

THE MINUTES OF THE REGULAR MEETING OF OCTOBER 17, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 10, 2019, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Jamie Sharp – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager and Ms. Samantha Bulkilvish – Planner I.

Ms. Cornwell noted that staff would request that the item relating to Lands of Ann J. Banks be removed from the Agenda.

Motion by Ms. Stevenson seconded by Ms. Wingate and carried unanimously to approve the Agenda as amended to remove Lands of Ann J. Banks from the Other Business section of the Agenda. Motion carried 5-0.

OLD BUSINESS

C/Z 1890 W&B Hudson Family Ltd

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and an MR Medium Density Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 37.08 acres, more or less. The property is lying on the south side of Lewes-Georgetown Highway (Route 9), approximately 340 feet east of Harbeson Road (Route 5) and on the east side of Harbeson Road (Route. 5), approximately 456 feet south of Lewes-Georgetown Highway (Route 9). 911 Address: N/A. Tax Parcels: 235-30.00-62.00, 64.00, 66.00, 67.00, 70.00, & 72.00.

The Planning Commission discussed the application which has been deferred since October 10, 2019.

Ms. Cornwell stated that the Applicant has requested to withdraw the application for the Change of Zone and that since the Planning Commission has already held a Public Hearing for this application that the Planning Commission would have to vote and accept the withdrawal of the application.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the request to withdraw the application. Motion carried 5-0.

PUBLIC HEARINGS

Mr. Sharp described the procedures for public hearings before the Planning and Zoning Commission.

2019-17 Iris Cove – David S. Elechko and Margaret O. Elechko

A standard subdivision to divide 9.10 acres +/- into 2 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is located on the east side of Ajewell Road, (a 50-foot private access Road) approximately 205 feet northeast of Vines Creek Road (Route 26). Tax Parcel: 134-11.00-148.00. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record is a Subdivision Plan, comments from the Office of the State Fire Marshal, a Soil Feasibility Study, comments from the Sussex County Engineering Department - Utility Planning Division, and comments from the Sussex Conservation District. Ms. Cornwell noted that there is a Tax Ditch located on the property.

The Commission found that Mr. David Elechko was present on behalf of his application; that Mr. Elechko stated that he is proposing to subdivide lot four into two lots; that the property is part of a previous Subdivision; that one of lots has St. George's Church grave yard located on the property and the Church is still trying to maintain the grave yard; that he had brought property to be able to access the land-locked parcels; that he is proposing to subdivide one more lot off of the easement to get back to a total of four lots; that Ms. Stevenson asked if there are any Restrictive Covenants or deed restrictions affecting the lot; that Mr. Elechko stated that there are no deed restrictions; that he is trying to maintain the Deed Restriction of 2,000 square foot for each lot; that Ms. Cornwell asked if the subdivision would impact the roadways or school districts; Mr. Elechko stated it would not have any impact to the roadways or school districts and that he had prepared a written response to the items listed in 99-9.C of the Subdivision Code; that Ms. Cornwell asked if it would impact any wetlands or woods; that Mr. Elechko stated it would not impact any wetlands or woodlands; that Ms. Cornwell asked Mr. Elechko if he would like to submit a copy of his responses stating that he is in compliance with Chapter 99-9C; that Mr. Elechko stated that one of the Deed Restrictions requires that 1/3 of trees would be maintained on the property; that he would comply with Chapter 99-9C; that Ms. Cornwell asked if there is an easement for the proposed septic system for the parcel; that Mr. Elechko stated yes; that Ms. Cornwell asked if there is ample room for replacement or to expand the septic system; that Mr. Elechko stated yes; that there is a utility and electric easement that has been recorded; that Mr. Sharp asked if the Applicant has had any conservation with DNREC about the ability to place a septic system on the proposed lot; and that Mr. Elechko stated he has received written approval from DNREC.

That the Commission found that no spoke in favor of or in opposition to the application.

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

Mr. Mears moved that the Commission grant Preliminary Approval of Subdivision 2019-17 for Iris Cove, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 2 lots on 9.10 acres of land is significantly less than

the allowable density.

3. Because the property includes large parcels of all sizes located along an existing lane, waivers from both the street design requirements and the perimeter buffer requirements are appropriate.
4. The proposed subdivision meets the purpose and the standards of the Subdivision Code and the Applicants have addressed the requirements of Section 99-9C of the Code.
5. This Preliminary Approval is subject to the following conditions:
 - A. There shall be no more than 2 lots within the subdivision.
 - B. The stormwater management system shall meet or exceed the requirements of the State and County.
 - C. All entrances shall comply with all of DelDOT's requirements.
 - D. There shall be a maintenance agreement for the shared access easement.
 - E. There shall be a maintenance and easement agreement for the septic area benefitting Lot 4 but located on Lot 3. The easement area must be shown on the Final Site Plan.
 - F. The Applicant must provide documentation evidencing DNREC approval of the septic systems for both lots prior to the submission of the Final Site Plan. All septic systems shall comply with DNREC requirements.
 - G. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to grant Preliminary Approval for the reasons and the conditions stated in the motion. Motion carried 5-0.

2019-18 Merrill J. & Betty L. Parker

A standard subdivision to divide 49.80 acres +/- into 8 single-family lots to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The property is located on the northeast side of Lakeview Road approximately 3,850 feet southeast of Country Living Road. Tax Parcel: 133-15.00-19.00. Zoning District: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan, comments from the Sussex Conservation District, and comments from the Sussex County Engineering Department of Utility Planning Division. Ms. Cornwell stated that the Applicant is asking for the creation of eight new lots, but it would be a total of nine because it is eight plus the residual lot.

That the Commission found that Mr. Jim Parker was representing his parents and was present on behalf of the application; that Mr. Parker stated his parents are proposing to subdivide 49-acres into eight lots plus one residual lot for a total of nine lots; that his parents have owned the property for 43 years plus; that his parents would like to subdivide the property and give it to their children, grandchildren, and great-grandchildren; that the children would like to live on the property; that the property is a farm, they have raised chickens and grown crops in the past; that his parents are proposing to subdivide to create eight lots only; that although there could be more lots subdivided (potentially 50-70 in total), they only want to subdivide enough lots for the family to have; that the area has grown as residential communities; that some of the communities are Ingram Point, Long Wood Lakes, John Deere Estates and other subdivisions in the area; that if the proposed Subdivision is approved, and they would like to ask for a waiver from the road standards; that they would establish a private road agreement and it would also include shared road maintenance; that

a draft copy of road and maintenance was submitted into the record; that they are asking for a waiver from the landscape buffer requirement for subdivisions; that the proposed lots are going to be 2-acres to 10-acres which would be large lots; that are already buffers from other developments in the area; that he has contacted a Soil Scientist to undertake a Soil Feasibility Study; that Mr. Jay Duke with Coastal Soils is preparing the study but this is not yet available as such studies are normally completed after crops are harvested; that Mr. Duke stated that the soils look good but Mr. Parker is awaiting approval from DNREC confirming this; that Ms. Wingate asked about the existing buffer along the perimeter; that Mr. Parker stated the property currently does have some woods on it; that some properties have 25-feet to 30-feet of woods; that there are other areas with 9-acres or 10-acres of woods located on the property; that there is some woods surrounding the property; that originally the property was wooded but throughout the years, the property had been cleared to allow it to be farmed; that Ms. Wingate asked if the proposed subdivision would have any impact on roadways, schools, and waterways; that Mr. Parker stated that there would be no impact; that Mr. Sharp stated the residual land lot frontage might need a variance for the lot width; and that Ms. Cornwell stated the Planning Staff can address the road frontage in the Plan review.

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

Mr. Mears moved that the Commission grant Preliminary Approval for Subdivision 2019-18 Merrill J. & Betty L, Parker based upon the record made during the public hearing and for the following reasons:

1. The Applicants are seeking approval of a subdivision within the AR-1 (Agricultural Residential Zoning District). The Applicants are seeking a subdivision having lots each consisting of a minimum of 1.966 acres.
2. The proposed subdivision will have no more than 9 single-family lots on approximately 49.80 acres. This results in a density which is well below the maximum density permitted in the AR-1 zone.
3. This subdivision will not have a significant impact on the neighboring properties or area roadways.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicants have addressed the requirements of Section 99-9C of the Code.
5. The project will be served by private septic.
6. The project will be served by on-site wells.
7. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
8. Because the property includes large parcels of all sizes located along an existing lane, waivers from both the street and design requirements and the perimeter buffer requirements are appropriate.
9. This Preliminary Approval is subject to the following:
 - A. There shall be no more than 9 lots within the subdivision.
 - B. The developer shall establish a homeowner's association or maintenance agreement responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation

- District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- D. The subdivision shall be served by individual private wells and septic systems.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. Construction hours including the deliveries of dirt, fill or other similar materials shall only be made to or from the site between the hours of 8:00 a.m. through 6:00 p.m., Monday through Friday. There shall be no work on Saturday or Sunday.
 - G. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval with the conditions stated in the motion. Motion carried 5-0.

C/U 2194 Imagination-Renovation, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a furniture making and repair business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.0 acres, more or less. The property is lying on the east side of Rust Rd. approximately 0.25 mile south of Harbeson Rd. (Rt. 5). 911 Address: 20601 Rust Road, Harbeson. Tax Parcel: 234-4.00-10.32.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, an exhibit booklet, comments from the Sussex Conservation District, the result from the DelDOT Service Level Evaluation requests, and comments from the Sussex County Engineering Department of Utility Planning Division.

That the Commission found that Mr. David Hutt an Attorney with Morris James, LLP and Mr. Phillip Bortz one of the owners of the property and also one of the Principals of Imagination-Renovation, LLC were present of behalf of the application; that Mr. Hutt stated the application is for a cabinet, furniture, and repair business; that the property is located on Rust Road; that the buildings in the back are proposed to be used for the business; that the Applicants had just acquired the property; that the seller of the property was a contractor/builder and had used the building in the past in a similar manner to that proposed; that that property does consist of 5-acres and is similar to other parcels in the area; that the property is zoned AR-1 (Agricultural Residential District); that the Land Use Classification per the 2019 Comprehensive Plan is in the “Low-Density Area”; that DelDOT stated that a Traffic Impact Study (“TIS”) was not required because DelDOT views the impact as being negligible; that one the existing pole barns is approximately 4,000 square feet in area and the second one is under 400 square feet; that Imagination-Renovation, LLC is a custom cabinetry maker and furniture making business; that the proposal for the Conditional Use is that the two buildings would be the workshop where the cabinetry and furniture is constructed; that the cabinets are then taken to the customer’s home for installation; that there would be very little customer or retail traffic that would occur at the property; that they would have two to four cabinet makers or apprentices that would be working at the site; that the typical hours of operation are 8:00 am to 4:00 pm or 4:30 pm; that proposed Finding of Facts and conditions

were submitted into the record; that they are requesting the hours of operation to be from 7:00 am to 5:00 pm, Monday through Friday and 8:00 am to 2:00 pm on Saturdays; that there would be no Sunday hours; that over the past years they have worked only two to three Saturdays in total; that the proposed use would likely be unnoticed from the road due to the location of the buildings on the site; that all the work is indoors; that all the materials are stored indoors; that there is very little traffic; that the Applicant's live at the property; that there would be no retail sales; that the only time a customer would come to the site is during production; that the area is a busy construction area for new homes; that the proposed Conditional Use is appropriate because this business is public or semi-public and for the convenience, welfare, and also promotes orderly growth; that there are several Conditional Uses in the area; that there would be no odor or noise with the use; that it would only be employees going to the buildings; that proposed Finding of Facts and conditions were submitted into the record; that one of the proposed conditions relates to an un-lit sign that would not be greater than 32 square feet in size; that the Applicant has spoken to the neighbors and they had no objections; that Ms. Stevenson asked how the materials arrive to the buildings; that the materials are delivered by delivery trucks; that Mr. Bortz stated that one tractor trailer would deliver the materials, such as lumber, per month; that the cabinets are custom-designed and are generally are small in size and the Applicant's often just go to lumber yards to pick-up the required materials; that Ms. Stevenson asked if there would be any storage of any materials outside; that Mr. Bortz stated there would be no materials stored outside and all the work is to be undertaken indoors; that Ms. Stevenson ask how many parking spaces does the Applicant want; that Ms. Cornwell stated the parking would be based on the square footage building or the number of employees; that Mr. Hutt stated that there is adequate room for parking; that Ms. Stevenson ask if the Conditional Use was for the whole property or just in the rear of the property; that Mr. Hutt stated the application is for the whole property; that Mr. Hopkins asked how many employees will there be; that Mr. Hutt stated six employees would be the maximum to allow for growth; that Mr. Hopkins asked if the tractor trailer would drive down the driveway or deliver from the road; that Mr. Bortz stated yes, the tractor trailer would use the paved driveway to deliver the materials; that Mr. Mears asked if they spray their finishes and if there would be a spray room; that Mr. Bortz stated that they do have a spray room and they only use water base latex and no oil based lacquers; that Ms. Bulkilvish asked, if the Applicant does do some re-finishing, whether clients could be bringing their pieces to the property; that Mr. Bortz stated that within the last two years, only four customers had showed up for something to be fixed; that he would probably put a sign on the building and not a sign along the road; that all the measurements are normally undertaken at the customer's home; that Mr. Sharp ask if there are any chemicals used on the site; that Mr. Bortz replied no; that Mr. Sharp ask if any welding is done at the site; and that Mr. Bortz stated the materials are all wood and there is no welding.

That the Commission found that no one spoke in favor of or in opposition to the application.

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

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1893 Lisa Horsey

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1

Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 0.474 acres, more or less. The property is lying at the northeast corner of Sussex Highway (Route 13) and Boyce Road. 911 Address: 28537 Sussex Highway, Laurel. Tax Parcel: 132-12.00-113.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, the results from the DelDOT Service Level Evaluation, comments from the Sussex Conservation District, and comments from the Sussex County Engineering Department - Utility Planning Division.

Mr. Sharp recused himself for this item.

The Commission found that Mr. Kevin Smith with The Kercher Group, Mr. Sam Connors, a partner with LBG Homes, LLC were present on behalf of the application; that Mr. Smith stated the building was used as the old Bayside seafood building and it was Commercial in nature; that the property is less than ½ acre in area; that the property does have an existing well and septic system; that the Applicant would like to leave the parcel as it is and would not be providing any improvements; that the Applicant would like to get the zoning to match the current use; that the Applicant would like to bring the zoning into compliance with what the occupier had been doing in the past; that Ms. Wingate asked if there is any plan to improve the site other than just the zoning; that Mr. Smith stated the application is to bring the zoning from AR-1 (“Agricultural Residential District”) to a commercial zoning; that Ms. Cornwell asked if the request for the C-2 (“Medium Commercial District”) is keeping with the Comprehensive Future Land Use Map of *Commercial* for the area; that Mr. Smith stated the he believed the Future Land Use Plan stated the property to be in the *low-density* area; that Ms. Cornwell pointed out that the Future Land Use Map shows it as being in the *Commercial* area, and whether Mr. Smith would agree that the request for C-2 zoning is therefore in keeping with area designation of *Commercial*; to which Mr. Smith agreed.

That the Commission found that no one spoke in favor of or in opposition to the application.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1894 Howard Pepper, Jr

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.368 acres, more or less. The property is lying on the east side of DuPont Boulevard (Route 113), approximately 0.38 miles south of Lazy Lagoon Road. 911 Address: 35029 DuPont Boulevard, Frankford. Tax Parcel: 533-4.00-61.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, results from the DelDOT Service Elevation, comments from the Sussex Conservation District, and

comments from the Sussex County Engineering Department - Utility Planning Division.

That the Commission found that Mr. Howard Pepper, Jr., representing the Pepper Family Farm, LLC, and Mr. Ron Pepper were present on behalf of the application; that Mr. Howard Pepper stated the parcel is part of 500-acres of family farm and is in Delaware Agricultural Preservation; that the parcel had been used as a sales lot for years; that his son wanted to use the lot for his landscaping business and to use the mobile home as an office; that he is trying to get the zoning correct; that Chairman Wheatley asked Ms. Cornwell if the property is in an Agricultural Preservation District; that Ms. Cornwell stated that the parcel is in not in an Agricultural Preservation District but the adjoining parcels, which were part of the farm, were designated as such; that this particular parcel was part of the 500-acres of the family farm and has been cut out; that Mr. Mears asked if the property going to be used for sales for the landscaping business; that Mr. Ron Pepper stated they would use the office building and have a display with a sign; that Chairman Wheatley reminded the Commission Members that the application is for a Change in Zone and any thing that is permitted in a C-3 (“Heavy Commercial District”) could potentially take place on the parcel if the change of zone were approved; that Ms. Cornwell asked about the future Land Use Map designation and whether the parcel is designated as *commercial*. Mr. Cornwell asked whether the Applicant thinks that C-3 zoning district is appropriate in the Commercial Land Use classification; to which Mr. Pepper replied yes.

That the Commission found that no spoke in favor of or in opposition to the application.

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

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

OTHER BUSINESS

(S-17-33) & (CU 2046) Arbor-Lyn Final Site Plan

Final Site Plan

Mr. Whitehouse advised the Commission that this is a Final Site Plan for the construction of 100 detached single-family units and 42 multi-family dwellings to be located off of Warrington Road. Conditional Use #2046 to allow for the multi-family development was approved by County Council at its meeting of December 13, 2016, (Ordinance #2479), The Planning and Zoning Commission approved the Preliminary Site Plan at their meeting on July 27, 2017. The Final Site Plan complies with the Sussex County Zoning Code and all conditions of approval. Tax Parcels: 334-12.00-127.02, 127.04 & 127.05. Zoning: MR (Medium Density Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan. Motion carried 5-0.

Hocker’s Supercenter – Car Wash

Revised Site Plan

Ms. Bulkilvish advised the Commission that this is a Revised Site Plan for the replacement and

relocation of an existing car wash with a 3,911 square foot car wash and vacuum stations with associated parking. The site plan also shows proposed Right-of-Way dedication to the State of Delaware and the provision of an easement along Route 26. Some of the existing car parking spaces would be within this permanent easement. The Applicant has indicated that DelDOT has indicated that they have no objection to this. The Revised Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcels: 134-12.00-330.01, 331.00, 332.00, 333.00 & 334.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals for the revised Site Plan.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Revised Site Plan. Motion carried 5-0.

(S-19-38) Cellco Partnership – DOV Springfield Hollis

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for telecommunications tower to measure 134 feet in height and additional ground equipment. A Special Use Exception for the telecommunications tower was approved by the Board of Adjustment on April 16, 2018. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 234-8.00-2.03. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 5-0.

Meeting adjourned at 6:59 p.m.