

MINUTES OF THE REGULAR MEETING OF JANUARY 22, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 22, 2015 in the County Council Chambers, Sussex 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. Rodney Smith, Mr. I.G. Burton, III, and Mr. Michael Johnson, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of January 8, 2015 as corrected. Motion carried 4 – 0.

PUBLIC HEARINGS

**AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §§ 216 D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL**

The Commission found that this Ordinance Amendment amends the Code to provide that, in the event an applicant fails to appear or fails to withdraw its application in accordance with the Code for reasons beyond the applicant’s control, if the failure to appear occurred before the Planning and Zoning Commission or, if the failure to appear occurred before the Sussex County Council, the Planning and Zoning Commission or the Sussex County Council, as applicable, shall have discretion to reconsider the application upon an affirmative vote of the body following the applicant’s submission of a Petition for Reconsideration within fifteen (15) days of the scheduled public hearing containing facts sufficient to demonstrate that the failure to appear was beyond the applicant’s control. Upon affirmative vote to reconsider the application, the public hearing shall be rescheduled.

Mr. Lank advised the Commission that the Department has not received any letters, emails, or comments from any parties in support of or in opposition to this Ordinance Amendment.

The Commission discussed the proposed Ordinance Amendment.

The Commission found that there were no parties present in support of or in opposition to the proposed Ordinance Amendment.

Mr. Robertson read the following suggested motion for consideration: “Mr. Chairman, I move that we recommend approval of the Ordinance to amend Chapter 115, Article XXVIII, §§ 216 D.

and F. of the Code of Sussex County with the recommendation that it be revised to state that Sussex County Council shall not act upon any matter in which an applicant failed to appear before the Planning and Zoning Commission”.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the suggested amendment as read by Mr. Robertson. Motion carried 4 – 0.

**Conditional Use #2004 – Delmarva Roofing and Coating, Inc.**

Application of **DELMARVA ROOFING AND COATING, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a contractors shop and office to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 6.47 acres, more or less, land lying west of Road 631 (Mennonite School Road) 1,800 feet north of Route 16 (Beach Highway) and 3,200 feet south of Route 36 (Shawnee Road) (911 Address: 12982 Mennonite School Road, Greenwood, DE) (Tax Map I.D. #430-5.00-56.00).

The Commission found that the application was filed on October 16, 2014 and that the Applicant provided surveys of the property depicting the improvements on the property.

The Commission found that DelDOT had provided comments in the form of a Support Facilities Report, dated October 7, 2014, referencing that a traffic impact study was not recommended, and that the current Level of Service “A” of Mennonite School Road will not change as a result of this application.

The Commission found that the County Engineering Department – Utility Planning Division had provided comments in the form of a memorandum, received January 16, 2015, referencing that the site is located in the Western Sussex Planning Area #1; that 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 has a schedule to provide sewer at this time; and that a concept plan is not required.

Mr. Lank advised the Commission that this site was formerly approved for a Conditional Use (C/U #494) for Merle Embleton for a maintenance shop and construction equipment yard for a contractor, and then amended in 1986 (C/U #853) for The Marble Works for the manufacturing of countertops and cultured marble.

The Commission found that Sheldon Swartzentruber was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he is proposing to move the business from in-town Greenwood to this site; that the site has not been used for business purposes for approximately 6 years; that business hours are intended to be from 7:00 a.m. to 5:00 p.m. weekdays; that he has from 15 to 20 employees; that the existing buildings will be used for storage of roofing materials, insulation, and equipment; that debris from job sites are hauled to landfills; that he would like to retain the existing sign structure on the property and only reface it with their sign; that they have 5 to 10 truck deliveries per week; that he is

associated with the Mennonite School and will be directing traffic to and from the site towards Route 16, and away from traveling towards Route 36.

Mr. Lank advised the Commission that since the previous Conditional Uses have not been active in excess of two (2) years, those Conditional Use application are void.

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

The public hearing was closed.

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

Mr. Burton stated that he would move that the Commission recommend approval of C/U #2004 for Delmarva Roofing & Coating, Inc. for a contractor's shop and office based on the record made during the public hearing and for the following reasons:

- 1) The location has been used for this type of use for many years. Prior Conditional Uses have approved light manufacturing on the site. This type of use is consistent with the prior use of the property.
- 2) This use will not adversely affect neighboring properties or roadways.
- 3) The Applicant has stated that the site will be used for storage and offices. The actual construction work associated with the use will occur off-site.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
  - A. All parking areas will be clearly shown on the site plan.
  - B. There shall not be any outside storage of materials on the site.
  - C. No disposal of roofing materials or other debris shall occur on site.
  - D. As stated by the Applicant, the hours of operation shall be between 7:00 a.m. and 5:00 p.m., Monday through Friday.
  - E. The sign shall be located in the same location as the current sign on the site, and shall be the same size as the existing sign.
  - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, 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 4 – 0.

### **Conditional Use #2005 – Indian River Volunteer Fire Co., Inc.**

Application of **INDIAN RIVER VOLUNTEER FIRE CO., INC.** to consider the Conditional Use of land in a GR General Residential District for a boat storage facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.571 acres, more or less, land lying southwest of Oak Orchard Road (a.k.a. Route 5 and Road 297) 0.15 mile north of River Road (Road 312) (911 Address: 32634 Oak Orchard Road, Millsboro, DE) (Tax Map I.D. 234-34.08-43.00 & 44.00).

The Commission found that the application was filed on October 16, 2014 and that the Applicants provided a survey/site plan for the proposed use.

The Commission found that DelDOT provided comments in May 15, 2014 in the form of a Support Facilities Report referencing that a traffic impact study was not recommended and that the current Level of Service “C” will not change as a result of this application.

The Commission found that the County Engineering Department – Utility Planning Division provided comments on January 16, 2015 in the form of a memorandum referencing that the site is located in the Oak Orchard Sanitary Sewer District; that wastewater capacity is available for the project, if the project does not exceed a total of 11.06 Equivalent Dwelling Units (EDUs); that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is \$4,100.00 per ED U; that a 6-inch sanitary sewer lateral serves each parcel; that the two laterals are installed along Oak Orchard Road; and conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that Patrick Miller sent a letter in support of this application and advised that the request is consistent with the neighboring property usage and is not out of character with the waterfront community; that the Fire Company has attempted to be a community partner that strives to keep its property in a clean and presentable fashion’ and that he encourages a favorable consideration.

The Commission found that Patrick Miller, President of the Indian River Volunteer Fire Company, Inc. (Fire Company) was present on behalf of the Fire Company and stated in his presentation and in response to questions raised by the Commission that the Fire Company is a not for profit operation; that the Fire Company purchased the property to prevent development and for future expansion of their facilities; that a revenue generator is needed to support the Fire Company; that they intend to lease the property to the adjoining boat repair and storage facility; that the use of automatic gates is anticipated; that the Fire Company stored their rescue boats in the firehouse; that fencing will be provided; that they type of fencing has not yet been determined; that they anticipated that 8 – foot chain-linked fencing will be utilized and that slats in the fencing may be installed for screening; and that based on the current activities of the adjoining boat storage facility, their employees will be moving the boats in and out of the facility.

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

The public hearing was closed.

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 #2005 for the Indian River Volunteer Fire Company, Inc. for a boat storage facility based on the record and for the following reasons:

- 1) The use is consistent with neighboring and adjacent uses. There is also an existing boat storage area next door.
- 2) The use is appropriate for a waterfront community such as Oak Orchard.
- 3) The use as a boat storage facility is a public or semi-public use and is desirable for the general convenience and welfare of the area.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
  - A. The boat storage area shall be fenced.
  - B. The area shall be open during daylight hours only.
  - C. No maintenance of boats or vehicles shall occur on the site.
  - D. Any security lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
  - E. 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. Burton, 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 4 – 0.

#### **Conditional Use #2006 – Thomas and Laura Kuckarik**

Application of **THOMAS AND LAURA KUCHARIK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a seasonal farm stand/garden center to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.2287 acres, more or less, land lying west of Beaver Dam Road (Road 285) 1,100 feet north of Stockley Road (Road 280) (911 Address: 19884 Beaver Dam Road, Lewes, DE) (Tax Map I.D. #234-5.00-44.07).

The Commission found that the application was received on October 16, 2014 and that the Applicant had provided a survey/site plan with the application.

The Commission found that DelDOT provided comments on October 7, 2014 in the form of a Support Facilities Report referencing that a traffic impact study was not recommended and that the current Level of Service of Beaver Dam Road will not change as a result of this application.

The Commission found that the County Engineering Department – Utility Planning Division provided comments on January 16, 2015 in the form of a memorandum referencing that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal 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 Jay Beach sent a letter in support of the Applicants plans referenced in this application.

The Commission found that Thomas Kucharik was present on behalf of their application and stated in his presentation and in response to questions raised by the Commission that he has been working in the green industry for approximately 20 years; that they have been growing plants, flowers, vegetable and plant seedlings, and that they have some chickens for the sale of the eggs; that some of their clients have requested that they provide mulches, pots, and other landscaping materials; that their sales display area is approximately 100 feet from the road; that they are planning on planting evergreens and landscaping; that they will have 2 to 4 employees; that their business will be open from March through December with business hours from 8:00 a.m. to 4:00 p.m. Monday through Thursday, 8:00 a.m. to 6:00 p.m. Friday and Saturday, and Noon to 4:00 p.m. on Sunday; that the proposed sales building will contain approximately 576 square feet; that they will be erecting additional greenhouses; that signage already exists and will be downward illuminated; that there are not intended to erect any feather flags; that the parking area will be gravel; and that there not be any displays are parking within the 40-foot front yard setback.

The Commission found that Mr. Kucharik submitted 12 photographs of the property and business area.

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

The public hearing was closed.

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 #2006 for Thomas and Laura Kucharik for a seasonal farm stand/garden center based upon the record made during the public hearing and for the following reasons:

- 1) The Applicant resides on the premises where this Conditional Use will be located. He proposes to operate a small farm stand with a garden center for shrubs, plants, pots, mulch and soils and other similar garden items.
- 2) The proposed use is compatible with the underlying agricultural zoning and other agricultural uses in the area.
- 3) The use promotes both business and convenience in Sussex County in that it provides an agricultural business that will sell produce and garden products to Sussex County residents and visitors.
- 4) The Conditional Use will not adversely affect neighboring properties, the community or area roadways and traffic.
- 5) No parties appeared in opposition to the proposed use.
- 6) This recommendation is subject to the following conditions:
  - A. The Final Site Plan shall show all areas for the farm stand and the garden center and vehicle and truck parking. It shall also show existing and proposed display areas and storage containers on the site. Those storage containers shall be screened from view of neighboring properties. No display or storage shall be located in the front yard setback,
  - B. All material and equipment storage shall be screened from view of neighboring properties and roadways.

- C. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- D. The stand shall be open from March 20 until December 20 of each year.
- E. The hours of operation for the business shall be from 8:00 a.m. to 4:00 p.m. Monday through Thursday, Friday and Saturday from 8:00 a.m. to 6:00 p.m., and Sunday from Noon to 4:00 p.m.
- 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. Burton, 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 4 – 0.

### **Change of Zone #1763 – JJJ – Laurel, c/o John Willey**

Application of **JJJ-LAUREL, C/O JOHN WILLEY** to amend the Comprehensive Zoning Map of Sussex County, from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 5.24 acres, more or less, land lying at the northwest corner of Route 9 (County Seat Highway) and Route 20 (Concord Road) (911 Address: None Available) (Tax Map I.D. 132-9.00-7.00).

This application was withdrawn on January 5, 2015.

### **OTHER BUSINESS**

Holland Mills Subdivision  
Reconsideration – Request to Delete Sidewalks

Mr. Abbott advised the Commission that this is a request for reconsideration of a decision made by the Commission at their December 11, 2014 meeting; that this is a request to delete the requirement for sidewalks in this subdivision; that the Commission granted preliminary approval on November 9, 2005 with 10 conditions of approval; that sidewalks were not a condition of approval; that the Commission granted final approval on July 26, 2007; that the final record plan depicted a 4-foot wide sidewalk on one side of all streets; that the Commission was previously provided a copy of a letter from the developer and signed statements from the current owners within the development supporting the request; that letters and emails have been received in support of this request; that there are 121 total lots in the development; that 93 lots front streets that have been built or a bond has been posted; that an on-site inspection by staff on January 22, 2015 confirmed that there are 79 homes built or under construction; that none of the sidewalks have been installed; and that 34 signatures in support have been received.

The Commission discussed this request and stated that projects are approved with certain features; questioned why this request has been submitted since homes have been constructed in the development; questioned why the sidewalks have not been installed to date; that they have not been able to review the file; that the sidewalks could have been presented as an amenity to potential homebuyers; that a lack of sidewalks creates safety concerns with residents having to

walk in the streets; that they understand the current resident's maintenance concerns; that they feel that the developer is trying to avoid additional expenses; that sidewalks are usually required in cluster subdivisions; and that they feel that these type of requests are a violation of the subdivision approval process.

Preston Dyer, partner in the project, advised the Commission that they have met with the homeowners and the owners are in agreement that sidewalks should not be required; that a walking path 3,500 feet in length has been provided around the storm water management ponds and the clubhouse; that the paths were to connect to multi-modal paths that DelDOT is not requiring now since the site is located in a Level 4 investment area; that the sidewalks were proposed on the individual lots; that irrigation systems, landscaping and propane tanks could be required to be removed at homeowner's expense; that the sidewalks were to be installed by the builders; and that there are walking paths along the front of the lots.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action pending further consideration and to allow all members of the Commission an opportunity to participate in this request. Motion carried 4 – 0.

Mr. Johnson withdrew his motion and Mr. Burton withdrew his second of the motion.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to require the applicant to go through a public hearing process in respect to having the proposed sidewalks deleted from the final record plan. Motion carried 4 – 0.

#### Waters Run Subdivision Request to Delete Sidewalks

Mr. Abbott advised the Commission that this is a request to delete a portion of the required sidewalks within this subdivision; that the condition of approval required sidewalks on both sides of all streets; that sidewalks have been installed along the entrance into the subdivision and around Lots 11 through 20 and the amenity area; that the Commission was previously provided a copy of a revised plan and a letter from the developer; and that the staff has received a letter from the homeowners' association supporting the request.

Mr. Smith advised the Commission that he is familiar with the site and that he understands that there may be another request for this project; and that he would like to consider both requests at the same time and to also allow all members of the Commission an opportunity to participate.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to allow all members of the Commission an opportunity to participate in this request. Motion carried 4 – 0.

#### Reserves at Lewes Landing Subdivision Revised Site Plan – Route 9



Mr. Abbott advised the Commission that this is a request to revise the landscape buffer along Route 9 in front of the wastewater treatment area from a vegetated buffer to installing a split 3 rail fence along Route 9; that one of the conditions of approval from March 25, 2004 required a vegetated buffer of Leyland Cypress or similar vegetation; that trees were planted at one time but have since died or been removed; that since the condition of approval originated with the Commission, the Commission could amend the condition if it so chooses; and that the Commission was previously provided a copy of the revised site plan.

Mr. Johnson advised the Commission that he would like to have the opportunity to review the file for this application and to review the landscape plan that was originally submitted.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Eric Tindall

Lot & 50' Easement – Road 619

Mr. Abbott advised the Commission that this is a request to subdivide a 3.14 acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to extend an existing 50-foot easement to serve as access; that the proposed Lot 2 will be approximately 1.0 acre and the proposed Lot 3 will be approximately 2.14 acres; that there is an existing dwelling and accessory structures on Lot 3; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would make 3 lots having access from the easement and it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 4 – 0.

Meeting adjourned at 7:35 p.m.