



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 12, 2009 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. C. Shane Abbott – Assistant Director, and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended showing the withdrawal of Old Business item 2 (C/Z #1626 for Nicholas and Joann T. Varrato). Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of January 14, 2009 as amended, and the Minutes of January 22, 2009 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/U #1765 – application of **RICK AND JUDI FOLMSBEE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (3 units) 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 discussed this application which has been deferred since January 22, 2009.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1765 for Rick and Judi Folmsbee for a multi-family dwelling structure of 3 units based upon the record made at the public hearing and for the following reasons:

1. The existing structure on the property contains 3 units that have been occupied mainly by family members.
2. The proposed Conditional Use with the conditions recommended will have no significant impact upon traffic.

3. The use, with the conditions recommended, will not have an adverse impact on the neighboring properties or community.
4. The applicants have agreed that the units can be used by family members only.
5. This recommendation for approval is subject to the following conditions and stipulations:
 1. Only 3 units shall be constructed upon the property, within the existing structure.
 2. The units shall only be occupied by the Applicants and their family members.
 3. In the event the real estate is sold or transferred, this Conditional Use shall terminate.
 4. The site plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy and carried with 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 – 1 with Mr. Burton not voting.

C/Z #1626 – application of **NICHOLAS AND JOANN T. VARRATO** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southwest of Layton Avenue, 102 feet north of Road 305 (Jersey Road) and 300 feet south of Route 24, to be located on 26,400 square feet, more or less.

This application was withdrawn on January 23, 2009.

C/Z #1627 – application of **P.G.S. PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying southeast of Route 26, 505 feet southwest of U.S. Route 113, to be located on 10.77 acres, more or less.

The Commission discussed this application which has been deferred since January 22, 2009.

Mr. Gordy stated that he would move that the Commission recommended approval of C/Z #1627 for P.G.S. Properties, LLC based upon the record and for the following reasons:

1. 7.63 acres of the property is already zoned C-1. By rezoning the remaining 10.77 acres to CR-1, the commercial zoning will be consistent with the property's boundaries.
2. According to the Comprehensive Land Use Plan, this property is in a Developing District, and this proposed zoning is appropriate for such as area.
3. The rezoning is consistent with other uses in the area, including those uses at the intersection of U.S. Route 113 and Route 26.
4. This rezoning, to create a uniform commercial zoning on this property, will not adversely affect traffic or neighboring properties.
5. At the Town of Dagsboro's request, it is recommended that the applicant continue to explore the possibility of annexation.

Motion by Mr. Gordy, 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 stated. Motion carried 4 – 0 – 1 with Mr. Burton not voting.

PUBLIC HEARINGS

Subdivision #2008-26 – application of **DAVID AND LINDA BRICKMAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 15.97 acres into 2 lots, located south of Road 388, 980 feet east of Route 17. Mr. Abbott advised the Commission that the properties has already been divided into the maximum number of minor strip lots along Road 388 and that it is required by the Code that any further subdivision of the property requires a public hearing; that no Technical Advisory Committee review was required since the lot was on public road frontage; and that a DelDOT Letter of No Objection was received on October 27, 2008.

Mr. Abbott advised the Commission that a letter was received from William and Vivian Yost requesting postponement of the public hearing until April since they are immediate neighbors and are now out of state.

The Commission found that David Brickman was present and stated in his presentation and in response to questions raised by the Commission that he proposed to convey this lot to a friend for a place to live, and that the Town of Selbyville is going to be supplying central water and sewer service.

The Commission found that Ray Jenkins, III, the intended purchaser, was present in support of the application and stated that he and his wife are looking forward to owning this property.

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. Smith stated that he would move that the Commission grant preliminary and final approval of Subdivision 2008-26 for David and Linda Brickman, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. The applicant is proposing the creation of one 0.75 acre lot, with 15.22 acres remaining.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This approval is subject to the following conditions:
 1. All entrances shall comply with DelDOT's requirements.

2. Any further subdivision shall require the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to grant preliminary and final approval of this Subdivision with the reasons and conditions stated. Motion carried 5 – 0.

Mr. Lank advised the Commission that the Applicant has requested that C/Z #1672 and C/Z #1673 be consolidated for the purpose of the public hearing and that the Applicant is aware that the decisions on the applications will be separate decisions.

Mr. Robertson advised the Commission that he would not be participating in the public hearing for C/Z #1672 and C/Z #1673.

C/Z #1672 – application of **PGS PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying west of U.S. Route 113 (DuPont Boulevard) 1,500 feet south of Route 26 (Nine Foot Road), to be located on 7.13 acres, more or less.

C/Z #1673 – application of **PGS PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying west of U.S. Route 113 (DuPont Boulevard) 800 feet south of Route 26 (Nine Foot Road), to be located on 0.64 acres, more or less.

The Commission found that prior to the public hearing the Applicants had provided an Exhibit Booklet and that the Booklet contains references to both application, the project team, rezoning plots, commercial site plan plots, a site data table, qualifications of Mark Davidson of DC Group, LLC, copies of the applications, legal descriptions, copies of deeds and other recorded documents, rezoning plots, a map of commercial uses in the area, a traffic impact study, aerial photographs, a County Zoning Map reference, a portion of the State Strategies Map for Investment Levels, a 2007 land use and land cover map, references to the proximity to the sewer district, a FEMA Flood Plain Map, a National Wetlands Inventory map, a State Wetlands area map, a soils classification report, and a USGS Topographic Map.

In reference to both C/Z #1672 and C/Z #1673:

The Commission found, based on comments received from the Sussex Conservation District, that there are two soil types on each site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood hazard areas are affected; that it is not likely that off-site drainage improvements will be required; that it is very likely that on-site drainage

improvements will be required depending on the extent of construction; and that a tax ditch borders the properties.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the sites are located within the Dagsboro/Frankford Planning Area; that wastewater capacity is available for the projects; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$5,828.00 per EDU; that service has not been extended to the area at this time; that the project is capable of being annexed into the Dagsboro/Frankford Sanitary Sewer District; that conformity to the Dagsboro/Frankford Planning Area Wastewater Report or undertaking an amendment will be required; that the parcels are within the Dagsboro/Frankford Planning Area for sewer service and connection to the sewer system is mandatory; that the parcel adjoins another area being considered for annexation by the same developer; that annexation into the District is possible following completion of certain administrative procedures; that the County has been in discussions with the developers regarding extension of sewer service to a proposed project on the parcels; that it is anticipated that the developer will extend service to the area and that there will be adequate capacity; that before all of the needed capacity could be utilized, it will be necessary for the developer to complete additional phased upgrades; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation into the District; and that a concept plan checklist and County policies and steps for extending sewer district boundaries are attached to the memorandum.

The Commission found, based on DelDOT comments, that DelDOT acknowledges that both properties have split zoning classifications; that because the land mentioned is tentatively planned to be developed as one development, the Department would normally recommend a single Traffic Impact Study; that the Department would not permit access from these properties for uses generating more than a total of 200 trips per day; that because of that limitation, a Traffic Impact Study is not recommended; that the respective land is adjacent to U.S. Route 113 and is subject to the policy of the Corridor Capacity Preservation Program; that the main goal of the Program is to maintain the capacity of the existing highway; that according to the Office of State Planning Coordination's Strategies for State Policies and Spending document, the properties are located within a Level 3 Investment Area, where the State will promote efficient and orderly development; and that the Department will permit one shared rights-in and rights-out entrance along U.S. Route 113; that the vehicle trip generation for each parcel cannot exceed 200 trips per day.

The Commission found that the Town of Dagsboro submitted a letter expressing concerns about the rezoning of both properties and referenced that the properties are located within the Town's Future Annexation Area and Area of Concern as indicated on the adopted Town of Dagsboro's Comprehensive Plan; that the properties are identified on the Future Land Use Plan of the County Comprehensive Land Use Plan as within a Town Center; that by identifying this area as Town Center, the County has recognized that the land would be better served if located within the Town; that the Town has recently signed a Memorandum of Understanding with the County, wherein both parties agree to communicate and cooperate on issues relating to development

within the Town's growth area and the County's Town Center land use category; that a meeting has been scheduled for February 18, 2009 for the County and the Town to discuss this issue; that the Town ask that the Commission defer any action on these applications until after this meeting; that the Town would like the opportunity to work with the Applicant prior to the County taking any action on the parcels; that these parcels will have a significant impact on the future growth of the Town if not incorporated within the Town prior to development; and the Town's public servants will be impacted by the development at no benefit to the Town if the parcels are developed within the County.

The Commission found that Preston Dyer was present on behalf of PGS Properties, LLC with Mark Davidson of Design Consultants Group, LLC and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to expand the commercial zoning of the two parcels by 0.64 acres and 7.13 acres; that the State Strategies indicate that the parcels are located in Investment Levels 2 and 3; that the ditch is the dividing line; that the County Comprehensive Land Use Plan indicates that the parcels are located in a Town Center; that they have been working with County Engineering to do utility extensions; that originally they intended a shopping center; that due to the present economic market they are proposing pad sites; that the area contains a mix of commercial and business uses, including a plumbing and electrical business and water treatment business on the two proposed parcels, convenience store, produce stand, shopping center, American Legion Post, offices, etc.; that a 500-foot deep C-1 corridor already exist along U.S. Route 113; that there should be no negative impact on neighbors or the community; that the use is an appropriate use of land along U.S. Route 113; that the use will meet the requirements by expanding sewer for the County; that water service is proposed by Artesian Water Company; that 5 years ago they petitioned the Town of Dagsboro for annexation since they were led to believe that sewer was controlled by the Town; that the Office of State Planning Coordination recommended that the Town not grant annexation until utility services were available, therefore the Town did not act on the annexation; that the Town has established impact fees, levis, and other charges that differ from the Town's fees 4 years ago; that they withdrew their annexation request; that they may develop the sites jointly or separately with the property to the north; that they hope to provide retail, office space, and service use facilities for the area; that it will be necessary that they cross over, bridge or pipe an existing tax ditch to provide access to one of the parcels; and that DelDOT is limiting them to one access from U.S. Route 113 to provide a service road for access to all of the pad sites.

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 have no problem deferring the applications due to the Memorandum of Agreement between the Town and the County, and that he has no problem with the project as proposed.

In reference to C/Z #1672:

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z #1672 for PGS Properties, LLC based upon the record and for the following reasons:

1. 3.58 acres of the property is already zoned C-1 General Commercial. By rezoning the remaining 7.13 acres to CR-1 Commercial Residential, the commercial zoning will be consistent with the property's boundaries.
2. According to the Comprehensive Land Use Plan, this property is in a Developing District, and this proposed zoning is appropriate for such an area. The property is adjacent to, and partially within the 500-foot commercial corridor along U.S. Route 113, and is an extension of that corridor.
3. The rezoning is consistent with other uses in the area, including those uses at the intersection of U.S. Route 113 and Route 26.
4. This rezoning, to create a uniform commercial zoning on this property, will not adversely affect traffic or neighboring properties.

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

In reference to C/Z #1763:

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z #1673 for PGS Properties, LLC based upon the record and for the following reasons:

1. 7.03 acres of the property is already zoned C-1 General Commercial. By rezoning the remaining 0.64 acres to CR-1 Commercial Residential, the commercial zoning will be consistent with the property's boundaries.
2. According to the Comprehensive Land Use Plan, this property is in a Developing District, and this proposed zoning is appropriate for such an area. The property is adjacent to, and partially within the 500-foot commercial corridor along U.S. Route 113, and is an extension of that corridor.
3. The rezoning is consistent with other uses in the area, including those uses at the intersection of U.S. Route 113 and Route 26.
4. This rezoning, to create a uniform commercial zoning on this property, will not adversely affect traffic or neighboring properties.

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

C/U #1764 – application of **BUCHANAN DEVELOPERS, INC.** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (7 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.61 acre, more or less, lying east of Route One, 300 feet north of Route 361-A.

The Commission found that prior to the public hearings the Applicant had provided the Commission with an Exhibit Packet containing a tax map of the area, aerial photograph, Minutes

of the Planning and Zoning Commission for a previous application on the same site, and the County Council decision on the previous application (C/U #1494).

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the property is located in the South Bethany Sanitary Sewer District; that wastewater capacity is available; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$4,228.00 per EDU; that an 8-inch gravity sewer is available along the parcel's frontage on Coastal Highway; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sanitary sewer system is mandatory; that the project is within planning study assumptions for sewer service and capacity will be adequate for the proposed project; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; that the Department requires that a Sewer Concept Plan be submitted for review and approval; that the existing dwelling on the parcel must be properly disconnected and inspected by the County prior to removal, demolition, site work or issuance of a building permit; that one-time system connection charges will apply; and that a concept plan submittal is required.

The Commission found, based on comments received from the Sussex Conservation District, that there are two soil types on this property; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that during major storm events this area may be prone to flooding; that some off-site drainage improvements may be required; that on-site drainage improvements are likely; and that that no tax ditches are affected.

The Commission found that William Buchanan of Buchanan Developers, Inc. was present with James Fuqua, Attorney, and Charles Adams of Adams and Kemp Associates, Surveyors, and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to develop the site with seven (7) multi-family dwelling units; that DelDOT is going to require that the retention pond near Route One be moved back away from Route One; that parking will be provided under and between the buildings; that 21 parking spaces are proposed; that stormwater management on the site will conform to Sussex Conservation District regulations; that a 40-foot separation is proposed between all buildings; that sewer is available from the County; that the Town of Bethany Beach will provide water service; that there are no mapped wetlands on the site; that DelDOT did not require a Traffic Impact Study; that in 2003 the Planning and Zoning Commission recommended approval of the use and the County Council approved the use with 10 conditions of approval; that the Applicant is the owner of the property; that the original application ran out due to the lack of substantial construction; that the application is an infill within a highly developed area; that the site is surrounded by an office complex, a convenience store with petroleum sales and a fast food restaurant, a furniture store, multi-family uses, and a motel across Route One; that the use is less intensive than uses around the site; that the size of the site limits its commercial use potential; that JCM Environmental investigated the site for wetlands; and that the site will be landscaped.

Mr. Kautz suggested that the Flood Plain line and the wetlands line should be noted on the site plan.

Mr. Fuqua submitted proposed Findings of Fact and proposed Conditions of Approval for consideration.

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

The Commission found that Tom Naylor and John Hefferly, unit owners within Sea Pines Condominiums, were present, not in opposition, with concerns about existing drainage problems and run-off, during and after construction, and stated that the ditch that runs along the property line is the primary drainage from Pennsylvania Avenue and needs to be maintained.

The Commission found that Mr. Fuqua responded that prisoners were hired to dig a ditch across Sea Pines Condominium site and draining that site into the ditch, and that the Applicant believes that the ditch was dug on his property.

The Commission found that Mr. Adams added that there is no record with the Sussex Conservation District on the ditch digging; that the neighboring properties were elevated when developed; that there is a planned project for drainage for the area; that all stormwater run-off from this project will be maintained on site as required by the Sussex Conservation District; and that there is no intent to disturb this ditch.

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

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

C/U #1768 – application of **MICHAEL J. SHUHART** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a one-operator trucking company to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 0.76 acres, more or less, lying west of Road 449, 545 feet south of Route 24.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the current Level of Service C of Route 24 may increase to a Level of Service D; and that the current Level of Service A of Trap Pond Road may increase to a Level of Service C.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the property is located in the Western Sussex Planning Area #4; that an individual on-site septic system is proposed; and that the project is not in an area where the County has a schedule to provide sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that there are two soil types on this property; that the Applicant will be required to follow recommended erosion and sediment control practice during construction and to maintain vegetation; that a storm flood hazard area and tax ditch could be affected; that off-site drainage improvements are not likely; and that minor on-site drainage improvements may be necessary.

The Commission found that Michael J. Shuhart was present and stated in his presentation and in response to questions raised by the Commission that he resides on the adjacent property; that he operates a one-operator trucking operation; that he has one (1) tractor truck and is the owner/operator; that he hauls petroleum products for one company; that he owns approximately 8.75 acres from Route 24 down Trap Pond Road; that he has no plans to expand the business by operating additional tractor trucks or hiring employees; that he works 6 days and then takes 2 days off; that his truck idles for approximately 15 minutes before leaving the property; and that he has driving the truck from this site for approximately 2 years.

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

The Commission found that Doug Taylor was present, not specifically in opposition, but with concerns, and advised the Commission that the Applicant was in the area prior to a recently approved 80 lot subdivision across Trap Pond Road; that he is not concerned about the tractor truck, only the trailer for hauling petroleum; that there are also 2 dump trailers on the site; that he is concerned about vehicle maintenance, power washing, etc.; tractor and trailer blocking Trap Pond Road when entering or leaving the site; that the site is in close proximity to a ditch, causing some environmental concerns; and that several other neighbors are opposed, but have lost faith in the County process since the subdivision was approved.

The Commission found that Mr. Shuhart responded that the site is 200 to 225 feet from the ditch; that he installed a 6" thick recycled concrete circular driveway so that he can maneuver his tractor and the trailer on his site within blocking Trap Pond Road; that the site is primarily cleared; and that the dump trailers were purchased for hauling debris from the site when he cleared the site; and that the dump trailers, which hook up to standard vehicles, not tractor trucks, are for his personal use, not a business.

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

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1768 for Michael J. Shuhart based on the record and for the following reasons:

1. This application is for a one-operator trucking company located on the property. There will only be one trailer on the property.
2. The application is essentially for a home occupation use, but a Conditional Use is necessary since the applicant lives next door on a separate lot.
3. The application will not have an adverse impact on neighboring properties or traffic.
4. This recommendation for approval is subject to the following conditions:
 1. The use shall be limited to one truck and trailer on the property owned by the Applicant.
 2. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

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

Meeting adjourned at 8:00 p.m.