



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF JUNE 23, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 23, 2005 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. Smith and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz – Land Use Planner, and Mr. Abbott – Assistant Director.

Mr. Abbott advised the Commission that Item Number 1 under Other Business has been removed from the agenda.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the Agenda as revised.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of June 9, 2005 as amended.

### OLD BUSINESS

Subdivision #2004 – 34 - - application of **DAGSBORO TRACE, L.L.C.** to consider the Clustered Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 21.70 acres into 27 lots, located south of Route 26, approximately ½ mile west of Townsend Road (Road 340).

Mr. Smith stated that he would move that the Commission conceptually approve Subdivision #2004 – 34 for Dagsboro Trace, L.L.C. based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. In addition, the project is partly located within the Environmentally Sensitive Development Area. The Applicant is seeking clustered lots with a minimum area of ½ acre.
2. A subdivision on this site is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community.

There are other residential and commercial developments in the area, and the site is close to Dagsboro and Millsboro.

3. The lots will be served by individual wells and septic systems. A Statement of Feasibility has been presented for the septic systems.
4. Due to the existing nature of the site no significant grade changes are expected, and the applicant has stated its intentions to minimize the removal of mature trees located outside of the roadway and house areas.
5. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.

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6. That Mr. Smith's motion is for approval of the subdivision concept only, since Mr. Smith is not satisfied that the preliminary site plan, as presented, is superior to a standard subdivision as required by the AR-1 Clustering Ordinance. Generally, the items listed in Section 99 – 9C of the Subdivision Ordinance have been favorably addressed. However, the Applicant has not maximized the amount of open space or improved the overall design of the subdivision. Instead, it looks like clustering was used just to increase the number of lots from 19 to 27, without any other significant design improvement.
7. This conceptual approval is subject to the following conditions:
  1. The preliminary site plan shall be revised and must reflect a design that is superior to a standard subdivision, including the provision for more open space.
  2. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.
  3. The stormwater management system shall meet or exceed the requirements of the State and County. The Stormwater Management Area shall be relocated to a more central location within the proposed subdivision.
  4. All entrances shall comply with all of DelDOT's requirements.
  5. The Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the revised Preliminary Site Plan.
  6. The Applicant shall submit a revised Preliminary Site Plan in compliance with the conditions of this conceptual approval, to be considered by the Commission at a future meeting under "Old Business".

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this application as a concept for the reasons and with the conditions stated.

Motion carried 5 – 0.

CU #1612 - - application of **CANAL PLACE, L.L.C.** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (87 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex

County, containing 14.6 acres, more or less, lying west of Cedar Neck Road (Road 357), across from Fred Hudson Road (Road 360), and east of White's Creek.

Mr. Smith stated that he needs more time to review the record and would like to inspect the site again.

The other Commission Members agreed with Mr. Smith.

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

Motion carried 5 – 0.

#### PUBLIC HEARINGS

Subdivision #2004 – 35 - - application of **McRYAN PROPERTIES, L.L.C.** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 37.84 acres into 41 lots, located at the northeast corner of Road 225 and Road 224.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on November 17, 2004 and that the report will be made a part of the record for this application; that a revised preliminary plan reducing the number of lots from 41 to 39 has been submitted; that the revised preliminary plan also reflects the revisions suggested by the Technical Advisory Committee; and that David Rutt, Attorney, has submitted the proposed restrictive covenants.

The Commission found that Ring Lardner; Civil Engineer, with Davis, Bowen and Friedel, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the site contains 38 acres; that the plan has been reduced to 39 lots; that farmland is located to the north and west; that single family dwellings are located to the east of the site; that woodlands and a road are located to the south; that the site contains active open space; that the streets will be private; that individual on site wells and septic are proposed; that the preliminary plan has been revised to address the issues raised by the Technical Advisory Committee; that access has been provided to the wooded areas; that sidewalks will be provided on both sides of all streets; that inter – connection roads have been provided; that the stormwater management areas have been increased; that DNREC has approved the septic feasibility in May 2005; presented a standard  $\frac{3}{4}$  acre lot subdivision for comparison; that the standard subdivision does not provide for open space or sidewalks; that the clustered plan provides for a better layout of lots, open space and stormwater management; that the plan provides for two main streets; that the streets will have curb and gutter; that the site is

basically flat and that the highest point is located at the west end of the site; that a forested buffer will be provided to the north; that the open space will contain park benches and a tot lot; that walking trails will be provided throughout the project; that buffers will be provided along Roads 224 and 225; that the project will not have any negative impacts to area schools, traffic, and agriculture; that the entrance has been located as far away as possible from the intersection; that as many trees as possible will be preserved; and that the tot lots will be located away from the public roads.

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Mr. Robertson advised the Commission that the deed restrictions will need minor revisions such as maintenance of common areas and infrastructure; and that manufactured homes are not permitted in the development.

The Commission found that no parties appeared 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. Gordy, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

Motion carried 5 – 0.

Subdivision #2004 – 36 - - application of **MELISSA AND C. J. REED, III** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 127.37 acres into 2 lots, a variance from the maximum allowed cul-de-sac length of 1,000 feet, and a waiver from the street construction design requirements, located west of Route 5, approximately 850 feet north of Road 234B.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on November 17, 2004 and that the report will be made a part of the record for this application; and that DelDOT has approved the entrance plan on December 17, 2004.

The Commission found that C.J. Reed, III was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the street has been named Oak Hill Run; that he is planning to replace the existing manufactured home with a 2,500 square foot dwelling; that no further subdivision of the property is proposed; that the street is owned by his grandfather; and that the road has existed for over 30 years.

The Commission found that no parties appeared 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. Johnson, and carried unanimously to approve this application as a preliminary and as a final, and to approve the street design waiver and the variance from the cul-de-sac length since the street already exists and that it serves the general welfare of the community.

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Motion carried 5 – 0.

Subdivision #2004 – 37 - - application of **WAYNE MITCHELL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 21.75 acres into 24 lots, located west of Road 288-A, 0.5 mile south of Road 280-B.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on November 17, 2004 and that the report will be made a part of the record for this application; that a revised preliminary plan reducing the number of lots from 24 to 16 has been submitted and read a letter received from Lochwood Property Owner's Association referencing concerns about the proposed subdivision.

The Commission found that John Murray with Kercher Engineering, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the site is adjacent to Lochwood Subdivision; that the site is approximately 1,500 feet south of Holly Oak and approximately ½ mile from the intersection of Road 288-A and Route 24; that individual on site septic systems are proposed; that Tidewater Utilities will provide central water to the site; that a 6.89 acre parcel is being conveyed to Sussex County to serve as a buffer from the old landfill site; that agricultural buffers have been provided; that the stormwater management area contains 1.05 acres; that the smallest lot is 32,670 square feet; that the development will cause minimal impacts to the neighboring subdivision; that the developer prefers larger lots; that the preliminary soils study has been conducted; that no agency approvals have been received to date; that he has met with the County Engineer and has been advised that the stormwater management area can't be excavated below the water table in the area.

The Commission found that no parties appeared in support of this application.

The Commission found that Bill Slawter; President of the Lochwood Property Owner's Association was present and advised the Commission that they have concerns with water

in the area; and concerns with stormwater run-off coming onto the Lochwood Subdivision.

Mr. Murray advised the Commission that the stormwater management will be a bio – infiltration system and that DelDOT has excavated the drainage swales in the area.

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 pending receipt of a septic feasibility statement from DNREC.

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Motion carried 5 – 0.

Subdivision #2005 – 19 - - application of **SUSSEX COUNTY HABITAT FOR HUMANITY** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 15.12 acres into 20 lots, located north of Road 524, 125 feet northeast of Jewell Street within Lakewood Subdivision.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on June 15, 2005 and that the report will be made a part of the record for this application; and that a revised preliminary plan has been submitted reducing the number of lots from 20 to 19.

The Commission found that Bill Schab; Attorney with Schab and Barnett, John Barwick with Meridian Architects and Engineers, Kevin Gilmore; Executive Director of Sussex County Habitat for Humanity, and Richard Faull; President of Sussex County Habitat for Humanity were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that Habitat for Humanity is a group of over 300 volunteers; that he and the engineering firm have volunteered their time for work on this project; that ½ acre lots are proposed; that the owners will not make any money selling the lots; that Habitat for Humanity holds interest free loans who qualified buyers; that the project will create 19 affordable building lots; that the lots and homes will be for families who qualify for safe and affordable housing; that the project is not being done to create new residents but to serve existing residents of the County; that the project will not cause any negative impacts to schools or roads in the area; that the Organization has been in existence since 1991; that since this time, they have built 19 new homes in the County; that individual on site wells and septic systems are proposed; that low stormwater run-off is expected; that the plan has been reduced from 20 to 19 lots; that no lots are located in any wetlands; that the streets will be private and built to Sussex County specifications; that the proposed density is 0.8 lots/acre; that a homeowners' association will be established; that there will be small fees for the maintenance of the infrastructure; that the project will address substandard housing

issues; that it will help families better their lives; that the roads will be built or bonded prior to any homes being built; that it has been difficult to raise money for the project; that the road will be built to obtain funding; that they purchased the land since it was affordable; that they are requesting the maximum number of lots allowed; and that approval of the project will create more lots in the area.

The Commission found that Janice Williams of Georgetown, Mr. Figueroa, Vickie York of Ocean View, Gina Miserindino, and Mabel Granke of Rehoboth Beach were present and spoke in support of this application and advised the Commission that the applicants build nice affordable homes for needy families; that the design is good design; that there

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is a need for safe and affordable housing for the residents of Sussex County; that there are currently 4,324 sub-standard housing units in Sussex County based on a report from the Delaware State Housing Authority; that home prices are rising in the County; and that there is a critical need for affordable housing and that this project is necessary.

The Commission found that James Wells and William Thomas, residents of Lakewood Subdivision, were present in opposition to this application and stated that they have concerns with the number of lots proposed; that private sewer and wells on small lots will cause run-off into the Concord Pond; that the density proposed is too high; and that there is a lack of recreational area in the project.

Mr. Barwick advised the Commission that the open spaces and stormwater management areas can be used for recreational purposes; and that the lots in this project are larger than the lots in Lakewood Subdivision; and that the stormwater management areas will not be open ponds.

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

Motion by Mr. Wheatley, seconded by Mr. Smith, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

Motion carried 5 – 0.

Subdivision #2004 – 8 - - application of **SPRING BREEZE ASSOCIATES** to consider the Subdivision (Cluster Development) of land in an AR- 1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 139.62 acres into 235 lots, located north of Road 48 (Hollymount Road), 1,380 feet east of Road 285.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on April 21, 2004 and that the report will be made a part of the record for this application; that a previous application for 275 lots was denied by the Commission on January 20, 2005; that on April 7, 2005 the Commission voted

unanimously to allow for a rehearing; and read letters received from All Saints Church, Marie and Bob Smith, and Norma Lee Burton Derrickson into the record.

The Commission found that Heidi Balliet; Attorney with Tunnell and Raysor, and Ed Politowski with Karins and 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 plan has been reduced from 275 lots from the previous plan to 235 lots; that the subdivision will be a clustered subdivision; that the cluster option will have minimal impact to the area; that the applicants will maintain as many existing trees as possible; that the restrictive covenants will provide for forestation; that the wetlands and flood

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plains on site will not be disturbed; that the clustering of lots enlarges the open space; that 75 acres or 53 percent of the site will be open space; that the proposed buffer areas have been widened; that Artesian Water Company will provide central water and sewer to the site; that the applicants will follow erosion and sediment control practices and stormwater management practices; that stormwater management ponds will be utilized; that 5 streets, 2 cul-de-sacs, and pedestrian walkways are proposed; that the smaller lots will allow for lesser maintenance; that the project will not cause a loss of farmland since the site is forested; that the development will not have any negative impacts to the local schools since there is a new school in the area; that project will not impact any governmental buildings; that traffic will not be negatively impacted and that DelDOT is not requiring a traffic impact study; that the area is rural in nature and since the site is forested, it is better to cluster the lots so that as many trees as possible can be maintained; that the site is located in a low density area based on the Land Use Plan; that the proposed number of lots is less than what is permitted by the Subdivision and Zoning Codes; that the project will serve a need for affordable housing in the area; that 42 acres of the site will remain wooded upland areas; that reforestation will be subject to the recommendation of the Department of Agriculture; that the minimum width of the buffer area is 85 feet; that the price of the homes will be less than the beach area; that the lot/home packages will probably start in the \$400,000 price range; that development is moving further inland; that the applicants are going to provide the adjoining church with as easement to utilize the open areas and walking paths; that the applicants do not expect any significant grade changes; that the stormwater management areas will be at the lowest areas of the site; that the applicants will maintain the natural terrain; that a swimming pool and community building will be centrally located; that at this time, sidewalks are not proposed only natural walking trails are; that if the final sewer design changes, there will not be any additional lots; that the central sewer system will be a sequential batch reactor that meets the requirements of DNREC; that the system is similar to the ones at Stonewater Creek and Heron Bay Subdivisions; that the system uses air and natural bacteria and is turned to sludge and treated to clean water; that a drip system and not spray irrigation is used; that the sewer area is 14.73 acres but will probably be reduced therefore creating more open space; that there will not be any odors outside of the treatment building; that the size of the treatment building will be 60-feet by 70-feet by 25-feet and will have the appearance



of a barn structure; that the treatment equipment is in a tank inside the building; that 1 pumping station is proposed; and that the applicant is a home builder.

The Commission found that no parties appeared in support of this application.

The Commission found that John Davidson, Paul Kercher, Henry Glowiak, John Furbush, and Bob McGeryl, all area residents, were present and spoke in opposition to this application and stated that there is not any difference in this plan than the last plan that was denied; that there possibly could be lightening strikes in the area during storms and that with the homes being clustered, there could be more fire damage to the area;

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that the density proposed is too much for the area; that the minimum lot size should be required to be at least  $\frac{3}{4}$  acre in size; that the number of lots will create additional traffic problems to the area; that the adjacent church has to hire fire police for Sunday church services for traffic control; that Greenbank Estates is being developed in the area and that this development should be similar to it; that the site may be sold to another developer if approved; that the site plan does not contain enough recreational areas for the number of lots; that the area along Road 48 floods heavily during the spring months; that run-off will enter into Chapel Branch; that the developers will have to remove more trees than they stated; that substantial grading will be required since the site is low; that the water table is about 18 to 24 inches; that the small lots are out of character with the area; that the site is located in a Level 4 area with no infrastructure in place; that the Commission needs to consider the cumulative impacts to the area; that the plan does not conform to the Models for Better Developments; that the only difference in this plan and the previous plan is this plan has lesser lots; questioned whether the wetlands have been verified; that the plan is not in compliance with the Clean Water Act; that the plan will cause negative impacts to Chapel Branch and Rehoboth Bay; that the private deed restrictions will not protect the residents of the area; that the project will negatively impact Herring Creek; and that a cluster development is not appropriate for the area;

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

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

Motion carried 5 – 0.

## OTHER BUSINESS

Cu #1524 – route 274 Associates  
Time Extension

Mr. Abbott advised the Commission that this item was removed from the Agenda on June 20, 2005.

Subdivision #2004 – 31 - - Donald K. Miller  
Request for Reconsideration

Mr. Abbott advised the Commission that the applicant is requesting another public hearing; that the public hearing was held on May 26, 2005 and was denied due to no one being present on behalf of the application; that the applicant has stated that he did not received the written notice of the hearing date; and that the office did not receive any returned mail.

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Don Miller was present and advised the Commission that he did not receive any notice of the hearing date and that when they do, they write it down on a calendar in their office; and requested that another hearing be scheduled.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant a rehearing and reconsideration.

Motion carried 5 – 0.

Chapel Green Subdivision  
Revised Plan

Mr. Abbott advised the Commission that the Chapel Green Homeowners' Association is requesting permission to store boats, trailers, and recreational vehicles on a portion of the open space area within the subdivision; that the proposed area is 150-feet by 90-feet; that the proposed storage area is for the residents of the subdivision only; and that there will not be any fees involved.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the revised plan as a concept with the stipulations that the site be limited to the size requested and that a site plan prepared by a Licensed Surveyor or Professional Engineer be submitted referencing the exact location of the site and the setbacks.

Motion carried 5 – 0.

Frank Parks  
2 Lots and a 50' Right of Way – River Road

Mr. Abbott advised the Commission that this is a request to create 2 parcels with access from a 50-foot right of way; that the owner proposes to extend an existing 50-foot right of way to serve as access to the 2 parcels; that this would make a total of 3 lots with access

from the right of way; and that any further subdivision of the site would require an application for a major subdivision.

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

Motion carried 5 – 0.

Linwood G. and Margaret A. Burbage  
Lot and a 50' Right of Way – Honeysuckle Drive

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Mr. Abbott advised the Commission that this is a request to create a 1.00-acre lot with access from a 50-foot right of way; and that the owner proposes to extend an existing right of way and create the lot for their son.

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

Motion carried 5 – 0.

Michael Smack  
Lot – North Street

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot off of North Street near Bridgeville.

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

Motion carried 5 – 0.

Henry and Mildred Krause  
3 Lots and a 50' Right of Way – Road 303

Mr. Abbott advised the Commission that this is a request to create an additional lot with access off of an existing 50-foot right of way; that on March 8, 2001 the Commission approved 2 lots and the right of way; and that if approved, the new lot would be the third lot with access from the right of way.

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

Motion carried 5 – 0.

#### ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a Memo and copies of the comments from the PLUS Meeting with the Office of State Planning Coordination in reference to CZ #1576 – Reynolds Pond, L.L.C. (Isaacs Glen) and advised the Commission that the public record for written comments will be left open until the close of business on July 8, 2005.

Meeting adjourned at 10:17 p.m.