



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF FEBRUARY 23, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 23, 2006 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. Wheatley, Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Burton with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve the Minutes of February 9, 2006 as circulated.

OLD BUSINESS

C/Z #1588 – application of **ALAN S. RIECK** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying southwest of Route One, 170 feet southeast of Best Lane and 200 feet north of Red Mill Pond, and being Lots 2, 3 and 4 of Red Mill Manor Subdivision, to be located on 38,929 square feet, more or less.

The Commission discussed this application, which has been deferred since January 9, 2006.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1588 for Alan S. Rieck to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

- 1) The project is located within the Environmentally Sensitive Development Area according to the 2002 Update.
- 2) This change in zone will not have an adverse impact on the neighboring properties or community.

- 3) The project is in an area that contains other B-1 and C-1 zoned properties and Conditional Uses. Other uses in the area include tire sales, antique shops, music stores, builders and other offices.
- 4) The Applicant has stated that he will meet or exceed all DelDOT requirements.
- 5) B-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping and personal service activities, and that such uses should serve low density or medium density residential neighborhoods. This proposed change of zone is consistent with the stated

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purpose of the B-1 zone, and the location along Route One is appropriate for such zoning.

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

PUBLIC HEARINGS

Subdivision #2004 – 59 - - application of **DONALD K. MILLER AND DEBORAH BRITTINGHAM** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 2.15 acres into 2 lots, located south of Road 494, 1,350 feet east of Road 498.

Mr. Abbott advised the Commission that this application is necessary since the applicant has already created the maximum number of lots permitted without a public hearing.

The Commission found that Deborah Brittingham was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that she has already created 4 lots; that the 2 lots are the highest and best use for the property; that she has spoken with the neighbors and no one has raised any objections; that the proposed lots are in character with the area; that stick built homes will be built on the lots; that the lots are 0.76-acres and 1.38-acres; that central sewer and water are not available in the area; that individual wells and septic systems will be used; that there is a very small amount of wetlands located at the rear of lot 6; and that there are not any residual lands.

The Commission found that no parties appeared in support of or in opposition to this application.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried 4 votes to none, with Mr. Johnson not voting, to defer action pending receipt of a septic feasibility statement or approved site evaluations from DNREC. Motion carried 4 – 0 – 1.

Subdivision #2005 – 18 - - application of **JKC, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 150.00 acres into 133 lots (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 412, 0.8 mile northwest of Road 410.

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Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on June 15, 2005 and that the report will be made a part of the record for this application; that the applicants submitted an Exhibit Booklet containing a Presentation Outline, Site Plan, Soil Map, Map of Surrounding Area, Letter from Assessment Division, Wetlands Letter – Jurisdictional Determination Application, DNREC On-site Septic Feasibility Letter, and a PLUS Reply Letter, and a revised preliminary plan that will also be made a part of the record.

Mr. Abbott advised the Commission that Mr. and Mrs. Gene Stowell sent a letter requesting that future homeowners are aware of a poultry operation on an adjoining parcel.

The Commission found that Jim Fuqua; Attorney, Jack and Keith Cordrey; Applicants, and Tom Potts; Engineer with AES Architects, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located on the north side of Road 412 west of Millsboro; that 130 lots are proposed on 150.00 acres; that the original site plan called for 133 lots and has since been revised as per the PLUS meeting; that the design meets the requirements of the AR-1 District and the Cluster Ordinance; that ½ acre lots are proposed; that DNREC has issued a septic feasibility statement; that the average lot size is 0.70-acres; that 200 lots are permitted by the cluster ordinance; that the proposed density is 0.86 lots/acre; that the subdivision will maintain a rural character; that the property has been in the Cordrey family since 1945; that the property is not productive for farming due to the sandy soils in the area; that Sheila's Branch Road is just over 1,000 feet in length; that a forested buffer 30 feet wide along the entire north perimeter is provided; that a 50 foot landscaped buffer along Road 412 is provided; that none of the lots has direct access to Road 412; that there are not any wetlands located on the lots; that none of the lots are located in a flood plain; that the site contains a mature stand of trees; that as many trees as possible will be preserved; that there is a 50 foot buffer along both Long Drain Ditch and Sheila's Branch; that an existing pond on the site will be converted for use as a wet storm water pond; that there are 22 acres of wetlands; that there are 19 acres of active open space; that there are 41 acres or 27% of the site as open space; that the restrictive

covenants will require an Architectural Review Board to review all plans; that the minimum size of the dwellings will be 2,200 square feet for one-story dwellings and 2,500 square feet for two-story dwellings; that there will be a mandatory membership in the homeowners' association; that there are not any known historical or cultural resources that would be impacted; that the lands to the south of the property border Sheila's Branch; that a stream connects the pond to the west of the property to Ingram's Pond; that the lands south of Sheila's Branch are owned by the State and are deed restricted that they cannot be developed; that most of the lots back yards front a wooded buffer or park to provide private and scenic back yards; that no cut zones and clearing restrictions will reduce the impact on the forest and provide privacy; that the site is located on high

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ground and includes hills and contours; that most of the sites can accommodate full basements; that there are three parks proposed in the project; that two trails are proposed; that open space is provided; that central water will be provided by Tidewater Utilities; that fire protection will be provided by the Millsboro Fire Department; that the streets will be built to State of Delaware Standards; that the storm water management design will meet all State and County requirements through best management practices; that the developers have met with the State agencies and that the plan has been revised to address the State's comments; that a standard subdivision would not provide as much open space as the proposed plan provides; that there will not be any adverse impacts to the area; that the subdivision is similar to surrounding developments in the immediate area; referenced the items listed in Section 99-9C of the Subdivision Code as referenced in Section 1.9 of the Exhibit Booklet; that there are no plans for a boat dock on Ingram's Pond; that a tennis court is not planned; and submitted a map of the area, 3 letters in support of the application, and proposed findings and conditions of approval into the record.

The Commission found that no parties appeared in support of this application.

The Commission found that Christine Keeler and Joan White, area residents, were present in opposition to this application and advised the Commission that Road 412 is a heavily traveled road; that there are already several developments in the area; that the proposed streets would be better than the existing roads in the area; that there are safety concerns for children in the area; that there would be negative impacts on the adjoining State lands and area schools; and that there is hunting in the area.

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

Mr. Gordy stated that he would move that the Commission grant preliminary approval based on the record and for the following reasons:

1. The project is located within the AR-1 Development Area.
 2. The development is designed in accordance with the Cluster Development Ordinance.
- The proposed cluster design is superior to a standard subdivision with 41 acres of open

space. Also, the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.

3. The applicant has proposed 130 lots within the project, which is less than the allowable density for an AR-1 subdivision on this land and is a density of 0.86 lots per acre.

4. The project will not have an adverse impact on the neighboring properties or community. Several residential developments are located in the immediate area and the proposed development is consistent with the nature of the area.

5. The Subdivision will include amenities such as walking paths, parks, pavilions, and an athletic field.

6. Central water will be provided to the project.

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7. The lots will be served by individual septic systems and DNREC has issued a feasibility letter for their use.

8. The site's design has a minimal impact on wetlands and no wetlands are included within any lot lines.

9. The development has been designed to maintain as many trees as possible.

10. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance and is subject to the following conditions:

- a) There shall be no more than 130 lots within the subdivision.
- b) The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, buffers, storm water management facilities, and other common areas.
- c) The storm water management system shall meet or exceed the requirements of the State and County.
- d) The entrance shall comply with all of DelDOT's requirements.
- e) Street lighting shall be provided, and the location of the streetlights shall be shown on the final site plan.
- f) The Applicant shall provide restrictions to minimize tree removal as represented. The areas of preserved trees shall be shown, along with a landscape plan, on the final site plan.
- g) No wetlands shall be included within any lot lines.
- h) The development shall utilize a central water system as represented.
- i) A multi-modal pathway with a minimum width of four feet shall be provided on at least one side of all streets.
- j) The final site plan shall be subject to the review and approval of the Commission.
- k) The restrictive covenants shall contain the Agricultural Use Protection Notice and a Notice of Hunting Activities in the area.
- l) Street naming and addressing shall be subject to the approval of the Sussex County Addressing Department.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2005 – 20 - - application of **ALBERT E. AND KAREN E. JOSEPH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 14.46 acres into 4 lots, located west of Road 458, 1,759.60 feet north of Road 464.

Mr. Abbott advised the Commission that this application is necessary since the applicants have created the maximum number lot permitted lots allowed by the Subdivision Ordinance.

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The Commission found that Albert and Robert Joseph were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for 4 lots; that DelDOT has granted an entrance approval for the lots; that DNREC has approved the septic designs for the lots; that lots 5 through 7 will require a standard or a low pressure pipe system and that lot 8 will require a mound system; that they have created 11 lots by right; that all of the lots are $\frac{3}{4}$ acres; that there are deed restrictions for the lots; that the minimum size of the dwellings will be 1,800 square feet; and that the residual lands contain 12 acres and will not be developed.

The Commission found that no parties appeared in support of or in opposition to this application.

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

Mr. Gordy stated that he would move that the Commission granted preliminary and final approval of this application based upon the record and for the following reasons:

1. The application is for land in the AR-1 District. It is consistent with the purposes of the AR-1 District and the Subdivision Ordinance.
2. The application is consistent with other approved lots along County Road 458 and will not have an adverse impact on neighboring properties.
3. The Applicant has stated that there will be restrictive covenants governing the use of the lots and the types of homes that will be built.
4. The Applicant has stated that the Agricultural Use Protection Notice will be contained in either the deeds or restrictive covenants.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary and as a final. Motion carried 5 – 0.

Subdivision #2005 – 21 - - application of **ALBERT J. BIERMAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 59.46 acres into 41 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northwest corner of the intersection of Road 74 and Road 446.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on June 15, 2005 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a letter of concern was received from Kenneth D. and Angela S. Guy and a letter in opposition was received from Burton Brittingham and that both letters will be made a part of the record for this application.

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The Commission found that Albert Bierman and Dudley Campbell were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 41 lots are proposed on 49 acres; that the site is zoned AR-1; that individual on-site septic and wells are proposed; that there are not any environmental concerns with the property; that the existing dwelling on site will remain on the development; that the average lot size is 1.20 acres; that the cul-de-sac length is approximately, 1,400 feet long; that the residents of the development will police the speed limit in the development; that traffic calming devices can be installed; that the proposed development is in character with other developments in the area; that only stick built homes will be permitted; that the minimum dwelling size will be 2,000 to 2,500 square feet; that a homeowners' association will be established; and that buffers will help to alleviate trespassing concerns.

The Commission found that no parties appeared in support of this application.

The Commission found that Vincent Bonowicz, an adjoining property owner, was present in opposition to this application and advised the Commission that he moved here from New Jersey to be near trees; that if this development is approved, the trees in the area will be destroyed; that the proposed entrance goes through the only wooded area on the site; and that there is water run-off problems and poor drainage in the area.

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

Motion by Mr. Gordy, seconded by Mr. Burton and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

Subdivision #2005 – 22 - - application of **GORDON RAMEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 8.88 acres into 6 lots, and a variance from the maximum

allowed cul-de-sac length of 1,000 feet, located east of Route 30 (Atlanta Road), 965 feet south of Road 547 (Boyce Road).

This application was withdrawn on January 26, 2006.

Subdivision #2005 – 23 - - application of **JANET AND BAILEY W. MAULL, III** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 6.70 acres into 2 lots, located at the southwest corner of the intersection of a 50' private road and Penn Central Railroad, and 750 feet south of Route 9.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on July 20, 2005 and that the report will be made a part of the

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record for this application.

The Commission found that Bailey Maull, III was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 2 lots are proposed; that the proposed 3.0-acre lot will be for his son to build a home on; that the proposed lots front an existing 50-foot private road; that the adjoining property owners submitted letters of no objection to the proposed subdivision; and that the existing driveway is paved in its' entirety.

The Commission found that no parties appeared 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 move that the Commission grant preliminary and final approval for this application based on the record and for the following reasons:

1. All of the adjoining property owners are in support of this application.
2. The proposed subdivision is in character with the surrounding area.
3. The proposed subdivision will have no adverse impacts on the surrounding property values.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary and as a final for the reasons stated. Motion carried 5 – 0.

Subdivision #2005 – 24 - - application of **CASCADE PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 258.64 acres into 494 lots (Cluster Development),

located north of Route 16, south of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road).

Mr. Robertson advised the Commission that he would not be participating in this hearing.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on July 20, 2005 and that the report will be made a part of the record for this application; and that the applicants submitted an Exhibit Booklet containing references to Section 115-25E of the Zoning Ordinance and Section 99-9C of the Subdivision Ordinance, Perimeter Survey information, Application and Plans, Covenants and Restrictions, Technical Advisory Committee Report, Office of State Planning Application and comments, Soils Report, Agency Approvals, Nutrient Budget Report, and Details and that the Booklet will be made a part of the record for this application.

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Mr. Abbott advised the Commission that a petition with 59 signatures was received in opposition to this application, and that supporting statements have been received from Kenneth W. Redinger of Environmental Services, from CPR Property Management, L.L.C., Tidewater Environmental Services, Inc. and a septic feasibility statement from DNREC, and that these will all be made a part of the record for this application.

The Commission found that Pret Dyer and Scott Dailey of Cascade Properties, L.L.C. and Mark Davidson and JC Owens of DC Group, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project will be known as Captain's Run; that the proposed use is permitted by the Zoning Ordinance and Subdivision Ordinance; that they are willing to listen to the public's and agency concerns; that the development will be a low density residential development; that a traffic impact study has been performed and reviewed and approved by DelDOT; that commercial uses were originally included within the design but have since been removed; that the open space in the project exceeds 30%; that the streets will be private; that there are 4.6 miles of bike/walking trails located throughout the development; that there are 10 miles of trails total; that the minimum lot size is 7,500 square feet; that the project has been designed utilizing a conservation design; that the storm water management design will utilize bio-retention ponds with rain gardens and swales; that the storm water management will improve the water quality in the area; that the existing borrow pit on the site will be reshaped into a recreational pond; that the storm water management ponds will be aerated; that best management practices will be implemented; that a nutrient budget plan has been prepared; that a wetlands delineation has been performed and submitted to the Army Corps of Engineers for a jurisdictional determination; that no negative impacts on the wetlands are anticipated; that ditch crossings will be bridged; that there are two entrances to the project with one being off of Route 16 and the other off of Road 231; that DelDOT will require improvements as part of the traffic impact study approval and that the developers will comply with these

recommendations; that a school bus and DART shelter will be provided; that the required 30 foot buffers have been provided; that there is a 100 foot buffer around the perimeter of the development; that the site adjoins lands owned by the Nature Conservancy and an Agricultural Preservation District; that Tidewater Utilities will provide central wastewater treatment; that central water will also be provided; that this project creates more open space than a standard subdivision would; that the wetlands have been buffered; that recreational amenities are provided; that there will be a reclamation of the borrow pit on the site; that there are no rare or endangered species that will be impacted; that approximately 48.4 acres of forested areas would be disturbed; that the pool is not centrally located within the development; that 52% of the site is open space; that the recreational amenities will include kayaking, canoeing, paddle boats, fishing, walking trails, biking trails, athletic fields, a pool and a community center; that the developers will give donations to the Nature Conservancy and the area fire companies after the initial sale

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of each lot; that New Market Village has a greater density than what is proposed in this project; that the developers will implement a value housing concept for purchasers; that improvements will be required along Reynolds Pond Road; that street lights will be provided; that more tot lots could be provided; and addressed the items referenced in Exhibit Booklet relating to Section 99-9C of the Subdivision Ordinance.

The Commission found that no parties appeared in support of this application.

The Commission found that Logan Herbert, Tom Davis, Francis Herbert, John Herbert, and Linda Davis, all area residents, were present in opposition to this application and advised the Commission that the project will be out of character with the area; questioned if an environmental impact study around the borrow pit has been conducted; that Road 231 is in need of upgrades; questioned the types, prices and sizes of the proposed dwellings; that the project will have negative impacts to the wildlife in the area; that there are deer, turkeys, and Bald Eagles in the area; raised questions about groundwater recharge to the area; raised concerns about traffic and children safety in the area; that the area is predominately farming and the project will have negative impacts on the farming community; and questioned what type of fencing will be erected; and submitted a booklet that will be made a part of the record.

The Commission found that Mr. Dyer responded that an Environmental Phase 1 Study has been performed; that DelDOT has made recommendations for improvements along Route 16 and Road 231; that the fence will be a 6-foot chain link fence with green slats; and that they cannot age restrict the lots.

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

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

Meeting adjourned at 9:45 p.m.