



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF AUGUST 19, 2004

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 19, 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. Kautz – Land Use Planner, and Ms. Mowbray – Zoning Inspector III.

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

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

PUBLIC HEARINGS

C/Z #1550 – application of **NORMAN C. WALLS** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying south of Route 36, 272 feet west of Seabury Avenue (Milford) and ¼ mile west of U.S. Route 113, to be located on 1.4173 acres, 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 two types of Evesboro 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 Evesboro soils are considered of Statewide Importance; 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 letters were received from Sara Rogers, and Bill and Eva Farlow in support of the rezoning.

The Commission found that Norman C. Walls was present with David Rutt, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the rezoning will allow for Mr. Walls to use the property for equipment and parts storage for his fuel tank installation business; that a Conditional Use application is not an option in the MR District; that the Applicant also does installations of pivot irrigation systems; that the dwelling located on the property is a rental unit; that the site has historically been used as a feed and fertilizer business; that the frame building on the east side of the property will be used for storage of vehicles and has a pit for repair

Minutes

August 19, 2004

Page 2

of vehicles; that all business vehicles will be parked in the building except for a dump truck; that some of the materials that will be stored in the buildings include piping and fittings; that no tanks will be stored on the site; that tanks are delivered to job sites; that there will be no outside storage of materials of any kind; that the L-shaped metal building is in need of repairs and can be used for storage; that the Applicant has been in the fuel tank installation business for 19 years; that the company has two (2) full-time employees; that adequate space is available on the site for parking; that the business generates minimal traffic; that typical business hours are from 7:00 a.m. to 3:30 p.m. Monday through Friday, with occasional hours on Saturday, and no Sunday hours except for emergencies; that the area is mixed with residential and some commercial and industrial uses, including Milford Grain and a cabinet shop; that the property is approximately ¼ mile from U.S. Route 113; that there will be no fabrication performed on the site; that on-site water and septic exist on the site; that the business is one of only a few that exist in Delaware; that the use will be a benefit to the County; that the application is supported by the neighbors; that the use complies with the purpose of a C-1 General Commercial District and the Comprehensive Plan since it is a service use and provides for general service and repair; that the business receives deliveries from Penco once per week and from UPS twice per week; that there is no need for a sign on the property since there are no walk-in customers; that an office is not proposed to be located on the site since the Applicant maintains an office at his home; and that outside security lighting already exists on the site.

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. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since the property has historically been used for business/industrial uses; since the use is not out of character with the neighborhood; and since the existing MR zoning does not allow the choice of a Conditional Use.

Motion carried 4 – 0.

C/Z #1551 – application of **SHORTS MARINE** 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 Indian River Hundred, Sussex County, land lying south of Route 306A, 100 feet west of Route 299, to be located on 10.7806 acres, more or less, of a 95.21 acre tract.

Minutes
August 19, 2004
Page 3

C/U #1551 – application of **SHORTS MARINE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat storage yard to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 10.7806 acres, more or less, of a 95.21 acre tract, lying south of Route 306A, 100 feet west of Route 299.

The Commission and James Fuqua, Attorney for Shorts Marine, agreed to combine the public hearings for C/Z #1551 and C/U #1551.

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 Evesboro loamy sand and Klej loamy sand; that the Evesboro soils have slight limitations for development; that the Klej soils have 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 soils are considered of Statewide Importance; 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 County Engineering Department Planning and Permits Division, that the parcel is not in a sewer district and cannot be annexed because it does not adjoin an existing district, as required by Delaware law, and that the parcel is in the North Coastal Planning Area but is not in an area where Sussex County expects to provide sewer service in the foreseeable future.

The Commission found that Don Short and Fred Ellingsworth of Shorts Marine were present with James Fuqua, Attorney, and that Mr. Fuqua stated in his presentation and in response to questions raised by the Commission that the application was filed as a Change of Zone from GR to AR-1 and a Conditional Use since there was no method of applying for a Conditional Use in the GR District when the application was filed; that the County Council has recently amended the Code to allow for Conditional Uses in GR Districts; that the area has been zoned GR since 1971; that they are actually applying for

a Conditional Use and would like to be able to obtain a Conditional Use without rezoning the property since the use intended will be operating on leased land; that the property is owned by Trey Norwood; that Shorts Marine operates several boat storage facilities in the area; that Shorts Marine has operated a boat storage yard at Road 299 and Route 24 since 1999 on 10 acres of leased land; that the existing 10 acre site may be the subject of a rezoning application in the future; that Shorts Marine has been in business since 1950 in the Oak Orchard area; that the primary business location is on Long Neck Road; that the proposed storage yard will be used for long term seasonal storage; that the site, during the

Minutes

August 19, 2004

Page 4

winter months, will be used to store boats and boat trailers; that during summer months the site will be used primarily for the storage of boat trailers; that the site plan depicts 483 large spaces; that they propose to install perimeter chain-link type fencing with rolled wire across the top and landscaping; that the entrance will be improved with crusher run; that the storage area will be maintained grass; that woodlands exists on three sides of the proposed storage yard; that a church cemetery exists immediately adjacent to the entrance; that the applicant is willing to landscape the buffer around the cemetery; that they propose a small 2' by 4' sign at the entrance; that normal business hours are from 8:00 a.m. to 5:00 p.m.; that keys to the gate are maintained by the business, not individuals; that there will be no repairs performed on the site; that there will not be any water or sewer on site; that the only utility on the site will be electric for the security lighting; that 11 letters have been received from neighbors in the area; that the Conditional Use will create a convenience to residents living in the area; that users will access the site primarily from Road 306A to Route 5 to Long Neck Road; that the lease on the property is valid for 10 years; that the leased property is the proposed fence line; and that the site will be operated the same as the existing site along Route 24.

The Commission found that Mr. Fuqua read and submitted suggested conditions of approval.

The Commission found that Mr. Fuqua submitted copies of the eleven- (11) letters in support of the application, and four (4) photographs of the existing storage yard.

The Commission found that Brian Clark, Chairman of the Board of Trustees for the Friendship United Methodist Church, was present and expressed concerns about the location of the entrance and traffic volumes to and from the site, and the need to protect and screen the graveyard. Mr. Clark added that they have no other objections.

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 on C/Z #1551 and C/U #1551 so that Mr. Robertson can review the record.

Motion carried 4 – 0.

C/U #1549 – application of **RAMON A. ROSA AND LOURDES APONTE DE ROSA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a medical office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 14,998 square feet, more or less, lying southeast of Savannah Road (Business Route 9), 1,200 feet southwest of Railroad and 1,100 feet northeast of Ebenezer Branch.

Minutes
August 19, 2004
Page 5

The Commission found, based on comments received from DelDOT, that the Department does not recommend a traffic impact study; that the Department is concerned about this application since they see it an encouraging more traffic in an area that has been identified as operating at unacceptable levels of service; that the site is within a Community Area according to the Strategies for State Policies and Spending document where DelDOT intends to support development with a more comprehensive menu of transportation facilities and services; that investments in transit, bicycling, and walking facilities are the focus so that the Department can support these alternative modes of transportation as supplements to the automobile; and that this road segment of Route 9 operates as level of service “E” during summer peak hour.

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; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that Sassafras soils are considered Prime Farmland; 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 County Engineering Department Planning and Permits Division, that the parcel is not in a sewer district and cannot be annexed because it does not adjoin an existing district, as required by Delaware law; that the parcel is in a future service area of the West Rehoboth Expansion Area and does not have sewer service at this time; and that the County does not have a schedule to provide service.

The Commission found that Fred Horn, Architect, was present on behalf of the application, and stated that this Conditional Use is being requested to provide a more convenient location for patients; that several doctors offices exists in the immediate area along Route 9; that they propose to retain the residential appearance of the existing residence when remodeling; that the majority of the parking is to the rear of the building; that two spaces are proposed in the front yard with one space being reserved for handicap parking; that office space for two doctors is proposed; that normal business hours are

from 9:00 a.m. to 4:30 p.m. Monday through Friday with no weekend hours; that the building will not be used for residential use; that the remodeling plans include two additions to the rear of the existing structure; that they have not yet applied for approval from the Fire Marshals office; and that they propose to combine access with the neighboring lot to increase the width of the driveway to 25-feet.

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

Minutes
August 19, 2004
Page 6

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 4 – 0.

C/U #1552 – application of **NCORB, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for professional offices to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.5417 acres, more or less, lying northeast of Route 361, 1,320 feet northwest of Route 368.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the use will not change the level of service of Road 361 since the use coincides with DelDOT's Highway Peak Hour.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this Conditional Use and advises the County that if the use is approved DelDOT will require the applicant to obtain an entrance permit for access to the project; that a well construction permit must be obtained prior to construction of any wells; that all well permit applications must be prepared and signed by a licensed water well contractor; that only licensed well drillers may construct the wells; that the Applicant is encouraged to maintain appropriate buffers of 100-feet from the drainage ditches that border the site on two sides; and that the Applicant is further encouraged to plant these buffers with native low maintenance grasses, shrubs and trees to maintain water quality benefits.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Pocomoke sandy loam; that the Evesboro soils have slight limitations for development; that the Pocomoke soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that both soil types are considered of Statewide Importance; that the Pocomoke soils are also considered Prime Farmland; that no storm flood hazard areas or tax ditches are

affected; that it may be necessary for some on-site and some off-site drainage improvements; and that there may be regulated wetlands on the site and that the Applicant should check for required permits from the Army Corps. of Engineers.

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a tax map highlighted with the zonings in the area; photographs of the site and surrounding uses; a site plan; an elevation drawing of the proposed building; portions of the 2002 Comprehensive Plan Update; a copy of the

Minutes

August 19, 2004

Page 7

DelDOT Support Facilities Report; a copy of the letter from the Office of State Planning Coordination; and suggested conditions of approval.

The Commission found that Dr. Paula Nadig was present with Tim Willard, Attorney, and John Lester of Design Ideas, Inc. and stated in their presentations and in response to questions raised by the Commission that the Applicant proposs to build a professional office building on the site; that the use will be consistent with the Comprehensive Plan Update; that the site is located within the Environmentally Sensitive Developing Area where additional commercial uses are needed; that businesses are needed to serve the rapidly expanding population; that the use will serve an area where a lack of services exists; that the site is located in the Muddy Neck Area between Ocean View and Bethany Beach; that ditches exists on two sides of the site; that the site adjoins several residential projects and is in close proximity to several commercial uses and zones; that they propose to build a 9,000 square foot building with appropriate parking; that the building will contain four (4) office units; that Dr. Nadig will utilize one of the units and the other three will be leased; that typical business hours are from 8:00 a.m. to 6:00 p.m. Monday through Friday; that DelDOT did not require a traffic impact study; that the State voiced no objections to the use; that Dr. Nadig is a pediatrician affiliated with A.I. DuPont and Beebe Hospitals; that both hospitals support this application; that the van parking indicated on the site plan is for side loading handicapped vans; and that the Applicant hopes to lease the units for medical or health care professionals to serve the community.

The Commission found that there were no parties present in opposition to the 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 the application be approved since the use will be a benefit to the community; since the use will not have an adverse impact on the community; and with the following conditions:

- 1) The offices shall be limited to professional medical health care and other professional service oriented occupations, and shall not include building contractors, building tradesmen, or real estate offices.
- 2) There shall be no more than four (4) offices.

- 3) There shall be no outside storage or uses.
- 4) There shall be no retail business conducted from the premise.
- 5) The Applicant shall adhere to all government regulations, including DeIDOT entrance permits and DNREC water supply licensing.
- 6) The Applicants project shall proceed according to the site plan approved by the Planning and Zoning Commission.
- 7) The parking lot and building shall be appropriately lighted for safety and security with downward illumination for screening from neighboring properties.

Minutes

August 19, 2004

Page 8

- 8) The project shall be landscaped based on the approved site plan.
- 9) Signs shall only be placed on the building identifying the various professional offices and one (1) lighted ground sign, not exceeding 32 square foot per side or facing, may be permitted.
- 10) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

Motion carried 4 – 0.

Subdivision #2003-50 – application of **KAPLAN, GALLO & HOWETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 57.00 acres into 53 lots, located on both sides of Road 257, approximately 2,465 feet southwest of Route One.

Mr. Lank advised the Commission that this Subdivision was reviewed by the Technical Advisory Committee on January 14, 2004 and that the Report of the Technical Advisory Committed meeting is a part of the record for this application.

The Commission found that the Applicants submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains references to site data, site information, water service, sanitary sewer service, stormwater management, appendices with utility company commitment letters, a copy of the preliminary site plan, copies of the proposed declaration of covenants, conditions and restrictions, a preliminary wetlands investigation report, an assessment of cultural resource review, a Phase I Environmental Site Assessment Report, and preliminary environmental site characteristics.

The Commission found that a letter was received from Joseph Larrimore, President of Eagles Crest Homeowners Association, in opposition to the application.

The Commission found that John Sergovic, Attorney, was present with Gary Cupples of ECI and that they stated in their presentations and in response to questions raised by the Commission that the Applicants propose to develop this 57 acre parcel with 51 lots; that the lots along the north side of Road 257 have been revised to increase the width of the lots; that central water and central sewer are proposed; that portions of the site are within

1,000 feet of tidal waters; that the site is feasible for central water and central sewer; that the central water and central sewer systems will be operated by a utility company; that the site is designated as a Low Density Area according to the 2002 Comprehensive Plan Update; that 20,000 square foot lots are proposed since central water and sewer are proposed; that the application is consistent with the Zoning Code and the Comprehensive Plan; that the Applicants plan on developing the site in compliance with the provisions of 99-9 C of the Subdivision Ordinance in that the developers will add additional landscaping, there is no intent to impact wetlands or floodplains, there will be no

Minutes

August 19, 2004

Page 9

significant impact on historic features, that they will minimize tree and vegetation removal, that they will limit grade changes when doing earth work, that screening will be provided, that the stormwater management system will meet or exceed State and County requirements, that the final plan will be designed to minimize impacts on groundwater, that all DelDOT requirements will be complied with, that the construction of the project should enhance the area, that development of the site will be the highest and best use of the site, that there should be no impact on the school district since the majority of the buyers will be retirees or second home buyers, that there should be no impact on roadways, that the development should be compatible with the area which includes residential uses and farms, that there should be no impact on waterways since no access is proposed to the waterways; that common driveway entrances are proposed for the lots fronting along the north side of Road 257; that lot 47 along the north side of Road 257 has approximately 10,000 square foot of upland area; that they did not see a need to submit revised site plans of the lots along Road 257 since they were reducing the number of lots from 53 to 51; that they propose to dedicate an additional 5-feet along each side of Road 257; that the sewer system will be designed to Ordinance No. 38 specifications; and that the wetlands line will be clearly indicated on the final site plan.

The Commission found that Preston Shockley, John P. Reed III, Matty Hoch, William Downes, Mark Nardi, and Joseph Larrimore were present in opposition and expressed concerns about the impact on a 1901 farmhouse immediately adjacent to the site; traffic and traffic accidents, the narrowness of Road 257; the many curves along Road 257; the impact of wetlands by development and encroachment; that the Beaverdam Creek is utilized by trappers and duck hunters and that steel shot used in duck hunting can travel in excess of 750 feet; that the bridge and roadway at the curve of Road 257 sometimes floods; that the proposed entrance is located where there is a natural flow from the farm and that a crossover pipe exist in the same area; that the open space indicated on the site plan adjacent to Beaverdam Creek is not usable and may be unsafe for access; that a farmer on adjacent lands has 10 coonhounds and that buyers may have to deal with a lot of noise; that Road 257 is utilized by several farmer in the area to move large farm equipment from one site to another site; that a proposed subdivision was denied approximately 3-years ago on a parcel across Road 257; that the Creek is ecologically sensitive and rich in wildlife, animals, plants and White Cedar trees; that they are concerned about buyers destroying trees and the wetlands just to get a view of the water;

that the density of the project far exceeds the density of this rural area; that the entrance is just beyond a blind curve; that they would not object to larger lots of 2 to 5 acres each; that there are some farmland preservation farms in the area; and that the citizens in the area are opposed to development along Road 257, one of the most beautiful roads in the County.

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

Minutes
August 19, 2004
Page 10

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

Motion carried 4 – 0.

Subdivision #2003-51 – application of **MORRIS MILL POND, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 156.39 acres into 150 lots, located on both sides of Road 48, 700 feet west of Road 297.

Mr. Lank advised the Commission that this Subdivision was reviewed by the Technical Advisory Committee on January 14, 2004 and that the Report of the Technical Advisory Committed meeting is a part of the record for this application.

Mr. Lank read a letter from Vincent D. Street, not opposing the development, but requesting that the project be done to all codes, and advising the Commission that there is a need for sewer in the area and widening of roads since there are no shoulders.

The Commission found that the Applicants provided an Exhibit Booklet prior to the meeting and that the Booklet contains a copy of the Declaration of Covenants, Conditions and Restrictions of the project, and copies of comments submitted to the Technical Advisory Committee from DelDOT, Vince Robertson relating to the restrictions, the Delaware Health and Social Services, the Department of Agriculture, the Division of Water Resources of DNREC, the Sussex Conservation District, and the Delaware State Fire Marshals Office.

The Commission found that John Sergovic, Attorney, and Jessica Nichols of Meridian Consulting were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that the site is in a Low Density Area according to the 2002 Comprehensive Plan Update; that single family detached lots containing a minimum of $\frac{3}{4}$ acre are proposed with on-site water and septic; that 147 lots are proposed; that a small recreational area is proposed and that the developers do not have plans for improving the recreational area; that the improvements made on the recreational area shall be subject to the approval of the homeowners association; that a

30-foot setback is proposed from all wetlands; that the application complies with the Zoning Code and the Comprehensive Plan Update; that the project is a traditional Sussex County subdivision; that the site is in close proximity to Georgetown and the new high school; that the site plan has been revised to respond to the comments received at the Technical Advisory Committee; that the entrances will be altered to comply with DelDOT recommendations; that buffers will be provided adjoining agricultural lands; that the Applicants plan on developing the site in compliance with the provisions of 99-9 C of the Subdivision Ordinance in that the developers intend to limit fill on the site, there

Minutes

August 19, 2004

Page 11

is no intent to impact wetlands or floodplains, additional setbacks will be provided from wetlands, there will be no significant impact on historic features, that they will minimize tree and vegetation removal, that the stormwater management system will meet or exceed State and County requirements, that all DelDOT requirements will be complied with, that the construction of the project should enhance the area, that there should be no impact on the school district, that the development should be compatible with the area which includes residential uses and farms in the area, that runoff should be improved and less impacting than present run-off since it will be treated; that the developers do not intend to provide street lighting or sidewalks; and that there are approximately 3 acres of land set aside for open space.

The Commission found that Marta Lyons, Preston McIlvaine, and Eileen Armstrong, residents of the area, were present and expressed concerns about traffic, the size of the proposed homes, the closeness to the new high school and Stockley Center, access to the millpond, accessory structures, the lack of buffers from existing residential lots, and requesting larger lots and more open space.

Mr. Robertson advised those present that the restrictions include references to 1,800 square feet of space for one story dwellings, 2,200 square feet of space for two story dwellings, that garages shall be attached, not detached, that boats and trailers shall not be parked in the front yard, that no setbacks shall be encroached upon, that there shall be no abandoned vehicles parked on the lots, and that the restrictions are more complete than some other restrictions that have been approved in the County.

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 4 – 0.

Meeting adjourned at 10:05 p.m.