



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF JANUARY 8, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 8, 2009 in the County Council Chambers, County Administrative 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, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of December 11, 2008 as circulated, and the Minutes of December 17, 2008 and the Minutes of December 18, 2008 as amended. Motion carried 5 – 0.

### PUBLIC HEARINGS

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

**C/U #1755 – application of T-TOPS, ETC.** to consider the Conditional Use of land in a B-1 Neighborhood Business District to manufacture, install and retail boat tops to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.612 acres, more or less, lying southwest of Route 5, 1,200 feet southeast of Route 47 (Johnson Road) and 1,550 feet northwest of Route 48 (Hollyville Road).

Mr. Lank advised the Commission that comments were not requested from DelDOT since this application is for the use of one of the storage units within the Route 5 Business Center.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Frederic M. Geiger was present on behalf of this application and stated that he proposes to use Unit #12 of Building “C” of the Route 5 Business Center as his

office and shop for the manufacturing and installation of t-tops for boats; that all work is performed indoors; that there will be no work performed outdoors; that there will never be more than 2 boats on the site at one time; that one boat will be inside and one will be parked outside waiting for the installation of the t-tops; that he is licensed to manufacture and install t-tops; that the business is open five (5) days per week with hours from 9:00 a.m. to 6:00 p.m. Tuesday through Friday and for ½ day on Saturdays; that he is self employed and has no employees; that a cut-off saw is the only noise generated in the work and since all work is performed indoors it should not disturb any neighbors; that all scrap materials are stored indoors; that trash is hauled to the State Recycling Facility just south of the site on Route 5; that he purchased the business from Doug Brockway and relocated to this facility; and that he makes the t-tops with aluminum.

The Commission found that Elizabeth Hurdle was present and expressed concerns about outdoor material storage; that she would be opposed to any Sunday business activities since a church exists on the same parcel; that he has a pond on her property and does not want to see any trespassing; that she has had problems with people on ATVs trespassing in her fields; and that she is not really opposed to this application if the applicant agrees to the stipulations discussed.

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

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

**C/U #1762** – application of **T.S. SMITH & SONS FARM, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail farmer's market with a small petting zoo to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.0 acre, more or less, lying at the southwest corner of U.S. Route 13 (Sussex Highway) and Road 600 (Fawn Road).

The Commission found, based on comments received from DelDOT, that the Department reviewed Main Street, Fawn Road, Redden Road, and Sussex Highway (U.S. Route 13) in consideration of this project; that a traffic impact study was not recommended; that with existing conditions with no development the Level of Service of Main Street is "C", the Level of Service of Fawn Road is "A", the Level of Service of Redden Road is "B", and the Level of Service of Sussex Highway is "C"; that the existing conditions with development plus existing peak hour traffic plus committed development with site generated traffic and projected Level of Service with no highway improvements during the peak hour the Level of Service of Main Street will remain "C", the Level of Service of Fawn Road, Redden Road, and Sussex Highway could change to "E"; that the property is subject to the Department's Corridor Capacity Preservation Program which has a goal to maintain the capacity of the existing highway; that the State Strategies indicate that this property is located within an Investment Level 4 where the State will encourage the preservation of a rural lifestyle and discourage new development; that the Program policy states that no new or expanded access to Sussex Highway will be permitted in an Investment Level 4 Area; that the Department will not permit an access to the site from Sussex Highway; and that the Department would permit access to the site along Fawn Road.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Planning Area #1; that an individual on-site septic system is proposed; that the proposed project is located north of the Town of Bridgeville and is not in an area where the County has a schedule to provide sewer service; that the applicant should contact the Town of Bridgeville for questions regarding future central sewer service; and that a concept plan is not required.

The Commission found that Tom Smith was present on behalf of this application and stated that the company grows fruits and vegetables and propose to sell fruits and vegetables; that the site is on the corner of U.S. Route 13 and Fawn Road; that there are 2 commercial businesses across U.S. Route 13 to the east, a business across Fawn Road to the north, and a doctor's office to the south at the corner of U.S. Route 13 and Redden Road; that the company has wholesale and retail licenses; that proposed business hours are from 8:00 a.m. to 9:00 p.m. from April through December; that they also purchase produce from local growers and occasionally some east coast growers; that the proposed petting zoo is an idea to attract customers with children during summer months; that the petting zoo will contain typical farm animals, i.e. a goat, a pig, some chickens, etc; that one of the new ideas of the agricultural community is to create entertainment farming; that they will be selling cider, not alcoholic beverages; that they would not oppose the elimination of the petting zoo from the application if the County so chose; that there is no housing along U. S. Route 13; that the existing business facility on Redden Road and Main Street (Route 13A) is 106 years old; and that they would like to install an illuminated sign on the site for advertising for the business.

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.

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1762 for T. S. Smith & Sons Farm, Inc. for a retail farmers market and small petting zoo based on the record made during the public hearing and for the following reasons:

1. The project promotes local agriculture.
2. The use is consistent with neighboring properties and uses, and will benefit residents of the County.
3. The use will not adversely affect neighboring properties or the neighborhood.
4. This recommendation for approval is subject to the following conditions:
  - a. Hours of operation shall be from 8:00 a.m. until 9:00 p.m. seven (7) days per week.
  - b. A lighted sign shall be permitted, not to exceed 32 square feet in size.
  - c. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith 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.

**C/U #1763** – application of **ALTON R. STACK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a contractor's office and parking for vehicles and equipment to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 28,964 square feet, more or less, lying northeast of DuPont Boulevard (U.S. Route 113) 0.25 miles south of Road 321 (Woods Branch Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study is not recommended; that the existing Level of Service "B" of DuPont Boulevard (U.S. Route 113) will not change as a result of this application; that the property is subject to the Department's Corridor Capacity Preservation Program which has a goal to maintain the capacity of the existing highway; that the State Strategies indicate that this property is located within an Investment Level 4 Area where the State will encourage the preservation of a rural lifestyle and discourage new development; that the Program policy states that no new or expanded access to DuPont Highway will be permitted in an Investment Level 4 Area; that it is unlikely that the Department will approve an access along DuPont Highway at this site; and that prior to making a final access determination, the Department will need further information.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where Sussex County currently plans to provide sewer service; that the applicant should contact the Town of Georgetown for information regarding future central sewer service; and that a concept plan is not required.

The Commission found that there was no one present on behalf of this application, or in support or in opposition.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action on this application until the end of the agenda. Motion carried 5 – 0.

At the conclusion of the other public hearings, the Chairman referred back to this application.

The Commission again found that there was no one present on behalf of this application.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the lack of a record in support since no one appear on behalf of the application, and based on DelDOT comments that it is unlikely that the Department will approve access along DuPont Highway at this site. Motion carried 5 – 0.

**C/Z #1625** – application of **DARREN SHAFFER C/O DGS SERVICES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying north of Route 26, 400 feet west of U.S. Route 113, to be located on 0.68 acre, more or less.

The Commission found that the Applicant provided an Exhibit Booklet prior to the meeting and that the Booklet contains a general purpose, a site description, references to existing conditions, photographs, references to the site plan as it relates to zoning, buildings, and utilities; and a series of maps, exhibits and letters.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the existing Level of Service "B" of DuPont Boulevard and Level of Service "D" of Clayton Street will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Dagsboro Frankford Planning Area; that wastewater capacity is available for the project; that sewer service has not been extended to the area at this time; that conformity to the Dagsboro Frankford Planning Study will be required; that the site is expected to receive sewer service when a developer of a proposed project located on the south side of Route 26 completes construction of a pump station and extension of sewer service to the area; that the Department is currently in the preliminary plan review process; that the Department will consider a district expansion at some future time and the above parcel will be included in the expansion at that time; that the schedule is unknown at this time; that when sewer service becomes available, connection to the system is mandatory; and that a concept plan is not required.

The Commission found that Darren Shaffer was present with Stephanie Hanson, Attorney, and Steve McCabe, Professional Engineer with George Miles & Buhr, and that they stated in their presentations and in response to questions raised by the Commission that the application represents the rezoning of 0.68 acres of a 1.94 acre parcel; that 1.26 acres of the parcel is already zoned C-1 General Commercial; that they are proposing to construct 2 buildings on the site, one containing 7,960 square feet and one containing 9,570 square feet; that the existing structures on the site will be demolished; that the company is leasing property elsewhere and needs more office, a small showroom and storage space; that business hours are normally from 7:00 a.m. to 3:00 p.m. Monday through Friday; that the company has 6 full-time employees and hopes to have 10 to 12 full-time employees after completion of construction; that they get deliveries of materials daily, mostly on Monday and Wednesday; that the 2002 Comprehensive Plan references this site as an area of mixed commercial activities; that the 2008 Comprehensive Plan depicts the site in a Town Center Area; that retail use is an appropriate use in a Town Center Area; that the State Strategies map depicts this site in an Investment Level 2 area and that the use is appropriate in this area; that PLUS review was not required; that the zoning proposed is consistent in a Growth Area; that they have received a Letter of No Objection from DelDOT to convert the existing 2 entrances into 1 entrance; that 25 parking spaces are required and 28 spaces are proposed; that there are no parking spaces planned in the front yard setback; that they will provide 6-foot high screening along adjacent residential properties; that they have received a site evaluation report for a sand mound for on-site septic until central sewer is available; that they will connect to the County sewer when available; that stormwater management will utilize Best Management Practices and will meet or exceed State and County regulations; that a Tax Ditch exist to the rear of the site and that they plan on discharging into the Tax Ditch; that the maintenance easement for the Tax Ditch has been changes and approved by DNREC and the Sussex Conservation District; that the only wetlands on the site are in the bottom of the Tax

Ditch; that there should be no negative impact on the Tax Ditch; that the site is not in a Floodplain; that they forwarded letters to all residents in the area and heard no negative complaints, except for a Mr. Smith who expressed concerns about lighting, fencing and mini-storage; that in summary the parcel has a split zoning, which they are trying to remedy and they will be bringing in new jobs; that the site is next to the American Legion Post; that on the southwest corner of U.S. Route 113 and Route 26 is a commercial produce stand; that on the southeast corner of U.S. Route 113 and Clayton Street in Dagsboro is a Royal Farm Store and office buildings; that on the northeast corner of U.S. Route 113 and Clayton Street is a medical facility; and that the entire property is located within the Highway Corridor Overlay Zone.

Mr. Wheatley reminded those present that this is a change of zone application; that the Commission has to consider whether this site is appropriate to be zoned CR-1; that the Commission is not reviewing the site plan; and that if the zoning is changed to CR-1 any use permitted in the CR-1 District will be permitted.

The Commission found that Veronica Faust, Attorney, was present on behalf of David Krulac, an adjoining landowner, and stated that Mr. Krulac is concerned that the bulk of the parking on the site plan is on the residential side of the site; that his preference would be that the parking be moved to the east side of the site adjacent to the American Legion Post; that lighting should be screened; that evergreen hedging would be preferred; and that they are concerned about outside storage, frequent trucking activities, dust, and the hours of operation.

Mr. Wheatley again reminded those present that this is a change of zone application, not a Conditional Use application, and that the Commission has to consider whether this site is appropriate to be zoned CR-1.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

**ORDINANCE AMENDMENT – AN ORDINANCE TO AMEND CHAPTER 115, SECTION 172, OF THE CODE OF SUSSEX COUNTY, IN RESPECT TO THE REPLACEMENT OF SMALL ACCESSORY BUILDINGS, COMMONLY REFERRED TO AS “SHEDS”.**

The Commission found that a letter was received from Dan Wien, a resident of the Long Neck Area, urging the Commission and County Council to deny this current amendment as presented, and to also urge the Commission and County Council to deny any effort to increase the lot usage percentage regulation in mobile home parks as irresponsible and detrimental to the quality of living in the County and detrimental to the essential character of the park neighborhoods.

Mr. Lank summarized the Ordinance Amendment which is an attempt to provide a method by which small accessory buildings can be replaced without a variance or the costs associated with a variance provided the size of the replacement building is 120 square feet or less and is located substantially within the footprint of the building it replaces and the owner/applicant obtains a County building permit before the replacement shed is installed and the accessory building to be

replaced was either grandfathered or installed pursuant to a valid building permit issued by the County.

The Commission found that Don Minter, Jerry "Doc" Semper, Jeanne Sisk, Ed Speraw and Roberta Hemmerich, of the 13 parties present with interest in this Ordinance Amendment, gave testimony on the proposed amendment and expressed concerns and questions relating to grandfathering; the size of accessory buildings; whether a smaller accessory building could be placed instead of the same size accessory building; that State laws require that all corner of lots be monumented; that a survey should not be required for the replacement of an accessory building; questioning if permits have always been required for accessory buildings; that variances should not be required for small accessory buildings; and that surveys would not be necessary if all lots were monumented with corner markers.

The Commission found that Patricia Weyl opposed the Ordinance Amendment for the Bay City Mobile Home Community and expressed concerns about the impact on a new manufactured home having to be placed 20-feet from a non-conforming shed on an adjacent lot, which could require to owner of the new manufactured home to apply for variances, and that all improvements on lots within in mobile home community should be required to comply with all setbacks, spacing between structures and lot coverage requirements.

The Commission found that Mrs. Weyl submitted a letter expressing her concerns and in bold print stated "Please do not grandfather the shed situation. If a shed is not in compliance when it comes up to be replaced, it should be made to be in compliance for the safety of all homeowners. Lower the fee for a variance or a permit for a shed but please do not agree to grandfather".

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as circulated. Motion carried 5 – 0.

#### ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a copy of a one-page article from a First State Geology brochure in reference to Rapid Infiltration Basin Systems in Delaware for the Commissions information.

Mr. Lank reminded the Commission that a Special Meeting of the Commission is scheduled for Wednesday January 14, 2009 at 3:00 p.m. in County Council Chambers.

Mr. Wheatley congratulated Mr. Robertson for his reappointment as Assistant County Attorney serving the Commission and commended and thanked Mr. Robertson for his assistance and cooperation provided to the Commission and staff.

Meeting adjourned at 8:05 p.m.