



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF JULY 22, 2004

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of July 8, 2004 as amended.

OLD BUSINESS

C/U #1566 – application of **LANE BUILDERS, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office building and storage building to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 29,348 square feet, more or less, lying southeast of Kings Highway (Route 268) 1,700 feet northeast of Gills Neck Road (Route 267).

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

Mr. Robertson stated that it is his opinion that the Agricultural Preservation District restrictions do not apply to this application since the application is not the creation of a new subdivision or parcel, the parcel already exists and is already improved.

Mr. Johnson stated that he would move that the Commission approve C/U #1566 for Lane Builders to operate an office building and storage building based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.

- 3) The operation of the business will not generate a significant increase in traffic or noise.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
 - 2) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.

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- 3) No outside storage shall be allowed on the premises.
- 4) No chemicals shall be stored on the premises.
- 5) The storage building and garage shall not be used as a workshop or for the operation of power tools or other machinery.
- 6) The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Wheatley, 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 4 – 0.

C/Z #1543 – application of **VINCENT PROPERTIES, L.L.C.** to amend the Comprehensive Zoning Map of Sussex County 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 Broadkill Hundred, Sussex County, containing 89.41 acres, more or less, land lying south of Cave Neck Road (Route 88) and northeast of Sweetbriar Road (Route 261).

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

Mr. Johnson asked Mr. Robertson to read Mr. Johnson's recommendation.

Mr. Robertson read that Mr. Johnson moves that the Commission recommends approval of C/Z #1543 for Vincent Properties, LLC for a MR-RPC based upon the information contained in the record and for the following reasons:

- 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance by promoting the orderly growth of the County. The proposed project is also in an Environmentally Sensitive Developing Area as established by the 2002 Comprehensive Plan Update.
- 2) MR zoning is appropriate for the site because medium density residential development is appropriate in areas where central water and sewer are available. Sewer service will be provided as part of a County operated Sanitary Sewer

District, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities.

- 3) With the conditions placed upon this project, the RPC designation is appropriate for this land since the purpose of an RPC is to encourage development creating superior living environments with design ingenuity.
- 4) The project is consistent with other uses in the area, including Paynters Mill, Pondview, Heronwood, Overbrook Shores, Creek Falls Farm, Carsyljan Acres, Sweetbriar and also the Hopkins/Pettyjohn project.

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- 5) This recommendation is subject to the following conditions:
 - 1) The maximum number of residential lots shall not exceed 250 as shown on the Developer's site plan.
 - 2) Site plan review shall be required for each phase of development.
 - 3) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
 - 4) Any propane tanks for residential service to the development shall be completely buried and shall not be visible. The area for propane storage shall also be entirely screened from view by a combination of privacy fencing and/or landscaping.
 - 5) A water storage tower shall not be constructed on the site without first obtaining a Conditional Use after public hearings before the Planning and Zoning Commission and County Council.
 - 6) Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These recreational facilities shall include tennis courts, swimming pool, and a community building including a meeting room and pathways and trails.
 - 7) The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
 - 8) The MR/RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - 9) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 - 10) The stormwater management facilities shall be operated in a manner that is consistent with Best Management Practices.
 - 11) The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on at least one side of the streets and street lighting.

- 12) The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- 13) Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.

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- 14) The Applicant shall cause to be formed a homeowner's association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- 15) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.

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 4 – 0.

Subdivision #2003-38 – application of **BPG PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 20.52 acres into 15 lots, located south of Road 252 (Huff Road), 1 mile east of Road 319 (Sand Hill Road).

Mr. Abbott advised the Commission that this application received preliminary approval for 15 lots on April 29, 2004; that the final record plan meets the requirements of the Subdivision and Zoning Ordinances and that all agency approvals have been received; and that the record plan is suitable for final approval and recordation.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant final approval of the 15 lot Subdivision.

Motion carried 4 – 0.

PUBLIC HEARINGS

C/Z #1544 – application of **SARA TAMMANY AND CAROLE LEVITSKY** 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 Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Route 273 (Hebron Road)

and Burton Avenue, 650 feet north of Route One, and being Lots 2 and 3 within West Rehoboth Subdivision, to be located on 12,591 square feet, more or less.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations for development; that the Applicants will be required to follow recommended erosion and

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sediment control practices during construction and to maintain vegetation; that the Sassafras soils are considered Prime Farmland soils; 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 improvement

The Commission found that a letter was received from West Side New Beginning, Inc. welcoming First State Appraisal to the West Rehoboth Community and stating their support of this rezoning.

The Commission found that a letter was received from Louis N. Chaconas in support of the rezoning.

The Commission found that Steve White, a partner in First State Appraisal was present on behalf of the application and stated in his presentation and in response to questions raised by the Commission that all of the properties across Hebron Road are zoned C-1 General Commercial; that all of the properties along Route One are zoned C-1 General Commercial; that the five properties along the same side of Hebron Road as this site are residentially zoned, but have been used commercially for years; that they propose to build a two-story Cape Cod office building; that they have only four (4) partners/employees; that they will only have a small sign or no signage; that most of their business is by phone or FAX; that very few clients will come to the site; that appraisal work is performed on the sites being appraised; that adequate space is available on the site for parking; that business hours are normally 9:00 a.m. to 5:00 p.m. six days per week; that the original building on the site was demolished; and that they hope to be good neighbors to the West Rehoboth area.

Mr. White submitted into the record a County property map colored to show commercial activities in the area; photographs of the adjacent property, a storage facility in the area, multi-family uses in the area, commercial and warehouse uses in the area, and a commercial tower site in the area; a small set of building plans for the proposed office building; and a site plan.

The Commission found that Minnie Smith, President of West Side New Beginning, Inc., was present and stated that they are in support of the use, not the other uses that are permitted in C-1 General Commercial zones; that they would prefer a Conditional Use; that they are concerned that a taproom would be built in their area; that the lot was originally occupied by a dwelling; that the dwelling was torn down upon purchasing; and that they seem to be losing residential properties in the neighborhood.

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

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Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since commercial uses and zonings exists in close proximity to the site and since the rezoning would be in keeping with the developing character of the area. Motion carried 4 – 0.

Subdivision #2003-47 – application of **CANNON ROAD INVESTMENTS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 176.67 acres into 215 lots, located east and west of Road 307, and southwest of Route 5.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on December 17, 2003 and that the report will be made a part of the record for this application; and that the applicants submitted an information booklet containing a vicinity map, Planning and Zoning Minutes for Phases 1 through 4 and Phases 5 & 6, a letter from DelDOT, Wastewater System Permit and Information, a Cemetery Delineation Report, and proposed Findings and Conditions for approval.

The Commission found that Mark Handler and Randy Mitchell, developers, James Fuqua, Attorney, and Jason Palkewicz from McCrone, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for Phases 7 through 9; that the project is for a low-density single family residential development; that with central sewer, the lots may be 20,000 square feet in size; that the project is located off of Route 5 and Cannon Road; that the site is adjacent to other phases that have received final and preliminary approvals; that this site contains approximately 176-acres; that 215 lots are proposed for these phases; that the development will be subject to the same deed restrictions as the previous phases; that a swimming pool, clubhouse with locker rooms, a conference and meeting room and recreation areas are proposed for these phases; that the project will not cause any adverse impacts to the area or to the adjacent lots; that an entrance is proposed off of Route 5 and one off of Cannon Road; that this site has interconnections to previously approved phases; that no wetlands exist on any of the lots; that central sewer, central

water and propane are proposed to be on site; that street lights are also proposed for these phases; that multi-modal paths will be incorporated into this project; that the streets will be private and built to County specifications; that DelDOT did not require the applicants to do a traffic impact study for the project; that a bus stop will be located off of Route 5; that the existing cemetery on site has been delineated and will remain undisturbed; that access will be provided to the cemetery location and will be maintained by the Homeowners' Association; that Delaware Electric Cooperative will provide electricity to the site; that Artesian Water Company will provide central water; that Sharp Gas will provide propane; that the site is located in Indian River of Oak Orchard Fire District and that the owners will give \$100.00 to the Fire Department for each initial lot sale; that the

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proposed findings of facts and conditions of approval are the same as the previous approved phases; that Phases 1 through 4 are currently being constructed; that no dwellings have been built yet; that the clubhouse must be built within two years of the issuance of the first building permit; that DNREC has approved the sewer for 750 total lots; that dwellings will be started in September; and that the applicants settle on the property the last week of July.

No parties appeared in support of this application.

The Commission found that Joan Deaver was present in opposition to this application and stated that the proposed central sewer system does not work; and that these systems fail all the time.

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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary for the same reasons and with the same conditions as Phases 1 through 4 and 5 and 6.

Motion carried 4 – 0.

Subdivision #2003-48 – application of **ANTHONY CONDURSO** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 42.72 acres into 35 lots, located northeast of Road 211, 1,320 feet northwest of Road 207.

Mr. Abbott advised the Commission that the Technical Advisory Committee discussed this Subdivision on December 17, 2003 and that the Technical Advisory Committee Report for December 17, 2003 is a part of the record for this application.

The Commission found that there were no parties present in support of the application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to postpone the public hearing to the conclusion of the discussion on Item #7 of Other Business since no one was present on behalf of the Applicant.

At the conclusion of the discussion on Item #7 of Other Business, Mr. Allen reopened the public hearing on this application and the Commission found that there were still no parties present in support of the application.

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Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny this Subdivision since there could be no record of support because there was no one present on behalf of the Applicant.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND”, TO ALLOW FOR THE STAFF APPROVAL OF MAJOR SUBDIVISIONS CONTAINING 50 OR FEWER LOTS AND FOR THE REVISION OF THE FEE SCHEDULE.

Mr. Lank summarized the proposed ordinance.

Mr. Lank submitted and summarized letters received from Dyer McCrea Properties, L.L.C. and Design Consultants Group, L.L.C. in reference to the ordinance.

The Commission discussed the ordinance.

Mr. Johnson stated that he has concerns about the number of lots proposed.

Mr. Wheatley stated that he feels that 50 lots are too many lots and that the number of lots should be reduced.

Mr. Gordy agreed and questioned the need for the ordinance.

Mr. Allen agreed that 50 lots are too many lots.

Mr. Wheatley stated that he agreed with the concept of the ordinance, not the number of lots, and that the public should have the opportunity to voice their concerns.

Mr. Robertson stated that subdivisions are not entirely “by-right”, that the ordinance does not propose to eliminate the public hearing process, and that the County does review projects based on the Subdivision Ordinance.

The Commission found that Joan Deaver stated that the County does not need this ordinance; that the County has a great economy; that there is no need to rush projects through the process; that the public cares about their neighborhoods; that public input is appropriate and necessary; and that any size subdivision should be subject to public review.

The Commission found that Stella Reed stated that the ordinance is not a good idea and that the public should have the right to review projects prior to approval.

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The Commission found that Rich Collins, Executive Director of the Positive Growth Alliance, stated that the ordinance is a good idea; that the number of lots should be determined by the Commission; that the public has the right to request a public hearing; that he is concerned about the requirement that the streets be dedicated to public use and built to State standards; that State standards are more costly than County standards for street construction; that the current process needs to be streamlined; that the process needs to remain affordable; that smaller projects should be allowed to have lesser standards; and that the clustering ordinance is be considered and should be incorporated into this ordinance.

The Commission discussed this Ordinance Amendment.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action to give the Commission time to consider the testimony.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS RELATING TO RESIDENTIAL USES IN NEWLY ZONED B-1 AND C-1 COMMERCIAL ZONING DISTRICTS BY LIMITING SUCH USES TO 4 DWELLING UNITS PER ACRE, TO REQUIRE A PUBLIC HEARING FOR THE EXPANSION OF LARGE SCALE USES, AND MAKE OTHER TECHNICAL CHANGES TO ARTICLE X, B-1 NEIGHBORHOOD BUSINESS DISTRICT AND ARTICLE XI, C-1 GENERAL COMMERCIAL DISTRICT.

Mr. Lank summarized the proposed ordinance.

Mr. Lank advised the Commission that a similar ordinance was reviewed in September 2003; that the Commission recommended approval of that ordinance with revisions in November 2003; and that the County Council rejected the ordinance.

The Commission discussed the ordinance amendment.

Mr. Wheatley stated that he sees no reason to require a public hearing to expand projects by 25%; that he has no objection to limiting the density to 4 units per acre in newly created B-1 or C-1 districts; and acknowledged that we may need more C-1 zones to serve all of the residential development taking place in commercial areas.

The Commission found that Joan Deaver stated that intensive residential development is taking place in existing commercial areas; that housing should not be permitted in commercial areas; that 12 units to the acre is too much; that units look like barracks; that

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the public is opposed to residential uses in commercial areas; and that the ordinance does not improve existing conditions.

The Commission found that Rich Collins stated that market will correct the use; that we will not see multi-family uses being built if the market does not show a need for that type of use; that areas are needed for higher density; that no one wants sprawl, but no one likes density either; that an applicant should be allowed to apply for a Conditional Use; that roads need to be managed better; and that residential uses create less traffic than large commercial uses.

The Commission discussed the ordinance amendment.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to forward this ordinance amendment to the Sussex County Council with the recommendation that the ordinance amendment be approved with the provision that D. Item (3) under Section 6 of the proposed ordinance amendment be deleted from the proposed ordinance.

Motion carried 4 – 0.

OTHER BUSINESS

Forest Landing MR/PC
Final Record Plan – Roads 84 and 368

Mr. Abbott advised the Commission that this is the final record plan for a 353 unit residential planned community; that the Commission granted master plan and preliminary approval on May 8, 2003 and a revised preliminary approval on July 10, 2003; that the final record plan is the same as the revised preliminary plan; that the record plan meets

the requirements of the zoning and subdivision codes; that all agency approvals have been received; and that the record plan is suitable for final approval and recordation.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the record plan as a final.

Motion carried 4 – 0.

Colonial East Park
Commercial Site Plan – Route One

Mr. Abbott advised the Commission that the site plan is for 25,700 square feet of retail area located in 2 buildings and a 3-story, 94,500 square foot indoor storage building located on 5.61 acres; that the site is zoned C-1 General Commercial; that DelDOT has

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issued a letter of no objection in reference to the entrance location; that on May 27, 2004 the Office of State Planning Coordination reviewed this project through the Preliminary Land Use Services (PLUS) process; that the Office of State Planning Coordination supports the project since it is for the redevelopment of an already developed site; that no other agencies had any negative comments or concerns; that one of the retail buildings is 15,200 square feet and the other is 10,500 square feet; that all building setbacks meet the requirements of the zoning code; that 129 parking spaces are required and 167 spaces are proposed; that 5 loading spaces are required and proposed; that a 20-foot landscaped buffer along Route One has been provided; that there are not any wetlands located on the site and that the site is not located in a flood plain; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

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

Motion carried 4 – 0.

Mariner's Cove VRP
Revised Site Plan – Route 22

Mr. Abbott advised the Commission that the revised site plan is for the relocation of 2 lots, the construction of a new multi-purpose court, clubhouse and a pavilion; that a 5 foot walkway and parking area are also being added; and that all of the revisions are located in the existing recreation area.

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

Long Neck Mini Storage
Commercial Site Plan – Route 22

Mr. Abbott advised the Commission that the site plan is for a retail and storage building on 1.61 acres; that the site is zoned C-1 General Commercial; that 21,000 square feet of retail space is proposed for the first floor and the second floor contains 21,000 square feet of storage area; that 42 parking spaces are proposed and 1 loading space is provided; that the setbacks meet the requirements of the zoning code; that 15 parking spaces are located in the front yard and need a waiver from the Commission; that the interior drive to the rear of the building needs to be revised to 25-feet; that there are not any wetlands located on the site; the site is not located in a flood plain; that with the revision noted, the plan is

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suitable for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 3 votes to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 3 – 0 – 1.

Subdivision #2003 – 6 - - Richards Farm
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval on July 24, 2003 for 32 lots; and that this is the first request for an extension.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve a one-year extension.

Motion carried 4 – 0.

Edward Quinn and Thomas Volatile
2 Parcels and a 50' Right of Way – Road 214

The Commission reviewed a request to create 2 parcels with access from a 50-foot right of way.

Dave Kenton advised the Commission that the applicants have access to the existing right of way and will create a 50-foot right of way to serve as access to the proposed parcels.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the request as a concept. Final approval shall be subject to verification that the applicants have access to the existing right of way.

Motion carried 4 – 0.

The Refuge at Derrickson Creek MR/RPC
Revised Master Plan – Route 54

Mr. Abbott advised the Commission that when the development was approved, it was approved with a 30-foot front and corner lot setback; that the developer's deed restrictions referenced a 20-foot corner yard setback, that the owner would like the

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Corner setback to reference 20-feet on the plot; and that the County's minimum corner yard setback is 15-feet.

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

Motion carried 4 – 0.

Meeting adjourned at 9:20 p.m.