



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF DECEMBER 9, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 9, 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. Mr. Allen introduced Rodney Smith, the recently appointed Commissioner. 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. 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 Johnson and carried unanimously to approve the Agenda as amended by announcing that Subdivision #2004-7 was withdrawn on December 8, 2004 and that Item #5 under Other Business was removed from the agenda.

Motion by Mr. Gordy, seconded by Mr. Wheatley and carried with 4 votes to approve the Minutes of November 18, 2004 as amended. Mr. Smith did not participate in the vote.

OLD BUSINESS

C/Z #1558 – application of **REHOBOTH CANAL VENTURES, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR High Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying west of the Lewes and Rehoboth Canal, 450 feet southwest of Route One, to be located on 5.0 acres, more or less.

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Johnson stated that he would move that the Commission recommended approval of C/Z #1558 for Rehoboth Canal Ventures, L.L.C. for a change of zone from AR-1 to HR based on the record and for the following reasons:

1. The project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the Comprehensive Plan Update.
2. The proposed Change of Zone will have no significant impact upon traffic.

3. There are other residential developments with HR densities and characteristics in the vicinity of this project.
4. The project will not have an adverse impact on the neighboring properties or community.
5. This Change of Zone will likely lead to the redevelopment of a property that was recently used for outside storage of refuse and waste and is in disrepair.
6. This project will be served by central water and sewer. But, any development will be subject to the approval of the Sussex County Engineering Department. The Engineering Department has stated that (a) there is adequate capacity in collection

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- lines and a new line appears to become deficient under the proposed density; (b) the nearest pump stations may not be able to handle the additional capacity of the proposed density; (c) the density would be detrimental to the system and the Wolfe Neck Treatment Plant. Consequently, the developer of the property will be required to test, design, fund and construct any upgrades to the County sewer system that are necessary to serve any density greater than the 17 unit capacity allowed by the Engineering Department.
7. I recommend that Tax Map I.D. 3-34-19.08 Parcel 39.00 should not be included in this rezoning or considered in density calculations for this property. It is not contiguous to the rest of the property that is the subject of this application.

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 stated.

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

C/Z #1559 – application of **GREG IVANOFF** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Plantation Road (Road 275) and Cedar Grove Road (Road 283), to be located on 16.49 acres, more or less.

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Johnson stated that he would move that the Commission defer taking action on C/Z #1559 for Greg Ivanoff so that the applicant can provide additional information concerning the land that will be dedicated to DelDOT and the stormwater management pond across reconfigured County Road 283; that according to DelDOT's January 30, 2004 letter, DelDOT requested that any action on this application be deferred until an agreement can be reached about the reconfigured road and stormwater management

pond; that in DelDOT's April 8, 2004 letter, it stated that the final location of the right-of-way would be determined, and that DelDOT would provide additional information about the location of the road; that Note 5 on the Preliminary Site Plan also states that "A letter will be forwarded to Sussex Planning and Zoning by DelDOT that addresses the relocation and other agreements entered into by DelDOT and the developer"; that it appears that the only additional document from DelDOT is a short letter stating that DelDOT and the Applicant "have been working together in a cooperative effort", without specific information; and that I would like more definite information from the Applicant

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about any agreement with DelDOT, including whether the location and size of the reconfigured right-of-way has been finalized with DelDOT.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 4 votes to defer action for the reasons stated.

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

C/Z #1565 – application of **ALLEN FAMILY FOODS, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a MR Medium Density Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 5, 0.25 mile south of Route 9 at Harbeson, to be located on 2.60 acres, more or less.

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Johnson stated that he would move that the Commission recommend a denial of C/Z #1565 for Allen Family Foods, Inc. seeking a Change of Zone from MR and AR-1 to HI-1 Heavy Industrial based on the record and for the following reasons:

- 1) I do not believe that the application is consistent with the character of the surrounding residential properties fronting along Route 5.
- 2) Although the Applicants stated that the intended use is limited to parking, a Change of Zone to HI-1 would potentially allow more intensive industrial uses that are not compatible with the surrounding uses and properties adjacent to Route 5.
- 3) I am not satisfied, based on the record, that this is the only area where the Applicants can locate additional parking. It appears that there are other HI-1 lands on the northern side of the railroad tracks that are either vacant or under-utilized that could be developed for employee parking.

- 4) If the Applicants choose to revisit the need for parking on this parcel, I believe it should apply for a Conditional Use, which allows the County to place limitations and conditions on the particular use of the property.

Motion by Mr. Johnson to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated.

Motion died for the lack of a second.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried 3 – 1 – 1 to defer action on this application. Mr. Johnson opposed the motion and Mr. Smith did not vote.

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Subdivision #2004-26 – application of **LAWRENCE A. BIASOTTO** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 12.73 acres into 37 lots, located south of Hickman Road (Road 359), 1,800 feet east of Cedar Neck Road (Road 357).

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2004-26 for Lawrence Biasotto based on the record and for the following reasons:

- 1) The proposed subdivision generally meets the purpose of the Subdivision Ordinance by protecting the orderly growth of the County.
- 2) The property is zoned MR which permits development of approximately 4 lots per acre. The proposed subdivision has a density of approximately 2.9 lots per acre.
- 3) The subdivision is in character with other residential development in the area, and there are also businesses and services in the area that will serve the subdivision.
- 4) Although there was some concern from neighbors about setbacks and height limits, these are governed by the requirements of the existing MR zoning for the property.
- 5) The subdivision has been designed to have a minimal impact on wetlands, and no wetlands are included within any lot lines.
- 6) The Applicant has adequately addressed all of the applicable issues in Section 99-9C of the Subdivision Ordinance.
- 7) The project will be served by central water and central sewer.
- 8) This recommendation is subject to the following conditions:
 - 1) Agricultural buffers shall be provided in accordance with the Subdivision Ordinance, if necessary.
 - 2) The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, any forested buffers, stormwater management facilities, and other common areas.

- 3) All entrances shall comply with DelDOT's requirements.
- 4) There shall be streetlights and sidewalks on at least one side of the streets within the subdivision.
- 5) The stormwater management system shall meet or exceed State and County requirements.
- 6) The deeds to all properties shall contain the Agricultural Use Protection Notice, if applicable. In addition, all of the deeds shall contain a similar notice about hunting activities on adjacent properties.
- 7) The stormwater management pond shown on the Preliminary Site Plan shall be relocated so that it is not adjacent to any other residential properties.

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Motion b Mr. Gordy, seconded by Mr. Johnson, and carried with 4 votes to grant preliminary approval of this subdivision for the reasons and with the conditions stated.

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

Subdivision #2003-42 – application of **JEFF HEFLEBOWER AND WOODY LOGAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 17.32 acres into 18 lots, located south of Road 530, 0.8 mile southwest of Road 46.

Mr. Abbott advised the Commission that the final record plan is for 18 lots; that the Commission granted preliminary approval on May 13, 2004 for 18 lots; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the subdivision and zoning codes; and that all agency approvals have been obtained.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve this application as a final.

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

Subdivision #2002-41 – application of **COMMERCIAL CORNER JOINT VENTURE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 41.38 acres into 37 lots, located northeasterly of Road 382 (Route 20), 3,630 feet southeast of Road 26.

Mr. Abbott advised the Commission that the final record plan is for 34 lots; that the Commission granted preliminary approval on March 20, 2003 for 37 lots; that the final plan has been reduced by 3 lots; that the final record plan meets the requirements of the subdivision and zoning codes; and that all agency approvals have been obtained.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

PUBLIC HEARINGS

C/U #1575 – application of **AMERICAN LEGION POST #28** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a B-1 Neighborhood Business District for a location for annual carnival and circus events to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex

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County, containing 12.645 acres, more or less, lying at the southwest corner of Route 24 and Road 298 (Legion Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that there should be no change in the level of service of Route 24 or Road 298 as a result of this application.

The Commission found that Terry Johnson was present on behalf of the Legion and stated in his presentation and in response to questions raised by the Commission that the Legion has had activities in the past and have provided traffic control and police protection; that the entrance to the activities will be from Road 298, not Route 24; that they are planning on having only 1 or 2 events per year with the events ending around 9:00 p.m. or 10:00 p.m.; that they have applied for Conditional Use so that the events can be scheduled for more than 3 days; that they anticipate that the events will last for 4 days; the events will include rides for children of the ages of 4 to 16 years; and that they have no objection to being restricted to no more than one (1) circus and one (1) carnival per year.

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.

There was a consensus of the Commission that the use should be restricted to the following conditions:

- 1) No more than two (2) events shall be held per year.
- 2) The events shall be scheduled for no more than seven (7) days and no longer than from 9:00 a.m. to 11:00 p.m.
- 3) There shall be no permanent structures erected on the site for carnival or circus use.

- 4) The Applicants shall provide for prior notification to all fire, police, EMS services of the scheduling of the events and shall provide for traffic control, trash collection, and sanitary facilities.
- 5) There shall be no fireworks displays.
- 6) There shall be no parking along Route 24 of Road 298.

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

Motion carried 5 – 0.

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C/Z #1561 – application of **BARGAIN BILL’S** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, land lying east of U.S. Route 13 and 700 feet south of Route 9, to be located on 3.45 acres, more or less.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that according to the Western Sussex Water and Sewer Plan Area Study the site is located in the Laurel Service Area and that the Applicant should contact the Town of Laurel concerning the availability of water and sanitary sewer service.

The Commission found that DelDOT had provided an update on the entrance locations.

The Commission found that Bill Brown was present on behalf of the application and stated in his presentation and in response to questions raised by the Commission that he is acquiring the additional property for stormwater management facilities and additional parking; that he needed to revise and relocate entrances per DelDOT recommendations on Route 9 and U.S. Route 13; that the entrance along Route 9 for the Flea Market is being moved further east; that the design of the stormwater management facilities will be a benefit to DelDOT and the Exxon station across Route 9; that a 48,000 gallon fire protection water tank and fuel tanks have recently been installed; that drains have been installed, that crusher run will be placed on the parking area for temporary use and base for the pavement; that they may agree to annexation to the Town of Laurel in the future; and that the rezoning provides for additional areas for stormwater management and parking, and a possible small addition to the building on the south side along U.S. Route 13.

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. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved based on the record and since the rezoning squares up the perimeter property lines; since the rezoning is an expansion to an existing site already being used for commercial purposes; since only minor additions can be created; and since the rezoning will cause safer access to the site.

Motion carried 5 – 0.

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Subdivision #2004-6 – application of **KENNETH MORRIS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 29.37 acres into 30 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet located at the southeast corner of the intersection of Route 5 and Road 234-B.

This application was withdrawn on November 2, 2004.

Subdivision #2004-7 – application of **KEITH PROPERTIES** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 22.01 acres into 6 lots, located at the end of Nature's Walk Way within Fenwick Shoals Subdivision on the south side of Route 54, east of Fenwick Farms Subdivision.

This application was withdrawn on December 8, 2004.

Subdivision #2004-8 – application of **SPRING BREEZE ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 139.05 acres into 275 lots, located north of Route 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 revised preliminary plan was mailed to the Commission members on November 5, 2004; that restrictive covenants have been reviewed by Mr. Robertson and that his concerns raised in the comments of the Technical Advisory Committee meeting have been addressed; and that letters in opposition to this application have been received from Norma Lee Burton Derrickson and Marie and Bob Smith and that they will be made a part of the record for this application.

The Commission found that Andrea Finerosky of Karins and Associates was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that the project was designed using the cluster development option ordinance; that a central sewer system will be designed and operated by Artesian Water Company; that the total site is 139 acres; that the majority of the site is woodlands; that the wetlands and flood plains will remain undisturbed; that wooded buffers will be provided; that a landscaping plan will be provided at final approval if required; that they have met with DelDOT and that DelDOT will probably require a traffic impact study to be done; that all wetlands on the site will be preserved; that there are not any historical features on the site; that 62 acres of the site will be open space; that central water is proposed; that single family homes are proposed; that 275 lots are proposed at a

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minimum of 7,500 square feet; that no wetlands are included within any lots; that DelDOT initially did not require a traffic impact study but the cluster design will probably warrant a traffic impact study; that 18 acres will be used for the central sewer and water systems; that DNREC has reviewed the soils and issued a non-binding letter of septic feasibility; that they will only cut down trees that are necessary for construction; that the cluster design option creates more open space and allows for more lots; that the original plan that was submitted contained 169 lots; that a homeowners' association will be created; that street lights and sidewalks will be provided if required; and that a community center will be created at the entrance to the development.

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

The Commission found that John Davidson, John Furbush, Bob Smith Norma Lee Burton Derrickson, Paul Kercher, and Henry Glowiak, all residents of the area, were present in opposition to this application and stated in their presentations that too many lots are proposed for the area; that the water run-off will have negative impacts to Burton's Pond and Herring Creek; that the local roads in the area cannot handle this much traffic; that the development needs to be scaled back; that it does not fit in with the character of the area since the existing lots are large lots; that hunting is permitted on the existing large lots in the area and new residents would have complaints against this; that the entire site is wooded and woodlands will be destroyed; raised questions about the location of the community center; that 0.75 acres should be provided; that the site is very low and under water most of the time; that more open space is needed for families of the development; that the size of the lots will impact the types of dwellings that will be built; that the proposed density is too much; questioned water quality in the area; that the site is located in a rural area; that the wetlands have not been verified by the Corps of Engineers; and that there would be a loss of land in the Inland Bays Watershed.

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

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

Motion carried 5 – 0.

OTHER BUSINESS

Seagrass Plantation MR/RPC
Revised Master Plan – Irons Lane (Road 348)

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Mr. Abbott advised the Commission that the revised master plan is for 208 single family lots; that the Commission approved the master plan on August 12, 2004 for 124 single family lots and 84 multi-family units; that the revised master plan is for 84 more single family lots to replace the 84 multi-family units; that 208 lots will exist and are permitted by the approved ordinance; that since the total number of units originated with the Commission, the Commission may modify the types of units without requiring another public hearing.

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

Motion carried 4 – 0. Mr. Smith did not participate in the vote.

Baytree Storage Facility
Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that the preliminary site plan is for six, 6,000 square foot, one-story storage facility buildings and a 2,000 square foot office and on-site management residence; that the site contains 8.39 acres and is zoned C-1; that all of the storage buildings are 30-feet by 200-feet and have a 25-foot separation between them; that there are 422 storage units proposed inside the six buildings; that 15 parking spaces are required and provided; that the setbacks meet the requirements of the zoning code; that on-site sewer and water are proposed; that there are not any wetlands on the site and the site is not located in a flood zone; that the storage facility will be fenced in; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Johnson, 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 5 – 0.

Roop Office

Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that the preliminary site plan is for 4, 2,400 square foot office buildings on 2.59 acres; that the site is zoned C-1; that the proposed buildings are one-story each; that the setbacks meet the requirements of the zoning code; that 48 parking spaces are required and that 50 spaces are provided; that a landscaped buffer is provided on the north and south sides of the site; that sidewalks are provided; that on-site sewer and water are proposed; that there are not any wetlands located on the site and the

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site is not located in a flood zone; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Johnson, 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 5 – 0.

Seaside Baptist Church

Site Plan – Road 277

Mr. Abbott advised the Commission that the preliminary site plan is for a one-story 5,880 square foot church on 5.04 acres; that the site is zoned AR-1 and that churches are permitted in all zoning districts; that the setbacks meet the requirements of the zoning code; that 126 seats are proposed in the church; that 32 parking spaces are required and that 33 spaces are provided; that all of the parking will be located to the rear of the church; that on-site sewer is proposed and that Tidewater Utilities will provide central water to the site; that there are not any wetlands located on the site and the site is not located in a flood zone; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all 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 5 – 0.

Hudson Homes Route No. 24

Multi-Family Site Plan – Route 24

This item was removed from the agenda on December 8, 2004.

Wheels Bike Shop

Commercial Site Plan – Road 273-C (Oyster House Road)

Mr. Abbott advised the Commission that the preliminary site plan is for a 2-story, 4,400 square foot building; that the site is zoned C-1; that 1,000 square feet will be used as a showroom and the remaining 3,440 square feet will be used for storage; that the Board of Adjustment granted a variance to allow the front yard setback to be 40 feet; that the setbacks meet the requirements of the zoning code; that 5 parking spaces are required and provided; that due to the size of the parcel, the 5 spaces are located in the front yard

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setback and need a waiver from the Commission; that the existing dwelling on the site will be razed; that Sussex County will provide central sewer to the site and the City of Rehoboth Beach will provide central water; that there are not any wetlands located on the site and the site is not located in a flood zone; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Wheatley, 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. The waiver in the parking location was also granted.

Motion carried 5 – 0.

Ray Lewis

CU #1508 Site Plan – Road 413

Mr. Abbott advised the Commission that the site plan is for a 55.04 acre borrow pit; that the borrow pit will be dug in 3 phases; that Phase 1 is for 17.20 acres; that Phase 2 is for 14.81 acres; and that Phase 3 is for 23.01 acres; that the site plan complies with the requirements of the zoning code and the conditions of approval; that DelDOT has issued an entrance approval; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Wheatley, 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 5 – 0.

Kevin Sagers

CU #1538 Site Plan – Route 26

Mr. Abbott advised the Commission that the final site plan is for a camping trailer and boat storage lot; that the Conditional Use was approved by the County Council on August 3, 2004; that the storage spaces are 12-feet by 50-feet each; that 17 conditions of approval were placed on this application and are referenced on the site plan; that the site plan complies with the zoning code and conditions of approval; that all agency approvals have been received and that the site plan is suitable for final approval.

Kevin Sagers advised the Commission that 400 Leyland Cypress trees have been planted along the perimeter of the site for the buffer and that each tree is between 4 and 5 feet in height.

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

Motion carried 5 – 0.

Paradee Gas Company and Moor Disposal Service, Inc.
CU #1543 and CU #1530 – Revised Condition – Route 24

Mr. Abbott advised the Commission that CU #1530 was approved by the County Council on August 10, 2004; that CU #1543 was approved by the County Council on July 20, 2004; that both applications were approved with a stipulation that a 30-foot landscape buffer be provided along all boundary lines except along Route 24; that the 2 sites are adjacent to one another; that both parties are requesting that the buffer along the common boundary line be deleted since there will be a common entrance along the adjoining property lines; that all other boundaries will have the required buffer; and that since the stipulation originated with the Commission, the Commission may modify the conditions of approval without requiring another public hearing.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to amend the condition of approval as requested.

Motion carried 5 – 0.

Subdivision #2003 – 17 - - Hazzard Development Co., L.L.C.
Time Extension – Road 634

Mr. Abbott advised the Commission that a request for a time extension has been received in order to obtain final record plan approval; that the Commission granted preliminary approval for this application on October 23, 2003; that the staff has received approvals from DNREC and the Sussex Conservation District; that approvals are needed from

DelDOT and the Office of the State Fire Marshal; that this is the first request for an extension; and that if the Commission grants an extension, it should be retroactive to the original approval date.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant a one-year time extension retroactive to the original approval date of October 23, 2003. Preliminary approval is now valid until October 23, 2005.

Motion carried 5 – 0.

Byron and Patricia Mutchler

2 Lots on a 50' Right of Way – Beaver Dam Road (Road 285)

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Mr. Abbott advised the Commission that this is a request to create 2 lots with access off of an existing 50-foot right of way; that the owner of the right of way has sent a notarized letter stating that they have no objections to the applicants using the right of way; that if approved, the 2 lots would make 3 lots under the policy of 3 lots and a right of way; and that any further subdivision would require a public hearing for a major subdivision.

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

Motion carried 5 – 0.

Jim and Beth Mitchell

2 Lots and a 50' Right of Way – Route 36

Mr. Abbott advised the Commission that this is a request to create 2 lots with access off of a 50-foot right of way; that the owner proposes to widen an existing 25-foot driveway to a 50-foot wide right of way and split a 3.89 acre parcel into 2 lots; that if approved, the 2 lots would make 3 lots under the policy of 3 lots and a right of way; and that any further subdivision would require a public hearing for a major subdivision.

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

Motion carried 5 – 0.

Bayside Farms

Agricultural Setback Variance – Road 390A

Mr. Abbott advised the Commission that the staff has received a letter requesting the regular GR side yard setback of 10 feet instead of the 50-foot side yard setback for a new

parcel adjacent to agricultural lands; that the adjoining property owner has sent a letter of no objection to the request; and that this request requires action by the Commission and not the Board of Adjustment since the setback is referenced in the Subdivision Ordinance and not the Zoning Ordinance.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to grant the variance.

Motion carried 5 – 0.

Summercrest MR/RPC
Final Record Plan – Road 275

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Mr. Abbott advised the Commission that this is the final record plan for a 101 single family lot residential planned community; that the Commission granted preliminary approval on April 29, 2004; that the final record plan is the same as the preliminary plan; that the final plan meets the requirements of the subdivision and zoning codes; that all agency approvals have been received; and that the record plan is suitable for final approval.

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

Motion carried 5 – 0.

Meeting adjourned at 9:00 P.M.