



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JANUARY 12, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 12, 2012, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:05 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the agenda as circulated. Motion carried 3 - 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of December 15, 2011 as amended. Motion carried 3 – 0.

OLD BUSINESS

C/U #1915 – application of **MICHAEL VAN DRUNEN** to consider Conditional Use of land in AR-1 Agricultural Residential District for a manufactured home installation business and related equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 3.0 acres, more or less, lying southeast of Road 293 (Dodd Town Road) ¼ mile southwest of Route 5.

Mr. Lank provided the Commission with copies of the DVD recording copied from the video recording cassette submitted by Mark Wyatt in opposition to the application during the December 8, 2011 public hearing.

The Commission discussed this application, which has been deferred since December 8, 2011.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to allow the Commission time to review the DVD. Motion carried 3 – 0.

C/U #1917 – application of **ROOSEVELT DOMOND** to consider Conditional Use of land in an AR-1 Agricultural Residential District for a beauty shop, barber shop, and spa to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 17,228.6 square feet, more or less, lying northeast corner Trussum Pond Road (Road 462) and Gordy Road (Route 70).

The Commission discussed this application, which has been deferred since December 15, 2011.

Mr. Smith expressed concerns that the record seemed incomplete as it relates to the existing structure and uses, the wastewater capacity since a septic system is being utilized and proposed, and suggested deferral until Mr. Ross can participate in the discussion.

Mr. Johnson expressed concerns about traffic safety and site design, agreed that the septic is a concern, and agreed that the Commission should defer.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 3 – 0.

Subdivision #2007-14 – application of **BOB BROOKS, BEAVER DAM PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 14.08 acres into 21 lots, (Cluster Development), located at the southwest corner of the intersection of Roads 280 and 285.

Mr. Abbott advised the Commission that this is the final record plan for a 21-lot cluster subdivision application; that the Commission granted preliminary approval for 21 lots on November 13, 2008 and granted one-year time extensions on November 12, 2009 and October 28, 2010; that a time extension was also granted under the “Blanket time extensions” approved by the County Council; that the final record plan complies with the requirements of the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to grant final approval of Subdivision #2007-14. Motion carried 3 – 0.

Subdivision #2008-6 – application of **BAY TWENTY** to consider the Subdivision of land in an GR General Residential District in Baltimore Hundred, Sussex County, by dividing 34.18 acres into 76 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 Route 20 and Road 390.

Mr. Abbott advised the Commission that this is the final record plan for a 76-lot standard subdivision application; that the Commission granted preliminary approval for 76 lots on December 16, 2009; that the final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant final approval of Subdivision #2008-6. Motion carried 3 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to amend the Agenda by moving Other Business prior of the Public Hearings.

OTHER BUSINESS

Trinity Financial / Donald Claycomb
C/U #1892 Site Plan – Road 207 (Johnson Road)

Mr. Abbott advised the Commission that this is a site plan for a financial planning, investment and insurance office; that the Conditional Use was approved on June 7, 2011 with 4 conditions; that the conditions of approval are noted on the site plan; that the site plan indicates that 600 square feet within the existing structure will be utilized for office space; that 3 parking spaces are required and provided; that existing on-site septic and well will be utilized; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted since all appropriate agency approvals have been received. Motion carried 3 – 0.

Ryan Homes Sales Center
Commercial Site Plan – Route 24 (John J. Williams Hwy)

Mr. Abbott advised the Commission that this is a site plan for a 1,440 square foot sales trailer located on 1.49-acres; that the site is zoned C-1; that the Board of Adjustment granted a special use exception for 5 years on December 19, 2011 for the trailer; that the setbacks meet the requirements of the Zoning Code; that there is an existing paved parking lot in place that contains 34 parking spaces; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that there are no wetlands on the site; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted since all appropriate agency approvals have been received. Motion carried 3 – 0.

Subdivision #2007-31 – Sussex Ventures, Inc.
Southpointe Crossing – Amended Condition

This request was moved to the end of the Other Business Agenda since the Applicant had not yet appeared.

Ethel E. Littleton Heirs
Parcel & 50' Easement – Route 24 (Laurel Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 7.092-acre parcel into 2 lots with one parcel having access from a 50-foot easement; that Lot 1 will contain 0.899-acres and have access from an existing driveway off of Route 24; that there is an existing dwelling located on this lot; that the residual lands will contain 6.193-acres and have access from a 50-foot easement; that there is an existing 20-foot easement that serves the residual lands; that the

owner is proposing to widen the 20-foot easement to 50-feet across their lands; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Mr. Robertson suggested that, if the Commission grants approval of this request, it should be a conceptual approval only, and that it should be subject to the approval of the Mapping and Addressing Department.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant conceptual approval of this request with the condition that final approval shall be subject to the approval of the Mapping and Addressing Department. Motion carried 3 – 0.

Sandstone Subdivision Revised Record Plan – Road 229

Mr. Abbott advised the Commission that this is a request to delete the proposed clubhouse and pool; that this application received preliminary approval for 49 lots on October 13, 2005 and final approval for 49 lots on January 7, 2008; that the clubhouse and pool were not conditions of preliminary approval but they were shown on the preliminary and final site plans; that 4 of the lots have been sold to other parties and the remaining 45 lots are owned by Artisan's Bank; that the Bank has taken the project from the original developer; that the 4 property owners wish to delete the clubhouse and pool due to the cost of building and maintaining them in the future; that the area that was approved for the clubhouse and pool will remain as open space for recreational activities for the community; that the 4 property owners have signed a waiver acknowledging that these amenities will not be constructed; and that the Commission was previously provided copies of letters from the Engineer and an attorney detailing this request.

The Commission discussed this request to delete the proposed clubhouse and pool.

Mr. Johnson and Mr. Smith agreed that they would prefer to have the full Commission present to discuss this request.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action to give the full Commission the opportunity to consider this request. Motion carried 3 – 0.

Subdivision #2007-31 – Sussex Ventures, Inc. Southpointe Crossing – Amended Condition

Mr. Abbott advised the Commission that this is a request to amend a condition of the preliminary approval that was granted on June 11, 2009; that condition H states "As proposed by the Applicant, an asphalt walking path shall be provided throughout the community"; that the Applicants are requesting that this condition be deleted due to concerns that they were not aware of at the time that the paths were proffered; that the Applicants have advised that they are willing to install streetlights in lieu of the walking paths; that this application has not received final approval yet, therefore no lots have been sold or dwellings constructed within the project; and that the Commission was previously provided with a copy of a letter from the Applicants detailing this request.

The Commission found that Drew Ward was present on behalf of this application requesting permission to amend Condition “H” of the Conditions of Approval for the subdivision, and stated that the walking paths design impacts the road side swales in the project; that the design looks good on paper, but creates difficulties in construction; that the subdivision only contains 28 lots; and that he is willing to provide street lighting in lieu of the sidewalks.

Mr. Johnson stated that the subdivision is a small community with ½ acre lots and may not need the sidewalks as compared to a larger subdivision or cluster community.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the deletion of Condition “H” with the condition that street lighting be provided as proffered by the Applicant. Motion carried 3 – 0.

PUBLIC HEARINGS

C/U #1919 – application of **DR. KERRI KENNARD** to consider Conditional Use of land in AR-1 Agricultural Residential District for a therapy office to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 5.397 acres, more or less, lying west of Route 70 (Gordy Road) 305 feet north of Warrington Lane and 1,000 feet northwest of U.S. Route 13.

The Commission found that the Applicant submitted a survey/site plan with the application.

The Commission found that DelDOT forwarded comments on November 10, 2011 in the form of a Support Facilities Report which references that a traffic impact study was not recommended and that the current Level of Service “A” of Gordy Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division forwarded comments on January 11, 2012 in the form of a memorandum which references that the site is located in the West Sussex – Laurel Growth Area; that the use of an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Mr. Kerri Kennard and Terry Scott were present and stated in their presentation and in response to questions raised by the Commission that they operate a small child practice and have a very small group of adults that they treat; that they do not treat drug or alcohol use cases; that their practice serves the Indian River School District and the Laurel School District; that they have four (4) counselors that evaluate the children and teens in the schools and at their residences; that the counselors will come to the site approximately once per week; that appointments on the site with clients are scheduled for one hour sessions, not minutes as in some other medical practices; that traffic will be at a minimum due to the scheduling of appointments; that adequate space is available for parking in the existing parking area; that a septic system exists for the office and a septic system exists for the dwelling; that the building

intended for the office was previously used for an office and sales of feed and seed for farming practices; that signage will be minimal since the majority of the clients are referrals; that business hours should not exceed 9:00 a.m. to 7:00 p.m. six day per week with no Sunday hours; that there may be a few special appointments due to emergencies; that they have no intention to expand the facility on this site; and that a separate driveway and entrance already exists to serve the building.

The Commission found that Beverly Smith, one of the original owners, was present in support and stated that she has no objections to the use intended; and that her father used the facility for approximately 60 years for his farm business and for the sale of feed and seed.

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

By a show of hands, the Commission found that there were 6 parties present in support of this application, excluding the Applicants.

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1919 for Dr. Kerri Kennard for a therapy office based upon the record made at the public hearing and for the following reasons:

- 1) The use as a therapy office promotes the health, safety and welfare of Sussex County residents, particularly the children of Sussex County.
- 2) The use is on a parcel of property that has historically been used as an office for more than 60 years prior to the Applicant's purchase of it.
- 3) The use will occur within an existing office building and there are already ample off-street parking spaces on the site.
- 4) The Applicant testified that the office has its own septic system, which is adequate for the use as a therapy office.
- 5) Several parties appeared in support of the application, and no parties appeared in opposition to it.
- 6) The Applicant intends to reside on the site.
- 7) The use will not adversely affect neighboring properties, roadways or the community.
- 8) This recommendation is subject to the following conditions:
 - A) The use shall be as a therapy office.
 - B) Parking shall comply with the parking requirements in the County Zoning Code.
 - C) One unlighted sign, not to exceed 32 square feet per side, shall be permitted.
 - D) The hours of operation shall be from 9:00 a.m. to 7:00 p.m., Monday through Saturday, with emergency hours as needed.
 - E) Any security lighting for the office and its parking areas shall be downward screened so that it does not shine on neighboring properties or roadways.
 - F) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, 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 3 – 0.

C/U #1920 – application of **COLLINS 54, LLC** to consider Conditional Use of land in an AR-1 Agricultural Residential District for a storage garage for trucks and equipment and a parking area to be located on a certain parcel of land lying in Baltimore Hundred, Sussex County, containing 1.35 acres, more or less, lying northeast corner of the intersection of Route 54 and Road 389.

The Commission found that the Applicant submitted a survey/site plan with the application.

The Commission found that on December 29, 2011 the Applicant submitted an Exhibit Packet which contains a cover letter from James A. Fuqua, Jr., Esquire, with Fuqua, Yori and Willard, P.A., proposed Findings and Conditions, a portion of the Tax Map of the area, and a series of photographs of the site and business uses in the area.

The Commission found that DelDOT forwarded comments on November 10, 2011 in the form of a Support Facilities Report which references that a traffic impact study was not recommended and that the current Level of Service “C” of Route 54 and the current Level of Service “A” of Bunting Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division forwarded comments on January 11, 2012 in the form of a memorandum which references that the site is located in the West Fenwick Planning Area; that the use of an on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Carroll Brasure was present with James Fuqua, Jr., Attorney with Fuqua, Yori and Willard, P.A. and that they stated in their presentation and in response to questions raised by the Commission that Brasure’s Pest Control operates their business from the adjoining parcel; that the adjoining parcel is improved with an office building and storage garages for the pest control business; that it is the intent of the Applicants to expand the pest control business by building a 29’ by 165’ storage building/garage for storage of service vehicles and equipment; that they are proposing a driveway interconnection with the existing office site, rather than a new entrance along a public road; that the existing business is served by an on-site well and on-site septic system; that no new entrances are proposed; that business hours are typically from 6:00 a.m. to 7:00 p.m.; that security lighting will be screened so that they do not shine onto neighboring properties or roadways; that there will be no outside storage of equipment or materials; that no bulk chemical storage will take place on this site; that there is adequate space available on this site for employee parking; that the business has existed for 40 years and is operated by 32 employees; that they have a similar operation in the Roxana area; that the site is located in the Environmentally Sensitive Developing District according to the Comprehensive Plan Update and is an appropriate use according to the Plan since it serves the residents and the

agricultural needs of the County; that they offer the following proposed Findings and Conditions for consideration: 1) The proposed use is an extension of a business located on an adjacent parcel that has been in existence for over 40 years in the neighborhood; 2) The business evolved from a home business to a successful regional business serving Sussex County and employing over 32 people; 3) There are other service and retail businesses located near the proposed site and the proposed use is not out of character with the area; 4) The Conditional Use will utilize the entrance to the existing business site and will not require a new entrance; 5) The proposed use is a normal expansion of a successful business and will enable the business to continue to provide service to area agricultural uses and residents; 6) The proposed use will not adversely affect adjacent and nearby properties or uses by imposition of appropriate conditions; 7) This recommendation of approval is subject to the following conditions: A) The use shall be for vehicle and equipment storage inside the storage building and outside parking of employee vehicles. No outside storage shall be permitted; B) Security lights shall be screened so that they do not interfere with neighboring properties; C) One lighted sign, not to exceed 32 square feet per side, shall be permitted on the site; D) The Final Site Plan shall indicated all parking and driveway areas; E) Access shall utilize the existing entrance to Brasure's Pest Control from Road 389 with an internal driveway to the site; F) Any dumpsters or trash receptacles utilized on site shall be screened from neighboring properties or roadways; G) No chemicals or hazardous materials shall be stored on site; and H) The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission; that legal standards require that a Conditional Use be of a public or semi-public character; that the use is an expansion of an existing use; that the use is not out of character since it is adjacent to a business and since other none residential uses already exists in the area, i.e. boat storage, storage facilities, shopping center with 11 shops, pet care; that the proposed building will be similar in appearance to the existing buildings on the adjacent site; that there should be no adverse impact on the area with the conditions proposed; that the Applicant received two letters in support; that the old house on the property has been removed; that signage will be minimal; and that they will comply with all Sussex Conservation District requirements.

Mr. Fuqua submitted the two referenced letters in support for the record. The letters were from Henry C. Johnson, Jr. and Taylor M. Dickerson, Jr.

The Commission found that Iris Moore was present in opposition to this application and referenced that the property was left to her sister and her children; that she questions the sale of the property; and that records in Wills and Deeds reference that the property cannot be sold.

Mr. Robertson advised Ms. Moore that comments need to relate to this application, not to family concerns about the sale of the property; and that she should contact an attorney about the records.

Ms. Moore again stated that she is in opposition to this application.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to allow Mr. Burton and Mr. Ross time to review this application if they so desire to participate in a future discussion. Motion carried 3 – 0.

There was a consensus of the Commission that the two Ordinance Amendments relating to Electronic Message Displays on Off-Premise signs be considered in one public hearing, and that decisions on each of the Ordinance Amendments would be rendered separately.

In reference to:

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY REGARDING ELECTRONIC MESSAGE DISPLAY ON OFF PREMISES SIGNS.

Mr. Lank advised the Commission that this Ordinance amendment was introduced on November 29, 2011 and that it is proposed that an off-premises sign (billboard) may include an Electronic Message Display if specifically applied for and approved as part of a Special use exception.

In reference to:

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY TO PROHIBIT ELECTRONIC MESSAGE DISPLAY ON OFF PREMISES SIGNS.

Mr. Lank advised the Commission that this Ordinance Amendment was introduced on December 6, 2011 with reference that if the Ordinance Amendment proposed to permit Electronic Message Display on off-premises signs is rejected, the Code of Sussex County shall reference that an off-premises sign shall not include an Electronic Message Display.

Mr. Robertson stated that Electronic Message Displays are permitted on on-premise signs in certain zoning districts; that DelDOT, per Delaware Code, Title 17, has references to similar signs; and that if the Ordinance Amendment is approved, the public will be allowed to participate in the public hearing process before the Board of Adjustment for the Special use exceptions requested.

The Commission found that Sandy Spence, a resident of the Lewes area, was present and expressed concerns that the electronic signs are distracting causing traffic safety concerns; that she is opposed to the use of electronic signs, especially with the number of senior citizens in this area; that she suggested that if the signs are approved, they should only be allowed in the area of the County Councilperson that voted in support of the Ordinance Amendment; that she opposed the Ordinance Amendment introduced on November 29, 2011; and that she supports the Ordinance Amendment introduced on December 6, 2011.

The Commission found that Linda Blumner, a resident of the Lewes area, was present and expressed concerns about electronic signs in general; that the signs are sometimes blinding to pedestrians and traveling motorist causing a safety concern; that the signs are visually objectionable; referenced an Electronic Message Display at the Community Bank on Route One;

and added that she supports the Ordinance introduced on December 6, 2011 that prohibits Electronic Message Displays.

The Commission found that Barbara Vaughn, a resident of Lewes, was present and expressed concerns about the same sign at Community Bank and referenced that the white background of the sign is too bright; that some of the Electronic Message Displays are harder to read due to the colors; that she opposes white background of electronic signs; and that she supports the Ordinance introduced on December 6, 2011 that prohibits Electronic Message Displays.

The Commission found that David Hutt, Attorney with Wilson, Halbrook & Bayard, P.A., was present representing several property owners in support of the Ordinance introduced on November 29, 2011 and was responding to some of the concerns stated in opposition to this Ordinance Amendment; that DelDOT has jurisdiction over off-premises signs; that the regulations include that the signs are required to dim at night compared to daytime; that the signs being referenced by the opposition are existing on-premise signs; that on-premise signs are permitted to have Electronic Message Displays in certain zoning districts; and that the Ordinance Amendment introduced on November 29, 2011 requires that an off-premise sign application that includes an Electronic Message Display shall be so advertised.

Mr. Wheatley stated that the Commission may need to relook at on-premise signs.

The Commission found that Ms. Blumner questioned how individuals would know that an application was filed if the Ordinance Amendment is passed.

Mr. Wheatley stated that a public notice sign is placed on the site of an application and advertised in two newspapers.

The Commission found that Carol Wzorek was present and expressed concerns that signs are visual pollution and opposed approval of the proposed November 29, 2011 Ordinance Amendment.

The Commission found that Ms. Spence referenced that the Board of Adjustment has never turned down any billboard applications, and that she still supports the December 6, 2011 Ordinance Amendment that prohibits the Electronic Message Displays.

Mr. Wheatley stated that sign technologies have changed and that regulations are needed.

Mr. Smith stated that he would like to hear Mr. Burton's and Mr. Ross' comments on the issue.

In reference to:

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY REGARDING ELECTRONIC MESSAGE DISPLAY ON OFF PREMISES SIGNS.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to give all Commissioners time to review the record. Motion carried 3 – 0.

In reference to:

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY TO PROHIBIT ELECTRONIC MESSAGE DISPLAY ON OFF PREMISES SIGNS.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to give all Commissioners time to review the record. Motion carried 3 – 0.

Meeting adjourned at 8:05 pm.