

MINUTES OF THE REGULAR MEETING OF FEBRUARY 14, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 14, 2013, 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, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. James Griffin – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Agenda as amended by removing the Hitchens Auto Sales, LLC from Other Business. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action on the Minutes of January 24, 2013. Motion carried 5 - 0.

The Chairman invited Brain Hall, Circuit Rider for the Office of State Planning Coordination, to address the Commission.

Mr. Hall advised the Commission that he will no longer be the Circuit Rider and is moving onto the Private Sector with Choptank Electric in Denton, Maryland; that he hopes the transition to a new Circuit Rider runs smoothly; and that he thanks the Commission for their cooperation over the years that he and the Commission have worked together.

Mr. Wheatley, on behalf of the entire Commission, thanked Mr. Hall for his service and wished him well in his future endeavors.

OLD BUSINESS

Conditional Use No. 1950 – application of **ERLIN I. RIVERA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for parking commercial tractor trailers, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 9.59 acres, more or less, lying west of Road 516 (Concord Pond Road) 600 feet south of Road 525 (King Road)(Tax Map I.D. 2-31-12.00-152.00).

The Commission discussed this application which has been deferred since January 10, 2013.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1950 for Erlin I. Rivera for a Conditional Use for parking commercial tractor trailers based upon the record made at the public hearing and for the following reasons:

- 1) The Conditional Use is set on a parcel of land containing 1.40 acres of a 9.59 acre tract owned by the Applicant.
- 2) The Applicant has stated that his tractor trailer company provides a service to the Sussex County Agricultural Industry and this site is centrally located for this purpose and the Applicant's customers.
- 3) The Applicant has stated that the site is intended for parking only and there will not be any truck or trailer maintenance or repairs on site.
- 4) The use promotes the orderly growth and economic development of Sussex County.
- 5) The use, with the conditions and stipulations placed upon it will not have any adverse impact on neighboring properties, roadways or traffic.
- 6) This recommendation is subject to the following conditions:
 - A. There shall be no more than 10 trucks and/or trailers on the site at any one time.
 - B. All trucks and trailers on the site must be operable and have valid registrations.
 - C. No service, repairs or other types of maintenance shall occur on the site.
 - D. The parking areas and spaces shall be clearly designated on the Final Site Plan. The parking areas shall also be clearly marked on the actual site.
 - E. There shall be a 100 foot setback from the entire perimeter boundary of the Conditional Use. No parking of trucks or trailers shall be allowed in this setback area. The setback area shall be shown on the Final Site Plan and also clearly marked on the Site with post and rail fencing or a similar barrier. If this setback area eliminates the Applicant's ability to reasonably park the trucks and trailers, the Applicant may apply for an expansion of the Conditional Use onto the remaining property owned by him. If such an application is required, but only in the event that it is necessary due to this setback requirement, it should be considered on an expedited basis without an additional application fee. Any such expansion shall only include the minimal area needed to comply with this setback requirement.
 - F. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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 approved for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Conditional Use No. 1952 – application of **CLINTON E. MCCUTCHEN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for boat repair, boat storage, and boat sales, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.36 acres, more or less, lying southwest of Route 20 (Hardscrabble Road) at corner with and northeast of Road 473 (Messick Road)(Tax Map I.D. 2-32-2.00-21.00/22.00).

The Commission found that the Applicant submitted a survey and site plan with his application on October 24, 2012.

The Commission found that the Applicant submitted an Exhibit Booklet on January 30, 2013, and that the Booklet contains: a project description; some site data; a copy of the application form; a copy of the deed to the property, which includes a survey; a site plan; zoning information from the County Web Site; an aerial map depicting the site and surrounding area; a copy of DelDOT comments, dated June 1, 2012; suggested Conditions of Approval; and suggested Findings of Fact.

The Commission found that DelDOT provided comments on June 5, 2012 in the form of a Support Facilities Report which references that a Traffic Impact Study is not recommended, and that the current Level of Service “A” for Road 473 and the current Level of Service “A” for Route 20 will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on February 11, 2013 in the form of a memorandum which references that the site is located in the Western Sussex Planning Area #5; that use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; 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 service at this time; and that a concept plan is not required.

The Commission found that Clinton E. McCutchen was present with Heidi Gilmore, Attorney with Tunnel and Raysor, P.A. and stated in their presentations and in response to questions raised by the Commission that Mr. McCutchen wants to operate a boat repair, boat storage and boat sales business; that he lives on the premise; that they request that the Exhibit Booklet be made a part of the record; that the area is considered a Low Density Area; that on-site well water and septic exists on the site; that the site is in close proximity to Messick Supply Store and the Horsey borrow pits; that the building will be used for repairs; that a boat hoist will be available for use; that the area will be fenced with chain-link fencing; that access is intended from Messick Road subject to DelDOT approval; that his engineers are working with DelDOT to obtain a Letter of No Objection; that there should be no adverse impact on the community; that no employees are intended immediately; that as business improved he would hope to have no more than two (2) employees; that since he is starting as a one man operation living on the premises, he would like to be able to operate seven (7) days per week with no limitation on hours; that he has not received any violations; that the use cannot be considered a home occupation since he does repairs for others; that the fenced area will be gated; that the gate will be locked when not in use; that dumpsters will be screened; that due to the size of some boats, he will be doing some repairs outside, but only on the existing concrete pad; that most of the repair work will be performed indoors; that waste oils will be removed by licensed handlers; that he will be working on all types of water craft, i.e. boats, jet-skis, etc.; that all boats moved to and from the site will be moved by the Applicant; that boats for sale would include boats owned by the Applicant and boats on sale for consignment; and that he should be able to store 30 to 40 boats on the site.

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.

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

Conditional Use No. 1956 – application of **MARK A. GIBLIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto repair and service as extension to an approved towing service and landscaping business (Conditional Use No. 1933), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.374 acres, more or less, lying southeast of Route 17 (Roxana Road) 1,185 feet northeast of Road 382 (Zion Church Road)(Tax Map I.D. 5-33-6.00-60.02).

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

Mr. Lank advised that Commission that comments were not requested from DelDOT since the Department had already responded to the application for Conditional Use No. 1933.

Mr. Lank advised the Commission that the County Council approved the original application for Conditional Use No. 1933, towing service and landscaping, on December 11, 2012 with the following conditions: 1) The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties, to be constructed on or before June 1, 2013; 2) No more than 18 impounded vehicles shall be permitted on the property besides the Applicant's own vehicles; 3) No permanently disabled or abandoned vehicles shall be allowed to remain on the property. All existing and abandoned vehicles shall be removed within 90 days; 4) There shall be one lighted sign which shall not exceed 32 square feet in size to identify the towing service and the impound lot. The sign shall include a phone number to call for information about vehicles impounded and for other information about the service; 5) No vehicles shall be displayed for sale; 6) All security lighting shall be downward screened so that it does not shine on neighboring or adjacent properties; 7) The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles and towing equipment; 8) The area set aside for the landscaping business, including equipment storage and any bins for materials such as topsoil, mulch, etc. shall clearly be depicted on the Final Site Plan; 9) The landscaping business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Saturday with no Sunday hours; 10) The Final Site Plan shall include a landscaping plan for the area surrounding the impound yard screening it from neighboring or adjacent properties; and 11) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Commission found that the County Engineering Department Utility Planning Division provided comments on February 11, 2013 in the form of a memorandum which references that

the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Mark A. Giblin was present and stated in his presentation and in response to questions raised by the Commission that he agrees with the conditions imposed on his original application for towing and landscaping; that he thought that he had originally included service work; that he services vehicles for several police departments and other services; that he does not do any work on vehicles owned by the public; that his requested hours for the service/repair business are seven (7) days per week from 8:00 a.m. to 8:00 p.m.; and that customers normally pickup their vehicles on the same day as serviced.

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

The Commission found that Franklin Bennett of Ocean View was present in opposition to this application and referenced that there is too much going on at the property; that he has seen repair work being performed on buses, commercial business vehicles, i.e. furniture trucks, heavy equipment; and that the site does not comply with regulations.

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

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

Conditional Use No. 1957 – application of **GEORGE R. AND SANDRA L. VANFLEET** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a rental and storage units, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.148 acres, more or less, lying south of Route 54 1,550 feet northeast of Road 387 (Hudson Road)(Tax Map I.D. 5-33-18.00-35.04).

The Commission found that the Applicant provided a survey/sketch of the proposed use of the property.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated February 10, 2012 which referenced that a Traffic Impact Study was not recommended and that the current Level of Service “C” of Route 54 will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated February 11, 2013, which references that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County has a schedule to provide

sewer at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that George R. Van Fleet was present and stated in his presentation and in response to questions raised by the Commission that the existing building on the premise is used for personal use; that he has outgrown the building and hopes to construct another building; that to off-set cost he is proposing to rent out the front of a building; that the surrounding area includes farming activities across Route 54, residential to the east, and farming to the south and west; that approximately 1 mile to the east is a similar use; that approximately 0.75 mile to the west is a similar use; that the proposed building to the rear of the property could be completed by the end of summer 2013; that he has spoken to one of his neighbors to the east and heard no opposition; that he has not contacted any franchise storage business; that he anticipates no more than 20 to 25 rental storage units; that he has security lighting on the existing building and is proposing to add additional lighting and cameras; that he has not had any contact with the Sussex Conservation District; that he will provide dumpsters; that there will not be an office on the site; that the type and size of the units depends on the market; that the units may be dual sided or through units; that he will not have any employees; that he does not live on the site; that he will fence the site, if required; that all storage will be indoors; and that he does not plan on storing any boats, RVs or travel trailers.

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

The Commission found that John Sergovic, Attorney with Sergovic, Carmean and Weidman, P.A. was present in opposition on behalf of Lynch Farm Farmers, LLC and stated that his clients lands basically surround this site; that his clients lands are slated for residential improvements within the Town of Selbyville; that this project will have a negative impact on the residential improvements proposed; that the use is not in character with the area; that there is no need for additional storage units in the area; and that there is no market for such units.

Mr. Sergovic submitted a letter from Williamsville Industrial Park referencing that the rental market for these types of units is saturated; that the Williamsville Industrial Park has not been able to complete their storage project; that they still have 36 units to be built; that the rental market has not recovered since the economic downturn and the per square foot rental price for units has been reduced by 30%; and that more supply at this point can only harm this already fragile market.

The Commission found that Kathy Chabou, a Real Estate Marketer and Licensed Realtor, was present in opposition on behalf of The Refuge project in Selbyville for Lynch Farm Farmers, LLC and stated that the use jeopardizes property values for adjacent residential uses, and that in her opinion it could cause depreciation of property values.

Mr. Wheatley announced that he will be abstaining from participating in this public hearing realizing that he may have a conflict of interest.

Mary Schrider-Fox, Attorney with Steen, Waehler & Schrider-Fox, LLC was present in opposition as Town Solicitor for the Town of Selbyville and stated that the Town of Selbyville has a Memorandum of Understanding (MOU) with the County for Land Planning Coordination; that the MOU calls for the Town and the County to cooperate in the land planning process and to communicate with one another about the implementation of their respective land plans, particularly concerning the Intergovernmental Coordination Zone; that such intergovernmental coordination has been encouraged by the State in its dealings with the Town; that the Town's Comprehensive Plan, approved by the State, tasks the Town with participating in the County land planning decisions when the areas surrounding or near the Town's boundaries are concerned; that the Town strongly opposes this application; that according to the Town's Comprehensive Plan, the site is located within the Intergovernmental Coordination Zone and in the Town's planning area; that the site is in an area targeted for annexation; that the site is located in a small enclave that is largely surrounded by property already annexed into and located with the Town; that the Town's Comprehensive Plan references that such enclaves are a priority for annexation into the Town in the future; that the location of the site on Route 54 makes it an annexation priority according to the Town's Comprehensive Plan; that the Town's Engineers have prepared a zoning map of the Town, the site, as well as the zoning of the property that surrounds this area; that the surrounding property is zoned R-4, a residential designation that allows for low-density residential development of single family dwellings; that commercial storage facilities are not listed as a permitted use, conditional use or special use exception in the Town's R-4 zoning district; that the R-4 zoning district is the only district in the Town that is eligible to seek a Residential Planned Community (RPC) overlay designation under the Town's regulations; that storage facilities are not listed as a possible permitted use in an RPC district in Town; that in view of the likely annexation of the site by the Town, in accordance with its Comprehensive Plan, and the existence of residentially zoned property, that does not allow for storage facilities, located within the Town surrounding the site, the Town feels that approval of this conditional use request will interfere with and place the land planning efforts of the Town in jeopardy; therefore, the Town of Selbyville strongly opposes this application and respectfully requests that the Commission recommend denial.

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

Mr. Smith stated that the Applicant's presentation was somewhat vague.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0. Mr. Wheatley did not participate in the discussion.

OTHER BUSINESS

Advanced Fiberglass Tech
CU #1767 Site Plan – Road 48

Mr. Abbott advised the Commission that this is a site plan for a boat repair shop located on 1.20 acres in an AR-1 District; that this conditional use was approved on February 10, 2009 with 9 conditions; that the conditions of approval are noted on the site plan; that there is an existing 2,223 square foot metal building and a storage area surrounded by a 7-foot chain-link fence; that a 900 square foot addition is proposed to the rear of the existing metal building; that this building will be for repairs for taller boats that cannot fit inside the existing building; that there are also four accessory buildings located on the site; that the existing sign along Road 48 is noted that it is to be relocated inside the property line; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; 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.

Mr. Johnson questioned how access to the addition will be obtained.

Mike Cotton, P.E. advised the Commission that access to the addition will be from an interior gravel driveway that surrounds the existing building.

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.

Jim's Bait and Tackle Shop
CU #1885 Site Plan – Route 17

Mr. Abbott advised the Commission that this is a site plan for a bait and tackle shop located on 3.35 acres in an AR-1 District; that this conditional use was approved on April 12, 2011 with 9 conditions; that the conditions of approval are noted on the site plan; that the proposed bait and tackle shop will be located in an existing 703 square foot building; that 5 parking spaces are required and 6 spaces are proposed; that the parking area is proposed to be covered with stone or shell; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that if preliminary approval is granted, final 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. Smith, seconded by Mr. Ross 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.

Banks Borrow Pit
CU #1897 & CU #1949 Site Plan – Road 348

Mr. Abbott advised the Commission that this is a site plan for a 17.0 acre borrow pit located in 31.02 acres in an AR-1 District; that this conditional use was approved on June 12, 2012 with 20 conditions of approval; that an amended conditional use for the access to the site was approved

on December 11, 2012; that the conditions of approval are noted on the site plan; that the site plan complies with the zoning code and the conditions of approval; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

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

Breakwater MR/RPC
Revised Record Plan – Road 267

Mr. Abbott advised the Commission that this is a request to revise 3 approved tri-plex units to a duplex and to relocate Lot 5B and Lot 37B to the west side of Pilot Boat Drive and to relocate 9 parking spaces to the west side of Pilot Boat Drive near the relocated Lots 5B and 37B and adding 9 additional parking spaces; that the proposed setbacks for the revised units will be the same as the existing approved plan which is 15 feet from the front yard, 5 feet from the side yards and 10 feet from the rear; that there is not an increase in the total number of units; that since the project is a residential planned community, the Commission is required to approve any revisions; and that the Commission was previously provided a copy of the site plan.

Ben Gordy with Ocean Atlantic advised the Commission that the additional parking provides for 3 spaces per unit, which was under the old parking requirements.

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

Hitchens Auto Sales, LLC
Amended Condition CU #1667 – Route 18

This item was removed from the Agenda on January 29, 2013.

Emily Slacum Johnson
Lot on 50' Easement – Route 18

Mr. Abbott advised the Commission that this is a request to subdivide a 0.75 acre lot with a dwelling and an accessory building located on it with access from a 50-foot easement out of a 143.42 acre parcel; that the owner is proposing to extend a 50-foot easement over an existing gravel driveway at the end of an existing 50-foot private road known as Diamond J. Drive; 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. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Branson S. Smith
Lot on 50' Right of Way – Road 535

Mr. Abbott advised the Commission that this is a request to subdivide a 1.0 acre lot with a dwelling located on it out of a 32.66 acres parcel; that this would be the first lot subdivided out of this site; that this site was the subject site of a major subdivision for 15 lots which the Commission denied on October 27, 2011; 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. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Van Gabriel Terlmezian
3 Lots and 50' Right of Way – Road 249

Mr. Abbott advised the Commission that this is a request to subdivide a 16.14 acre parcel into 4 lots; this request proposes to create a 2.18 acre lot, a 2.14 acre lot and a 10.92 acre lot with access from a 50-foot right of way; the owner is proposing to create the 50-foot right of way over an existing roadway; the remaining 0.90 acre lot will have an entrance off of Road 249; that there is an existing dwelling located on the 0.90 acre lot; that this site was the subject site of a major subdivision application in which the Commission granted preliminary approval for 5 lots on September 8, 2010; 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 site will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

The Commission discussed the number of lots proposed and whether DelDOT has commented on the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action pending comments from DelDOT in reference to the proposed entrances to the lots. Motion carried 5 – 0.

Meeting adjourned at 7:30 p.m.