce stand to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 22,500 square feet, more or less, lying southwest of Road 382 (a.k.a. State Route 20), 250 feet northwest of Road 354A.

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

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

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is not located within a County operated or maintained sanitary sewer or water district; that the site is within the proposed Dagsboro-Frankford Planning Area; and that there is no schedule to provide sewer service to the area at this time.

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The Commission found that Kay A. Wilkerson was present and stated in her presentation and in response to questions raised by the Commission that she has operated the produce stand for approximately 19 years; that she would like to erect a non-lighted sign; and that customers park in her driveway.

The Commission found that, by a show of hands, there were five (5) people present in support of this application.

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

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

Motion by Mr. 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 since the temporary use has existed for approximately 19 years and since the use has no negative impact on the neighborhood, and with the following conditions:

- 1) One unlighted sign, not exceeding 32 square foot per side or facing, may be permitted.
- 2) Site plan review shall not be required since the use is already established.

Motion carried 5 – 0.

C/U #1527 – application of **VICTORIA'S HAIR CLASSICS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a beauty shop to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 32,250 square feet, more or less, lying north of Route 64, 1,609 feet west of Route 70.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Woodstown sandy loam which have slight to

moderate limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that the soils are considered Prime Farmland and Hydric in depressions; 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.

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The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located within the Delmar Service Area of the Western Sussex Water and Sewer Planning Area, and that the Applicant may want to contact the Town of Delmar concerning the availability of water and sanitary sewer service.

The Commission found that a note was received from Phyllis Dennis, a neighbor, in support of the application.

The Commission found that Victoria Leidy was present on behalf of her application and stated in her presentation and in response to questions raised by the Commission that she has a one operator beauty salon in her home and wishes to expand by leasing space for another hair stylist or barber; that normal business hours are from 9:00am to 5:00pm Monday through Saturday with some evening appointments; that there will be no Sunday business hours; and that she would like to illuminate the sign.

The Commission found that, by a show of hands, there were five (5) people present in support of this application.

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

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

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved since it is the type of business that will not change the character of the area and with the following conditions:

- 1) Business hours shall be from 9:00am to 5:00pm with some evening appointments. There shall be no Sunday business hours.
- 2) One lighted sign, not exceeding 32 square feet per side or facing, may be permitted.

Motion carried 5 – 0.

Subdivision #2003-35 – application of **ROUTE 30, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 30.25 acres into 28 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the southwest corner of the intersection of Routes 38 and 30.

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Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on September 17, 2003 and that the report will be made a part of the record for this application.

The Commission found that John Murray of Kercher Engineering, Inc. and Pete Loewenstein of Compass Point Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed development is for 28 lots on 30.52 acres; that on site stick built homes are proposed; that lots 2 through 9 will need to be revised to meet the minimum requirement of 32,670 square feet; that the proposed entrance to the site is off of Route 30; that in the design work, they considered an entrance off of Road 38 but did not feel that DelDOT would be supportive of it because of the distance from the intersection of Route 30 and Road 38; that there is approximately 600 feet of frontage along Road 38; that they have not met with DelDOT in regards to an entrance off of Road 38; that Route 30 is considered a major collector based on DelDOT's functional classification map; that there is more traffic on Route 30 than there is on Road 38; that if an entrance were created off of Road 38, there would be a dead end street approximately 2,000 feet in length; that DelDOT had no negative comments about the entrance location at the Technical Advisory Committee meeting; and that the existing dwelling on the site will be removed.

The Commission found that Harry Hobby Isaacs, Jr. was present in opposition to this application and stated that he is not opposed to development but he is opposed to the proposed entrance location along Route 30; that he serves as a member on the Council of Transportation and that DelDOT is making Route 30 a truck route; that Route 30 is a heavily traveled road; that the entrance to the site should be off of Road 38 since there is less traffic on that road; that there is adequate frontage along Road 38 to have the entrance off of it; that there are numerous traffic accidents at the intersection of Route 30 and Road 38; that where the proposed entrance is located, blind spots from the curves in Route 30 could cause accidents; and that there are other alternatives for the entrance location.

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried 4 votes to 1, with Mr. Allen opposed, to defer action.

Motion carried 4 – 1.

Subdivision #2003-36 – application of **DYER MCCREA VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 66.66 acres into 66 lots, located east of Road 30, 2,255 feet south of Route 16.

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Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on September 17, 2003 and that the report will be made a part of the record for this application; and that DNREC, DelDOT, and the Office of the State Fire Marshal have sent their approvals; and that the Town of Milton sent a letter requesting that the Commission take no action on this application until the Town has reviewed the site plan to determine if it meets their requirements since the parcel is located in the Town's future growth area based on their Comprehensive Land Use Plan.

The Commission found that Pret Dyer and Gary McCrea, developers, and Mark Davidson of Design Consultants were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 65 single family lots are proposed; that the average lot size is 35,165 square feet; that the development will adhere to the regular AR-1 setbacks; that lots 24 through 33 contain wetlands that will not be disturbed and that there will be a 20 foot setback from the wetlands line; that the density is 0.97 lots/acre; that a 30 foot forested buffer is provided where required; that the site is in a development district; that individual on site wells and sewer are proposed; that the wetland delineation has been performed and that they are awaiting verification from the Army Corps of Engineers; that they have met on site with representatives from the Fish and Wildlife and they have determined that the Delmarva Fox Squirrel and Swamp Pink are not issues for this project; that they signed a contract to purchase this property in March of 2003; that the site plan complies with the subdivision and zoning codes; and that one lot has been deleted from the original submittal.

The Commission found that Lester Radke was present in support of this application and advised the Commission that he is the seller of the property; that the site was not tilled last year; and that the development will be a welcomed addition to the area.

The Commission found that Kenneth Sherman was present in opposition to this application and advised the Commission that the 30 foot forested buffer should extend all the way to Route 30 along his property line since the land is agriculture; and questioned if his property will be impacted by the location of the proposed septic systems and wells.

The Commission found that Eric Evans, Code Enforcement Officer for the Town of Milton, was present in opposition to this application and advised the Commission that he was representing the Milton Town Council; that they have reviewed the plan and would like to see the plan meet the requirements of the Town of Milton; that interconnection streets should be provided; and read a letter into the record.

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.

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Motion carried 5 – 0.

C/U #1524 – application of **REHOBOTH BEACH ASSOCIATES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 23.52 acres, more or less, lying northwest of Road 274 (Old Landing Road), across from Road 275A (Airport Road).

The Commission found that the Applicant had submitted site plans and an exhibit booklet prior to the meeting and that the exhibit booklet is a part of the record and a part of the proceedings for this application. The exhibit booklet contains exhibits referencing site data and a tax map; a DelDOT summary of conclusions and recommendations based on a traffic study performed about the site; a DelDOT Letter of No Objection based on a review of the proposed site plan; a portion of the Phase 1 Environmental Site Assessment performed by BAY Environmental Corporation; a copy of the Sussex County Council decision on C/Z #1276 for Sea Chase I; a copy of the Sussex County Council decision on C/U #1379 for the Estates of Sea Chase; and suggested conditions if the use is approved.

The Commission found that a complete copy of the Phase 1 Environmental Site Assessment is on file as part of the record for this application.

The Commission found that a complete copy of DelDOT's letter of July 28, 2003 referencing review of the Traffic Impact Study is on file as part of the record for this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam or Sassafras loam which have slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Sassafras soils are considered of Statewide Importance or Prime Farmland; 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 that a copy of a letter received from Tidewater Utilities, Inc. announcing that they are willing and able to provide water service to the site.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that the State supports the comments generated by DelDOT; that DNREC has noted that there are no leaking underground storage tanks located near the project and asked that the Applicant notify the Tank Management Branch if any underground storage tanks or petroleum contaminated soils are discovered during construction; that the project is located adjacent to receiving

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waters of the Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES); that ERES waters are recognized as special assets to the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that Best Management Practices should be utilized to reduce non-point sources of nutrient runoff; that reduction of nitrogen and phosphorus loading will be mandatory; that this project is proposed within the low nutrient reduction zone; that in order for the Applicant to verify compliance with the Total Maximum Daily Loads mandate, a full nutrient accounting process known as a nutrient budget should be prepared; that the Applicant is encouraged to employ Best Management Practices or other pollution control strategies such as stormwater management and/or riparian buffers to mitigate nutrient runoff into adjoining streams or watercourses; and that the Applicant will be required to submit site plans to the Office of the State Fire Marshal for review and approval.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that wastewater capacity is available; that the project exceeds the West Rehoboth Expansion Study assumptions of 4.0 EDUs per acre; that the proposed project will not cause additional collection lines to become deficient; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$3,369.00 per EDU; that the location and size of laterals or connection points shall be subject to the approval of the County Engineer; that a 6-inch lateral was provided to the parcel during original construction, but that is not adequate for the proposed project; that the project is adjacent to the West Rehoboth Expansion Area; and that conformity to the West Rehoboth Planning Study, or undertaking an amendment will be required.

The Commission found that a letter was received from William and Renee Shettle in opposition to the application and expressing concerns that there are too many homes and traffic already in the area, and that the land is agricultural/residential and should remain that way.

The Commission found that Lewis Capano III, one of the developers, was present with James Fuqua, Attorney, and Darin Lockwood of Meridian Consulting Engineers, L.L.C. and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop 140 units within 70 duplex buildings with a density of 5.0 units per acre; that the State Strategies reference that this site is located within a “Community” area, a development/growth area; that the Comprehensive Plan Update references that this site is located within an “Environmentally Sensitive Developing Area; that central water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Sussex County; that a Traffic Impact Study was performed and that the Applicant agrees to comply with all DelDOT requirements on the site plan and entrance plan; that no Federal or State wetlands exists on the site; that the

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Applicant did have a Phase I Environmental Site Assessment performed; that shopping and medical facilities are located in close proximity; that the project will have a significant economic benefit to the area and the County; that the site is surrounded by commercial uses, medical facilities, mixed residential uses, and a non-conforming mobile home park; that the project will be a good transition between existing uses and densities; that the Office of State Planning Coordination voiced no objection to the application; that at least 3 parking spaces will be provided per units; that a 5-foot wide landscape buffer is proposed around the perimeter of the site; that internal walking paths and streetlighting will be provided; that stormwater management ponds will be installed; that a pool and pool house will be built on the site; that interconnection to adjoining vacant properties may be established; that the use could be referred to as “infill” in an area that is being developed; and that the varying densities around the site support the proposed density.

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. Lynch, and carried unanimously to defer action.

Motion carried 5 – 0.

C/U #1526 – application of **ROBINO-SANIBEL VILLAGE, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 38.23 acres, more or less, lying west of Route 269A (Old Orchard Road), south of Railroad and north of Dutch Acres Subdivision off of Route One.



The Commission found that the Applicant had submitted site plans and an exhibit booklet prior to the meeting and that the exhibit booklet is a part of the record and a part of the proceedings for this application. The exhibit booklet contains exhibits referencing site data and a tax map; proposed conditions if the use is approved; site access data; a copy of a letter received from Tidewater Utilities, Inc. announcing that they are willing and able to provide water service to the site; maps on Public Water Systems and Public Sewer Systems; a copy of a Construction Debris/Solid Waste Investigation Report; a Remedial Action plan; and a DNREC "No Further Action" letter.

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

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The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Johnston loam or silt loam which has severe limitations for development, Sassafras sandy loam which has slight limitations, and Woodstown sandy loam which has slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Johnston soils are considered Hydric soils; that some of the Sassafras soils are considered Prime Farmland; that some of the Sassafras soils are considered of Statewide Importance; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; and that it will be necessary for some on-site and off-site drainage improvements because of the increased storm runoff due to the increased impervious areas.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that an entrance approval will be required; that the parcel does not contain any natural areas listed on the State's Natural Areas Inventory, nor is it within an identified State Resource Area; that the site is upstream of both the Great Marsh Natural Area and the Great Marsh State Resource Area; that the site also includes a large area of deciduous forested wetland and a small area of shrub/scrub wetland; that the Applicant should contact DNREC regarding the placement of the access; that this wetland surrounds the headwaters of Black Hog Gut and that they recommend that any development should avoid placing lots in forested wetlands and include a minimum forested buffer of no less than 100-feet in width between the wetland edge and lot lines; that a vegetated buffer will help to mitigate the affects of stormwater run-off on the water quality of Black Hog Gut and Old Mill Creek; that because of the sensitivity of these waters to nutrient pollutants, that it is recommended that the Applicant maintain a 100-foot minimum buffer distance from wetlands edge; that it is recommended that the Applicant minimize the removal of existing upland forest because of its importance to the functional integrity of the adjoining wetlands and habitat for various wildlife species; that the Applicant should be

reminded that they must avoid construction/filling activities in areas containing wetlands and wetland associated hydric soils; that there are two inactive Leaking Underground Storage Tanks sites located near the proposed project; that if any underground storage tanks or petroleum contaminated soils are discovered during construction the Tank Management Branch must be notified as soon as possible; that the developers should employ Best Available Technologies and/or Best Management Practices as “methodological mitigative strategies” to reduce degradative impacts associated with development; and that the Applicant will be required to submit site plans to the Office of the State Fire Marshal for review.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the West

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Rehoboth Expansion Area; that wastewater capacity is available; that the project does exceed the West Rehoboth Expansion Planning Study assumptions of 4.0 EDUs per acre; that the project will not cause additional collection lines to become deficient; that the current System Connection Charge Rate is \$3,369.00 per EDU; and that the Sussex County Engineer must approve the connection point.

The Commission found that a letter was received from Howard and Imogene Records in opposition to the application and expressing concerns that the project should not be developed since part of the site is a borrow pit; since there is a pond on the site; since there is wildlife on the site; that flooding could be a concern after everything is black-topped; that they purchased their property in 1978 and were protected from wind by trees next to the railroad; and that they oppose development of this environmentally sensitive land, especially lots 55 and 56.

The Commission found that Paul Robino was present with James Fuqua, Attorney, Roger Gross of Merestone Consultants, Inc., and James McCulley IV, Environmental Consultant, and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop 170 dwelling units of which 108 units will be condominium units within six 3-story buildings and 62 duplex units; that the site is surrounded by the Village of Five Points, Atlantic Concrete’s sand plant, Dutch Acres and Taramino, Phase I of the Reserves of Nassau, the railroad and Sand Dune Village; that the Village of Five Points and Phase I of the Reserves of Nassau are multi-family projects; that the State Strategies designate the site within a “Developing” area and that the Comprehensive Plan Update designates the site within an “Environmentally Sensitive Developing Area”, both of which are growth areas; that central water will be served by Tidewater Utilities, Inc.; that the County will provide sewer service; that DelDOT does not want the development to have direct access to Route One; that the site was a former borrow pit and solid waste site (Hudson Tract); that DNREC has reviewed the site and agreed to a Remedial Action letter; that some Federal wetlands exists on the site and will be left undisturbed by the development, except for removal of debris with appropriate

permits; that 71% of the site will be open space; that they have an access agreement with the developers of the Village of Five Points and are working with Atlantic Concrete to establish a new combined entrance on Old Orchard Road; that DNREC will be inspecting the site during the cleanup; that the Office of State Planning Coordination has voiced no objections; and that the two of the multi-family projects that adjoin the site are being developed at 12 units per acre.

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.

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

Motion carried 5 – 0.

Meeting adjourned at 10:05 P.M.