



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF FEBRUARY 9, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 9, 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. 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 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of January 26, 2012 as amended. Motion carried 5 - 0.

OLD BUSINESS

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.

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.

The Commission discussed both Ordinance Amendments, which have been deferred since January 12, 2012, acknowledging that the Ordinance Amendments would be voted on individually.

Mr. Robertson stated that the second Ordinance Amendment prohibits the use of Electronic Message Displays on off-premise signs, aka billboards; that billboards are only permitted by Special Use Exception in C-1, CR-1, and the Industrial Districts after public hearings before the Board of Adjustment; that he would suggest, if the Commission is inclined to approve the inclusion of Electronic Message Displays on billboards, that the Ordinance be amended by adding an additional sentence to (5) of the Ordinance; that this change provides for timing of sign changes and makes it clear that other agencies also have jurisdiction over off-premises signs, i.e. State and Federal standards; and that he did not include DelDOT regulations as they are written, since DelDOT could amend their regulations.

The Commission discussed the Ordinance Amendments.

At the request of the Chairman, Mr. Robertson read the following amendment to the Ordinance that supports the inclusion of Electronic Message Displays by quoting (5) in the Ordinance Amendment with the additional sentence as follows: (5) An off-premises sign may include an Electronic Message Display if specifically applied for and approved as part of a Special Use Exception. If approved as part of a Special Use Exception, the standards for Electronic Message Displays contained in Section 115-159.5.A.4 (or more stringent State or Federal standards) shall apply.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to forward a recommendation to the Sussex County Council that the ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY REGARDING ELECTRONIC MESSAGE DISPLAY ON OFF PREMISES SIGNS be approved as read by Mr. Robertson. Motion carried 5 – 0.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to forward a recommendation to the Sussex County Council that the ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXI, SECTION 159.5B OF THE CODE OF SUSSEX COUNTY TO PROHIBIT ELECTRONIC MESSAGE DISPLAYS ON OFF PREMISES SIGNS be denied. Motion carried 5 – 0.

C/U #1921 – application of **JUDITH FOLMSBEE** to consider the Conditional Use of land in AR-1 Agricultural Residential District by Amending Condition 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 miles southeast of Route 16.

The Commission discussed this application, which has been deferred since January 26, 2012.

Mr. Burton stated that he would move that the Commission recommend denial of C/U #1912 for Judith Folmsbee for an amendment of conditions 2 and 3 of Ordinance No. 2055 for 3 multi-family dwelling units based upon the record made at the public hearing and for the following reasons:

- 1) This is the site of 3 existing multi-family dwelling units that were approved as Conditional Use # 1765 and Ordinance No. 2055. However, during that public hearing process, the Applicants specifically represented and agreed that the units would be used solely by family members.
- 2) Both the Planning and Zoning Commission and Sussex County Council stated in their Findings that the approval was based upon the fact that the units would be used only by family members. The recommendation and the Ordinance both contained specific conditions that limited the use to family members, and included a requirement that the use would specifically expire if the property was sold or transferred. I do not believe the prior Conditional Use and Ordinance would have been approved without these findings and conditions.

- 3) I have not heard any compelling reason to overrule the concerns and conditions stated in C/U #1765 or Ordinance No. 2055 for this property at this time.
- 4) I am not satisfied that the current septic system is adequately designed or constructed for 3 separate units.
- 5) The property is still in an area that consists of single-family residential homes or agricultural uses. There are no other multi-family dwellings or units in the vicinity, so the proposed occupancy by unrelated individuals in 3 apartment units would be inconsistent with the surrounding area.
- 6) I do not feel that the Applicant has created a sufficient record to support the approval of the requested amendments.

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 denied for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1922 – application of **EDGAR POLITE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a lawn care and maintenance business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.51 acres, more or less, lying at the west of Old Landing Road (Road 274) 300 feet north of the dead end of Old Landing Road.

The Commission found that the Applicant provided a survey site plan, a site location map of Old Landing, some photographs, and a petition in support of the application.

The Commission found that on February 6, 2012 the County Engineering Department Utility Planning Division submitted comments in the form of a memorandum which references that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available, if the proposed use does not exceed approximately 1.0 EDU; that the EDU assessment for the proposed use is not known at this time; that the system design assumption for the parcel is 1.0 EDU reflecting a residential parcel in a residential subdivision; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$4,590.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel's frontage on Old Landing Road and the existing single family use is connected to the sewer system; that conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that on December 9, 2011 DelDOT provided comments in the form of a memorandum which references that a traffic impact study is not recommended, and that the current Level of Service "D" of Old Landing Road will not change as a result of this application.

The Commission found that Edgar Polite was present and stated in his presentation and in response to questions raised by the Commission that he operates a lawn care and maintenance business from the property; that he, his son, and two employees do lawn care and maintenance of properties off-site; that he has received no objections from his neighbors; that equipment is stored in the 30' by 40' storage building or on trailers; that he maintains his equipment in the

garage; that the maintenance of the equipment is performed between the hours of 9:00 a.m. and 4:30 p.m.; that normal business hours are from 7:00 a.m. to 5:00 or 6:00 p.m.; that directly adjacent and to the rear of the site is a similar use on the Old Landing Golf Course; and that he does not believe that he will need any signage, since he advertises in the local media.

The Commission found that Robert Marshall, owner and operator of the Old Landing Golf Course and a lawn care and maintenance business was present in support of this application and stated that the Applicant operates a neat and clean business, and that he has no objection to this Conditional Use.

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

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 #1922 for Edgar Polite for a lawn care and maintenance business based upon the record made during the public hearing and for the following reasons:

- 1) The use will not adversely affect neighboring properties or roadways. The use is very nearly a home occupation.
- 2) The property is bounded by the Old Landing Golf Course and the equipment shed and landscaping equipment associated with the golf course business, and a landscaping company operated from the golf course.
- 3) The Applicant submitted a petition of neighboring residents in favor of the use.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
 - A. The use shall be limited to a lawn care and lawn care equipment maintenance business.
 - B. No waste materials, such as grass clippings, dirt, etc. shall be deposited or stored on the site.
 - C. All maintenance or equipment servicing shall occur within the garage building.
 - D. No disabled, junked or abandoned pieces of equipment shall be allowed on the site.
 - E. The Final Site Plan shall be subject to the review and approval of the 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 5 – 0.

C/U #1923 – application of **DONNA MASSEY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 35,000 square feet, more or less, lying at the west of Road 552 (Shufelt Road) ½ mile north of Route 20 (Stein Highway).

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

The Commission found that on February 6, 2012 the County Engineering Department Utility Planning Division submitted comments in the form of a memorandum which reference that the site is located in the Western Sussex Planning Area #2; that 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 on August 29, 2011 DelDOT provided comments in the form of a memorandum which references that a traffic impact study is not recommended, and that the current Level of Service "A" of Road 552 (Shufelt Road) will not change as a result of this application.

The Commission found that on February 3, 2012 a petition in opposition to this application was received from some of the residents within the Crestfield community, a residential subdivision to the rear of the site, expressing opposition to the creation of any rental apartments in the neighborhood; that non-stakeholder renters would not necessarily have the motivation to maintain the quality of life of the neighborhood; that properties could be sold to non-resident owners who could create two rentals on the same properties; that once started, it could result in efforts to convert other properties to multi-family units for the purpose of renting; that it is highly likely that the condition of the properties would deteriorate; that rental properties often attract people of lower living standards than resident property owners; that rental properties could have a large number of occupants with numerous vehicles; that the property is covered by the restrictions imposed by the Handy family when the property was sold as lots in the Crestfield community; and that the restrictions clearly specify one (1) detached single family dwelling per property. The petition contains nine signatures.

The Commission found that Donna Massey was present and stated in her presentation and in response to questions raised by the Commission that there is no new construction proposed; that they purchased the property in 2005 with the dwelling and a detached garage; that the dwelling was expanded in 2006; that the 26' by 30' addition is attached to the dwelling; that the addition has a kitchen, without a stove/oven; that basically they have one single family dwelling with 2 kitchen area; that approval of this request would allow her to add an additional stove/oven; that she has no intent to rent the unit; that the unit would be used by family members or guest when visiting; that the unit was originally built for her grandmother, who had no need for a cooking facility; and that she cannot attest that there are any other multi-family type properties in the immediate area.

The Commission found that Ms. Massey submitted photographs of the property.

Mr. Robertson advised the Commission that the County is not bound by the restrictive covenants, but added that the County normally honors restrictions.

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

The Commission found that Dennis Stordahl, a neighbor, was present and stated that he is present to oppose the use, not the Applicant; that he had no problem when the grandmother was

living on the premise; and that he would not be opposed to the use as long as the Applicant owns the property and is living on the property.

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

Mr. Wheatley stated that he would be inclined to approve the use with stipulations, and that he would not object to a deferral to allow Counsel to review the restrictive covenants.

Mr. Johnson agreed.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action, and to leave the record open for further consideration of the restrictive covenants by Counsel. Motion carried 5 – 0.

OTHER BUSINESS

Bay Forest Club MR/RPC Section 2.2 – Final Site Plan – Road 349 (Old Mill Road)

Mr. Abbott advised the Commission that this is the final record plan for Section 2.2 of the Bay Forest Club residential planned community; that the final record plan consists of 122 single-family lots and 35 detached condominium units on 68.84 acres; that the final record plan is the same as the preliminary plan that was approved by the Commission on March 17, 2010; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the record plan as a final. Motion carried 5 – 0.

Parsell Funeral Home Commercial Site Plan – Road 268 (King's Highway)

Mr. Abbott advised the Commission that this is a revised site plan for a 4,600 square foot office building for the existing funeral home on an adjacent parcel; that the parcels are zoned C-1 and will be combined into one parcel; that an existing dwelling on the site will be removed; that the setbacks meet the minimum requirements of the zoning code; that there are six parking spaces proposed within the front yard setback that are subject to site plan review; that the adjacent parcel has parking spaces located within the front yard setback; that sewer will be provided by Sussex County and water will be by a private well on-site; that 28 plantings are proposed for the buffer along Kings Highway in front of the proposed office; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Workman's Store
C/U #1916 – Site Plan – Route 20 and Road 431(Shortly Road)

Mr. Abbott advised the Commission that this is a site plan for the addition of a food-vending cart; that this conditional use was approved by the County Council on January 10, 2012 with three conditions; that the conditions of approval are noted on the site plan; that the site plan is the same as the preliminary and final site plan approved by the Commission on August 11, 2011; that the food-vending cart is located near the southeastern portion of the site; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

Meeting adjourned at 7:05 pm.