



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF DECEMBER 16, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 16, 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, 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 noting the removal of Bay Café from Other Business.

OLD BUSINESS

Subdivision #2004-1 – application of **COLTER CONSTRUCTION, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 13.47 acres into 12 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 326, 3,200 feet south of Road 432.

Mr. Abbott advised the Commission that his notes provided to the Commission indicate that all agency approvals have been received and the record plan is suitable for final approval.

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

Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2004-9 – application of **BAY TWENTY, L.L.C.** to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 34.18 acres into 75 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the southwest corner of the intersection of Roads 382 and 382A.

The Commission was reminded that this application was withdrawn on November 19, 2004.

Subdivision #2003-10 – application of **WINDSOR FARM, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 171.83 acres into 21 lots, located north of Road 527, 1.35 mile northeast of Route 18.

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Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on April 21, 2004; that the Commission and the applicants have received a copy of the report; and that the report will be made a part of the record for this application.

Mr. Robertson advised the Commission that the applicants have submitted the restrictive covenants and that he has reviewed them and found them to be acceptable.

The Commission found that Bill Stephens of Stephens Engineering Consultants, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the application proposes 21 lots; that the site is located on the north side of Wilson Hill Road approximately 6 miles west of Georgetown; that the site is located in a rural area; that 21, $\frac{3}{4}$ acre lots are proposed on 22 acres; that central sewer and water will be provided and operated by Tidewater Utilities; that the land was used as farmland; that the site is surrounded by lands owned by Glatfelter Pulpwood Company; that the remainder of the land could possibly be developed in the future depending on the success of this project; that at this time, no recreation area is proposed due to the small number of lots proposed; that if the project is ever expanded, recreational facilities will be provided; that they have not considered sidewalks due to the size of the project and that the streets will be built to County specifications with swales located within the right of ways; that DNREC has stated that the site is feasible for a large scale septic or sewer treatment facility; that there is enough land to meet the forest buffer requirement if a buffer is required along the lands owned by Glatfelter Pulpwood Company; that the stormwater management design will improve drainage to the site and road drainage; and that if DelDOT rejects a drainage culvert underneath the road, they will have to redesign the stormwater management area on site and may lose one lot.

The Commission found that Jeremy Kombacher of Tidewater Utilities was present in support of this application and advised the Commission that Tidewater is willing and able to provide central water and sewer.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action and to leave the record open for written comments referencing a septic feasibility statement from DNREC; comments from DelDOT concerning the proposed road crossing; and comments from the Department of Agriculture referencing the proposed forest buffer.

Motion carried 5 – 0.

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C/U #1576 – application of **SWAIN PIT, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for storage of clam shells for recycling in existing borrow pit site to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 40 acres, more or less, lying 400 feet west of Route 225 and ½ mile north of Route 225D and east of Railroad.

The Commission found that the Department did not request comments from DelDOT since the borrow pit already exists.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Johnston loam or silt loam, and Rumford loamy sand; that the Evesboro soils have slight to moderate limitations for development; that the Johnston soils have severe limitations; that the Rumford soils have slight limitations; that the Applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the Evesboro and Rumford soils are considered of Statewide Importance; that the Johnston soils are considered Hydric; that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for on-site or off-site drainage improvements; and that it should be verified if there are any wetlands on the site.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the proposed use does not require sewer capacity and is not near a current or proposed Sussex County operated wastewater facility.

Mr. Lank advised the Commission that the borrow pit was originally approved by the Sussex County Council on October 3, 1978; that no opposition was recorded during the public hearing with the Commission on September 14, 1978; that there were no additional conditions imposed by the County Council other than those required in the Zoning Ordinance; that the application was received February 19, 2004; that the legal description and proposed Ordinance for introduction of this application were prepared on May 4, 2004; that on May 5, 2004 a letter was sent to R. Gerald Swain advising him that

the application was no complete and requires surveys and site plans; and that the requested site plan has not been received to date.

The Commission found that R. Gerald Swain was present on behalf of the application.

The Commission and Mr. Gerald Swain discussed the lack of information in the file.

Mr. Swain stated that he did submit a site plan to one of the ladies in the Zoning Department and that the lady told him of the case number for the application.

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The Commission decided that they would proceed with the public hearing.

The Commission found that R. Gerald Swain was present and stated in his presentation and in response to questions raised by the Commission that he proposes to store raw clamshells on the site for recycling; that the raw clamshells are going to be obtained from Sea Watch; that there is very little odor in the shells; that there is some odor from the fish and other sea life that are scooped up with the shells; that his father was the original applicant for the borrow pit; that lime will be placed on the shells to help mask any odors; that he is not aware of any fire regulations relating to the use of lime; and that the market for shelled driveways will dictate how long the shells will be stored on the site.

Mr. Allen advised Mr. Swain that it appears that a junkyard has been created on the site and that the only thing that has been approved from the site is a borrow pit.

The Commission found that J. D. Barnes was present in opposition and stated that he is concerned about offensive odors from the clams; that the summer months will be impacted by the most odors; that bugs will be attracted to the odors; that he adjoins the site from across the railroad; that he was advised by a Sea Watch representative that there will be odors from the fish mixed in with the shells; and that he has three (3) lots for sale along road frontage and is concerned that the odors may impact the sales of those lots.

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

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

Motion carried 5 – 0.

C/U #1577 – application of **BRITTINGHAM & COLLINS GENERAL CONTRACTORS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a model home for modular sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County,

containing 0.62 acre, more or less, lying at the southeast corner of Route 9 and Route 281 (Joseph Road).

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 on the site are mapped Evesboro sand and Rumford loamy sand which have slight limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain

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vegetation; that the Evesboro soils are considered Hydric; that the Rumford soils are considered of Statewide Importance; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the proposed use is not near a current or proposed Sussex County operated wastewater facility.

The Commission found that Trent Collins was present on behalf of the application and stated in his presentation and in response to questions raised by the Commission that they propose to erect a model home on the site for a sales office; that they currently build site built homes and install modular homes; that they only plan on showing the model home by appointment; that they will use part of the dwelling for office space for their own use; that their incorporation company title is "Henlopen Housing"; that there are several businesses uses and zonings in the area, i.e. a gallery, a fencing company, antique shops, and a Moose Lodge; that they propose to locate their entrance on Road 281 (Joseph Road), not Route 9; that business hours would be from 9:00 a.m. to 5:00 p.m. Monday through Saturday with no Sunday hours; and that they would like to erect a 32 square foot lighted sign.

The Commission found that Mr. Collins submitted an elevation view of the proposed model home and some pictures of some of the dwellings that the company will offer.

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

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

Motion by Mr. Johnson, seconded by Mr. 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 with the following reasons:

1. Business hours shall be limited to 9:00 a.m. to 8:00 p.m. Monday through Saturday, with no Sunday business hours.
2. There shall be no outside storage.
3. One 32-square foot two-sided lighted sign may be permitted.
4. The entrance shall be subject to review and approval by DelDOT.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

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C/U #1578 – application of **BLUEBERRY LANE BERRY FARM & ORCHARD, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a farm market to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 2.35 acres, more or less, lying north of Road 402 (Blueberry Lane), 1,500 feet west of Road 403 and approximately 1 mile southeast of Route 26.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not requested and that the level of service of Road 402 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Pocomoke sandy loam which has severe limitations for development; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered as Prime Farmland and 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 Joseph Webb was present on behalf of the application and stated in his presentation and in response to questions raised by the Commission that the building already exists on the site; that the building is used as part a sales facility for the blueberry farm; that they would like to sell other produce, pies, fruits, jams, jellies, etc. that are not raised on the premises; that they grow blueberries, kiwi, tomatoes, and blackberries; that they would like to create a year round business activity; that they are open from 8:00 a.m. to 5:00 p.m. seven days per week; and that they will be using an existing sign on the premises.

The Commission found that Ross Cropper was present in support and with some concerns and stated that he would like to see the Applicant improve his business; that the area is a quiet area; that he is concerned about the amount of additional traffic that will be

generated; and requested that an 8-foot high privacy fence be required to be erected along the dividing line to a depth of 200-feet.

Mr. Lank advised the Commission that the fence could not exceed 3.5 feet in the first 40-feet and then with a 7-foot maximum height.

Mr. Webb stated that the property line is along the centerline of a tax ditch and that the fence may impact the existing entrance and drive.

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

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Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1578 since the use will not have an adverse effect on the surrounding neighborhood; since the farm market already exists; and since this application is an expansion to sell produce and items not grown by the Applicant and with the following conditions:

1. Business hours will be from 8:00 a.m. to 8:00 p.m. seven days per week.
2. The existing sign on the premises may be used for advertising of the business.
3. There will be no lighting directed onto neighboring houses or toward Road 402.
4. Screening or privacy fencing shall be erected along the tax ditch to a depth of 200-feet and shall be subject to review and approval by the Planning and Zoning Commission.
5. The Site Plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

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 for the reasons and with the conditions stated.

Motion carried 5 – 0.

OTHER BUSINESS

Bay Café
Preliminary Multi-Family Site Plan – Route 54

This item was removed from the agenda on December 16, 2004.

Ocean Highway
Revised Commercial Site Plan – Route One

Mr. Abbott advised the Commission that the revised site plan is for the addition of a 2-story 3,528 square foot bank and a 24,096 square foot retail building to an existing

commercial site; that the site is the old Lowe's location and is zoned C-1; that DelDOT has issued a letter of no objection in reference to the entrance; that there is currently 57,139 square feet of retail, office and storage/warehousing space; that the setbacks meet the requirements of the zoning code; that with the 2 proposed new uses, 181 parking spaces are required and that 187 spaces are provided; that existing central sewer is provided by Sussex County and existing central water is provided by Tidewater Utilities; that there are not any wetlands on the site and that 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.

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Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised 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.

Cedar Landing Campground
CU #1510 Site Plan – Roads 216A and 217

Mr. Abbott advised the Commission that the site plan is for a 277 unit campground; that the conditional use was approved by the County Council on April 6, 2004; that a caretaker dwelling, barn, maintenance building, recreation areas, 2 bathhouses/laundry building, swimming pool, clubhouse, office and camp store are proposed; that 2 picnic pavilions are proposed; that 90 parking spaces are required and provided; that the site plan complies with the zoning code and the 16 conditions of approval; that the conditions of approval are referenced on the site plan; that there are not any encroachments into the wetlands; that an on-site community sewer and water system are proposed; that the lots and improvements are not located in a flood zone; that a landscaping plan has been submitted; that the park rules and regulations have also been submitted; 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.

David L. and Russell V. Banks
CU #1539 Site Plan – Road 348 (Irons Lane)

Mr. Abbott advised the Commission that the site plan is for a recycling and storage of materials facility; that the conditional use was approved by the County Council on August 24, 2004 with 12 conditions; that the site plan complies with the conditions of approval and the zoning code; that the conditions of approval are referenced on the site plan; 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. Smith, 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.

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Motion carried 5 – 0.

Marathon Estates
Revised Subdivision (1 Lot Addition) – Road 532

Mr. Abbott advised the Commission that this is a request to revise an existing open space parcel to a buildable lot within an existing subdivision; that the open area parcel is owned by the Homeowners' Association and they want the lot to become a buildable lot for a dwelling; that all of the lot owners in the development have signed a consent form; that the lot is larger than $\frac{3}{4}$ acre; and raised a question if the request would have to go through a public hearing process since all of the lot owners are in agreement.

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

Motion carried 5 – 0.

Susan Baynard
Lots on 50' Right of Way – Route 36

Mr. Abbott advised the Commission that this is a concept to create 2 lots with access from a fifty-foot right of way off of Route 36; that the owner proposes to subdivide 6.52 acre into a 2.03 acre lot and a 1.75 acre lot; that the remaining 2.74 acres will be an extension to an adjoining property owners' land; and that if approved, this would make 2 lots with access from the right of way under the 3 lot policy.

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

Motion carried 5 – 0.

Mills Chase

CU #1466 Time Extension – Road 265 and Route 9

Mr. Abbott advised the Commission that this is a request for a time extension; that the conditional use was approved by the County Council on December 16, 2003; that the Planning and Zoning Commission granted preliminary site plan approval on September 23, 2004; that the plans have been submitted to all agencies for approval; and that this is the first request for a time extension.

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

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Motion carried 5 – 0.

Jack Rodgers

Lot Frontage Determination – Primehook Beach

Mr. Abbott advised the Commission that this is a request to have the Delaware Bay considered the front yard for setback purposes; that the owner wishes to place a shed on the lot near Road 39B; that the minimum rear yard setback for a shed less than 600 square feet is 5 feet; that since Road 39B will be considered the rear yard, the Commission may require a greater setback than the 5 feet; and that Mr. Rodgers proposes the rear yard setback to be 10 feet.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to consider the Delaware Bay as the front yard thus making Road 39B the rear yard, with the stipulation that the shed shall be located a minimum of 10 feet from the rear yard property line.

Motion carried 5 – 0.

Meeting adjourned at 8:35 p.m.