



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JANUARY 26, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 26, 2012, in the County Council Chambers, County Administrative Office Building in 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. Michael Johnson, Mr. I.G. Burton, III, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. James Griffin – 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 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of January 12, 2012 as circulated. Motion carried 5 - 0.

OLD BUSINESS

C/U #1915 – application of **MICHAEL VAN DRUNEN** to consider the 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.

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

Mr. Johnson stated that he has listened to the DVD provided and is prepared to make a motion on this application.

Mr. Johnson stated that he would move that the Commission recommend approval for Michael Van Drunen for Conditional Use #1915 for a manufactured home installation business and related equipment storage based upon the record made at the public hearing and for the following reasons:

- 1) The Applicant's father started this business almost 30 years ago as a mobile home installation business. It has been operated from the Applicant's property as well as his father's property throughout this time and it has evolved over the years.

- 2) The location of this business is appropriate, since it will be centrally located to serve municipalities, developments and business customers desiring the type of services offered.
- 3) Sixteen property owners in close proximity to the property have signed a petition in favor of the application and several parties spoke in favor of the application during the public hearing.
- 4) With the proposed conditions, the use will be as secure and unobtrusive as possible and will not have an adverse effect on neighboring properties or the community.
- 5) Most of the Applicant's business activities occur off-site, so there will not be a great deal of noise or other activities occurring on the site.
- 6) This recommendation is subject to the following conditions:
 - A. The Applicant shall install a solid wood or vinyl covered barrier fence at least six (6) feet in height to screen the property and the use from neighboring properties and roadways. There shall not be any dirt piles, dumpsters, equipment, debris, etc. outside of the fenced in area.
 - B. Any dumpsters on the site shall be covered at all times to prevent the scattering of construction waste or other trash and debris onto the site or neighboring properties.
 - C. As stated by the Applicant, landscaping must be installed along the perimeter of the driveway; parking and storage areas to improve the property's appearance and to have it blend in with nearby residential properties. A landscaping plan showing these areas shall be supplied at the same time as the Final Site Plan.
 - D. Any security lights shall be downward screened so that they do not shine on neighboring properties or roadways.
 - E. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
 - F. The location of all parking, storage areas, fences, and dumpsters shall be shown on the Final Site Plan.
 - G. No mobile or manufactured homes shall be stored or located on the site at any time without a valid placement permit from Sussex County.
 - H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with four (4) votes 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, with Mr. Ross abstaining.

C/U #1917 – application of **ROOSEVELT DOMOND** to consider Conditional Use of land in 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. Ross stated that he would move that the Commission recommend denial of C/U #1917 for Roosevelt Domond for a beauty salon, barber shop, and spa based upon the record made during the public hearing and for the following reasons:

- 1) The Applicant stated that there are no other businesses or commercial uses anywhere in the vicinity of this site. The surrounding areas are residential, agricultural, and vacant.
- 2) The site currently has 3 apartments on it. No evidence was presented that there are adequate septic facilities available for the existing 3 apartments, or the proposed salon with the remaining 2 apartments. This is a significant concern, given the amount of water that a successful salon would use.
- 3) The Applicant indicated in his testimony that vehicles would likely have to park in the building setback bordering Trussum Pond Road and back out on this road to leave the premises. I am not satisfied that there is ample space for parking on the site, especially once a new septic system is installed.
- 4) The proposed conversion of part of the existing building on the corner of Trussum Pond Road and Gordy Road to a commercial use poses a safety hazard for traffic, parking and pedestrians. The Applicant has proposed to utilize an existing porch, which is only about 10 feet from the roadway. This, with the parking requirements, will impair visibility for drivers on the roadways and people trying to park.
- 5) Several parties appeared in opposition to the project expressing concerns about its incompatibility with the residential and agricultural character of the area; concerns about traffic and corner visibility; and the septic system.
- 6) There was testimony that there are many vacant properties with zoning that would permit this type of use in and around Laurel already.
- 7) In general, there was not an adequate record supporting the Conditional Use application.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 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 discussed this application, which has been deferred since January 12, 2012.

Mr. Burton stated that he would abstain from participating in the discussion.

Mr. Ross stated that he has reviewed the file and listened to the taped record of the public hearing.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1920 for Collins 54, LLC for a storage garage for trucks and equipment and a parking area based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally an extension of the Applicant's business operations that have existed on its adjacent property for many years. The Applicant has stated that access to this property will also be through the existing business.
- 2) This is an appropriate extension of the Applicant's business.
- 3) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 4) The operation of the business will not generate a significant increase in traffic or noise.
- 5) This recommendation for approval is, however, subject to the following conditions and stipulations:
 - A. The use shall be for vehicle and equipment storage inside the storage building and outside parking of employee vehicles. No other outside storage shall be permitted.
 - B. Any security lights shall be screened so that they do not shine on neighboring properties.
 - C. No chemicals or other hazardous materials shall be stored on the premises, except those chemicals normally found on the vehicles.
 - D. One lighted sign, not to exceed 32 square feet in size per side, shall be permitted.
 - E. The Final Site Plan shall indicate all parking spaces and driveway areas.
 - F. As stated by the Applicant, access shall be via the existing entrance to Brasure's Pest Control from Road 389 with an internal driveway to the site.
 - G. Any dumpsters or trash receptacles utilized on the site shall be screened from neighboring properties or roadways.
 - H. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four (4) votes 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, with Mr. Burton abstaining.

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

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

The Commission discussed the Ordinance Amendments, which have been deferred since January 12, 2012.

Mr. Johnson stated that he is opposed to the size of the signs, and referenced that there was testimony-voicing opposition to Electronic Message Displays.

Mr. Wheatley reminded the Commission that they have the ability to make recommendations for amendments.

Mr. Burton stated that he has concerns about timing and backlighting.

Mr. Ross stated that he has listened to the taped record and that the concerns expressed related to safety issues, flashing lights, etc., but there are also benefits to change the regulations for signage, and that the County needs to look at the sign regulations again.

Mr. Smith stated that he supports the fact that the Board of Adjustment will still be reviewing the signs, but is concerned about the safety issues and distractions caused by the Electronic Message Display signs.

Mr. Ross moved that the Commission recommend adoption of the Ordinance Amendment to allow Electronic Message Displays, and suggested that the County Council should look at the sign regulations again. There was no second to his motion.

Mr. Ross withdrew his motion to recommend adoption.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action on the Ordinance Amendment regarding Electronic Message Displays. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action on the Ordinance Amendment that prohibits Electronic Message Displays. Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Griffin described how the public hearings would be held.

C/U #1921 – application of **JUDITH FOLMSBEE** to consider Conditional Use of land in an AR-1 Agricultural Residential District by Amending Conditions No. 2 and No. 3 of Ordinance No. 2055 (Conditional Use No. 1765) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 38,054 square feet, more or less, lying southwest of Road 226 (Orchard Road), 0.6 mile southeast of Route 16.

The Commission found that the Applicant submitted a survey and site plan, as presented for final approval to the Commission for Conditional Use No. 1765 with the necessary notations to be in compliance with said Conditional Use.

Mr. Lank advised the Commission that the Applicant had, on October 31, 2011, requested that the Commission amend the Conditional of Approval relating to Conditional Use No. 1765; and that on November 17, 2011 the Commission considered the request and determined that it would be necessary to file an amended Conditional Use application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on January 24, 2012 which reference that this site is located in the North Coastal Planning Area; that the use of an on-site septic system is proposed; that the site is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study will be required; that the

proposed project is not in an area where the County currently has plans to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that comments were received from John Herbert in opposition to the application expressing concerns about the adequacy of the septic system; that the neighborhood is predominantly single family; that the change would be out of character with the rest of the area; that the neighbors have already experienced the rental situation with the property a few years ago when the owners were living off-site; and that the neighbors do not want to see these problems again. Attached to the comments was a copy of a realty sales listing and a copy of an inspection report and certificate of completion for the septic.

The Commission found that Judith Folmsbee was present and stated in her presentation that she has owned the property since 1981; that they have not had any septic problems, except for one occasion when the dwelling was rented to a large family that did a lot of wash; that they moved back to the dwelling in 2007 and have not had any septic problems since; that they have received a letter in support from Robert Warrington, an adjacent property owner; that her son is going into the military and her daughter is moving away; that they obtained the original Conditional Use because that had 3 kitchens within the large home; that she is requesting to amend or delete Conditions of Approval #2 and #3 so that she can market the property as a rental; that each unit has separate access; and that the units are not currently rented.

Mr. Lank stated that Condition of Approval #2 references that "The units shall only be occupied by the Applicants and their family members"; and that Condition of Approval #3 references that "In the event the real estate is sold or transferred, this Conditional Use shall terminate".

Mr. Lank summarized the information on the DNREC Inspection Report/Certificate of Completion, and summarized the statements made by Rick Folmsbee during the public hearing for C/U #1765.

The Commission found that Betty Lewis Kasperski, a friend and Realtor, was present in support of the application and stated that the existing use of the property includes a 3 bedroom Nanticoke Home and two 1-bedroom units; that when the dwelling was rented previously it was rented to a large family of eight that did a lot of wash, causing the septic problem; that the Conditions of Approval need to be amended so that she can represent a sale to a future buyer; and that it creates an economic problem for the owner with the existing Conditions of Approval.

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. Johnson stated that he would like to listen to the taped record for C/U #1765.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to allow the Commission time to review the taped record of the previous public hearing on C/U #1765. Motion carried 5 – 0.

C/Z #1711 – application of **JAMES MOSES** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District and C-1 General Commercial District to CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.1185 acres, more or less, lying southwest corner of Route 54 and Road 396 (Westline Road).

The Commission found that the Applicant submitted a survey of the property with his application.

The Commission found that the Applicant submitted an Exhibit Packet for consideration which included a location map, a stated reason for the request, a DelDOT letter and email, a conceptual sketch of the proposed use, a map of the uses in the area, and a petition listing of neighbors in support.

The Commission found that on May 31, 2011 DelDOT responded that a Traffic Impact Study would be required; that on August 10, 2011 DelDOT responded that since the use has not been specified for the land to be rezoned, and that while it seems likely that criteria will be met, the Department cannot predict the site's trip generation with enough accuracy to make a Traffic Impact Study useful; and that the Department is willing to postpone a decision on DelDOT requirements for a Traffic Impact Study until the land has been rezoned and a site plan has been developed for it.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on January 24, 2012 and that the memorandum references that the site is located in the West Fenwick Planning Area; that use of an existing on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the parcel is not in an area where the County has a schedule to provide sewer service at this time; that when the County does provide sewer service, it is required that the on-site septic system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that James Moses was present and stated in his presentation and in response to questions raised by the Commission that he provided the Exhibit Packet to explain his application and to describe the area uses; that he realizes that site plan approval will be required and that he will have to address stormwater management, parking, lighting, etc.; that there is adequate space on the site for parking; that he has had some problems with vehicles cutting across the corner of Route 54 and Westline Road; that he either personally contact or wrote letters describing his application request to his neighbors; that he did receive one mail return and one additional letter of support since he provided the Exhibit Packet; that he intends to demolish the existing dwelling on the property and erect an office building; that several commercial and business uses exists in the immediate area, including a small shopping center across Route 54 which has retail and service uses; that traffic is very active at this intersection since Route 54 runs from Selbyville to Fenwick Island and Ocean City, and since Westline Road goes south to Bishopville; that the rezoning will be an infill and an extension to adjoining commercial property; that he has developed and is still operation a 10,000 square foot contractor

storage warehouse, and a boat storage facility just south of the site; that he anticipates that DelDOT will permit his access to Westline Road; and that DelDOT has a sight easement across the corner of the intersection.

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. Smith stated that he would move that the Commission recommend approval of C/Z #1711 for James Moses for a change in zone from AR-1 Agricultural Residential and C-1 General Commercial to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) This property has frontage on Route 54 and Road 396 and the first 200 feet from the intersection of those roads is currently zoned C-1 General Commercial. This change in zone application would re-zone the entire parcel to CR-1 so that it is all commercially zoned.
- 2) The re-zoning is consistent with neighboring and adjacent properties and their uses, which include other commercial and business zonings and uses. It is basically an infill, since it is surrounded on 2 sides by commercial zoning.
- 3) The Application will not have a significant effect on traffic.
- 4) CR-1 Commercial Residential zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping, personal and miscellaneous service activities, and that such uses should be located along arterial roadways where a general mixture of commercial and service activity now exists. In this case, the property has frontage on Route 54 and it is appropriate to extend the existing commercial zoning to the southwestern boundary of this property adjacent to other existing commercial zoning.
- 5) Any commercial use of the property would be subject to site plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0

OTHER BUSINESS

Red Mill Pond North and South Subdivision Amended Condition

Mr. Abbott advised the Commission that this is a request to amend the condition of approval requiring all amenities and recreational facilities to be constructed and open to use by the residents of the development within 2 years of the issuance of the first building permit; that in the north section, the clubhouse pool and sidewalks are installed; that on March 19, 2008 the Commission approved the deletion of walking trails throughout the project in lieu of the developers constructing a separate pool and cabana for the south section; that this project has

since gone into receivership; that the receiver for the project is requesting that the construction for the required gazebo and boardwalk for the north section commence once the 170th home has been constructed in the north section; that there are 321 lots in the north section; that the receiver is also requesting permission to construct the pool and cabana in the south section upon the completion of the 80th home; that there are 177 lots in the south section; that construction has not commenced in the south section; and that the Commission was previously provided a copy of the letter from the receiver detailing these request.

The Commission discussed this request; there was a consensus of the Commission that the south section request does not appear to cause any problems since construction has not yet commenced in this section; and that there were concerns with the north section since homes have been constructed and owners may have purchased their property with the understanding that certain amenities would be built and questioned if the owners were aware of this request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action pending receipt of verification that the owners in the north section are aware of and not opposed to this request. Motion carried 5 – 0.

Connie Louise Hearn
Parcel on 50' Easement – Road 47

Mr. Abbott advised the Commission that this is a request to create a 2.85-acre parcel with access from an existing 50-foot easement; that the Commission approved the easement in 1999; that if approved, this would be the second lot having access from the easement; 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.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Daniel F. Burton
Lot on 50' Easement – Road 410 (Revel Road)

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from an existing 50-foot easement; that the Commission approved the easement on September 16, 2009; that DelDOT has issued a Letter of No Objection; 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, it should be stipulated that any further subdivision of the property will require an application for a major subdivision since this would be the second and third lots having access from the easement; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Nicholas J. Dipietro
2 Lots and 50' Easement – Route 16 (Hickman Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 6.66-acre parcel into 2 lots with both lots having access from a 50-foot easement; that the owner is proposing to widen an existing 20-foot easement to 50 feet; that Lot 1 will contain 2.92-acres and there is an existing dwelling and accessory building located on it; that the residual lands will contain 3.74-acres; that DelDOT has issued a Letter of No Objection; 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.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as a concept. Motion carried 5 – 0.

Mark Foskey
Lot and 50' Easement – Road 536 (Woodland Road)

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre lot with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that a portion of the easement is on the applicant's relative's land; 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.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as a concept with the stipulation that the final record plan shall contain documentation that the adjoining property owner is aware of and consents to the easement. Motion carried 5 – 0.

Sandstone Subdivision
Revised Record Plan – Road 229

Mr. Abbott advised the Commission that this item was deferred at the January 12, 2012 meeting to allow all of the Commissioners to consider the request; that this is a request to delete the proposed clubhouse and pool; that this application received preliminary approval for 49 lots and October 13, 2005 and final approval for 49 lots on January 7, 2008; that the proposed clubhouse and pool were not conditions of the preliminary approval but were proffered by the original developer on both the preliminary and final plans; that 4 of the 49 lots have been sold to another party; that the 4 lots that have been sold have dwellings located on them; that 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 and the bank wish to delete the clubhouse and pool due to the cost of construction and future maintenance; that the area where the clubhouse and pool were supposed to be built will become open and recreation space for the community; and that the 4 property owners have signed waivers acknowledging that the clubhouse and pool will not be constructed.

Minutes

January 26, 2012

Page 11

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the revised record plan. Motion carried 5 – 0.

Meeting adjourned at 7:45 p.m.