

MINUTES OF THE REGULAR MEETING OF FEBRUARY 27, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 27, 2014, 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. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of February 13, 2014 as amended. Motion carried 4 – 0, with Mr. Johnson abstaining.

OLD BUSINESS

**Conditional Use #1978 – John W. Davidson**

Application of **JOHN W. DAVIDSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a professional office with contractor storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.6425 acres, more or less, lying southwest of Route 5 (Harbeson Road) 1,915 feet northwest of Route 48 (Hollyville Road) (Tax Map I.D. 2-34-10.00-70.16).

The Commission discussed this application which has been deferred since February 13, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use #1978 for John W. Davidson for a professional office with contractor storage based upon the record made at the public hearing and for the following reasons:

- 1) The location along Route 5 near the Indian Mission intersection is appropriate for this type of use. It is in an area where other commercial and business uses exist, including a car sales lot, warehousing, a mini storage facility, a boat sales and storage facility, a house moving and masonry yard and others. The State of Delaware Solid Waste Authority Transfer Station is also nearby.
- 2) The use will provide a service to Sussex County residents. The Applicant's business involves the re-use of dwellings and other structures that would otherwise be torn down when redevelopment occurs.
- 3) The proposed use is consistent with the Sussex County Comprehensive Development Plan, and it promotes the orderly growth of the County.
- 4) The project will not have an adverse impact on traffic as the proposed use does not generate large amounts of traffic to and from the site.
- 5) The use will not adversely affect neighboring properties or the community, as it is an extension of an existing commercial and business area.
- 6) This recommendation is subject to the following conditions and stipulations:

- A. The use shall be limited to professional offices and contracting, including the Applicants' masonry, dumpster rental and house moving business.
- B. Although permitted for use as the Applicant's house moving business, the site shall not become a sales facility for used or relocated houses, mobile homes or manufactured homes.
- C. All security lighting shall be screened from view so that it does not shine on neighboring properties or roadways.
- D. No junked or unregistered vehicles, trailers or similar equipment shall be stored on the site.
- E. The Final Site Plan shall depict all areas used for outside storage, including:
  - (a) Vehicles, trailers and similar equipment storage and parking;
  - (b) Storage of house moving materials such as beams, axles, dunnage, jacks, etc.;
  - (c) Materials associated with the masonry business;
  - (d) Construction dumpsters;
  - (e) Structures temporarily moved to the site while in transit between locations; and
  - (f) Any other outside storage associated with the Applicant's business.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for all required storm water management governed by that office.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.
- H. The project shall be subject to all DelDOT requirements regarding entrances and roadway improvements.
- I. The hours of operation on this site shall be from 7:00 a.m. until 5:00 p.m.

Motion by Mr. Smith, seconded by Mr. Burton, 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 and stipulations stated. Motion carried 4 – 0, with Mr. Johnson abstaining.

**Subdivision #2013-10 – David Green**

Application of **DAVID GREEN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 32.06 acres into 5 lots, located east of Coolspring Road (Road 290) 4,000 feet north of Stockley Road (Road 280) (Tax Map I.D. 2-34-5.00-38.00).

Mr. Abbott advised the Commission that this is the final record plan for a 5-lot strip subdivision; that the Commission granted preliminary approval for 5 lots on November 14, 2013; that DelDOT has issued a Letter of No Objection; and that the record plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final. Motion carried 5 – 0.

**Subdivision #2013-6 – Cannon Road Investments**

Application of **CANNON ROAD INVESTMENTS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 142.019 acres into 264 lots (31 lot expansion to a previously approved 233 lot preliminary approved application #2010-6), located on the east and west side of Cannon Road (Road 307) with the intersection on the southwesterly side of Indian Mission Road (Route 5) (Tax Map I.D. 2-34-16.00-P/O 19.00 and 2-34-17.00-358.00–381.00).

Mr. Abbott advised the Commission that this is the final record plan for Phase 1 of the Pelican Point subdivision; that this phase contains 87 single-family cluster lots; that the Commission granted preliminary approval for a 31 lot expansion to a previously approved 233 lot subdivision on June 27, 2013; that this phase is the same as the preliminary plan; that the record plan meets the requirements of the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve Phase 1 only, as a final. Motion carried 5 – 0.

PUBLIC HEARINGS

**Conditional Use #1979 – Thomas and Judy Munce**

Application of **THOMAS AND JUDY MUNCE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail package store and tavern to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.033 acres, more or less, lying east of U.S. Route 113 and 2,800 feet north of Route 16 (Tax Map I.D. 2-30-26.00-35.01).

The Commission found that on September 30, 2013 DelDOT provided comments in the form of a memorandum referencing that a Traffic Impact Study was not recommended and that the current Level of Service “B” of U.S. Route 113 at this location will not change as a result of this application.

The Commission found that on February 26, 2014 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the Ellendale Primary Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal 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.

Mr. Lank advised the Commission that the site is located in a Developing Area according to the Sussex County Comprehensive Plan Update.

The Commission found that Mr. and Mrs. Thomas Munce were present and stated in their presentation and in response to questions raised by the Commission that they want to reopen the package store/tavern that has historically existed at this site; that they are proposing that the

tavern be open for business from 12:00 Noon to 12:00 Midnight, and that the package store be closed at 9:00 p.m.; that they are not planning on cooking any foods on premise; that they will be offering snacks; that they anticipate a total of 3 to 4 employees; that DelDOT has reviewed their entrances and no changes have been determined; that they applied for the Conditional Use since the business had been closed in excess of two years; that they plan on using the existing signage on the premise; and that they have no plans to expand the building at this time.

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

### **Change of Zone #1740 – Zhenguo Zhang**

Application of **ZHENGUO ZHANG** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.3522 acres, more or less, land lying southwest of Route One (Coastal Highway) 1,000 feet northwest of Road 258 (Hudson Road) (Tax Map I.D. 2-35-16.00-64.00).

The Commission found that on September 17, 2013 DelDOT provided comments in the form of a letter and memorandum referencing that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study will be evaluated when a subdivision or land development plan is proposed; that the property owner can develop a rights-in / rights-out access to Delaware Route One for a site generating an average of 40 vehicle trips per day; and that the current Level of Service “E” of Route One will not change as a result of this application.

The Commission found that on February 26, 2014 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal 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 on January 17, 2014 the Office of State Planning Coordination provided comments in the form of a letter referencing that the Applicant met with State agency planners on December 18, 2013 for a Preliminary Land Use Service meeting and that this letter provides comments on the Strategies for State Policies and Spending, and comments on Code Requirements and Agency Permitting Requirements from DelDOT, the Department of Natural Resources and Environmental Control, and referencing that the Applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments

received as a result of the pre-application process, noting whether comments were incorporated into the project design or not, and the reason therefore.

Mr. Lank advised the Commission that he has not yet received a response from the Applicant relating to the comments from the State agency planners.

Mr. Lank advised the Commission that the site is located in a Low Density Area according to the Sussex County Comprehensive Plan Update.

The Commission found that Zhenguo Zhang and Miaohou Xu were present and stated in their presentation and in response to questions raised by the Commission that Mr. Zhang is a practicing Acupuncturist; that he needs an office in this area for his patients; that he purchased this property so that he can develop an office on the premise; that he may also offer massage therapy and chiropractic services; that he has offices in Dover and Lewes; that he will be open at this location three (3) times per week seeing approximately five (5) patients per day; that other commercial zoning and uses exist in the immediate area; and that he chose to apply for the rezoning, rather than Conditional Use.

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

#### **Change of Zone #1743 – Charles and Cristy Greaves**

Application of **CHARLES AND CRISTY GREAVES** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 18,886 square feet, more or less, land lying southeast of Route 16 (Broadkill Road) across from Road 233 (Reynolds Road) (Tax Map I.D. 2-35-15.00-25.00).

The Commission found that on November 13, 2013 DelDOT provided comments in the form of a memorandum referencing that a Traffic Impact Study was not recommended and that the current Level of Service “C” of Route 16 at this location will not change as a result of this application.

The Commission found that on February 26, 2014 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal 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.

Mr. Lank advised the Commission that Mr. Greaves submitted a request to be reviewed by the Preliminary Land Use Service agency planners on December 10, 2013; that he was scheduled for a PLUS meeting on January 22, 2014; and that the Department has not received any comments from the Office of State Planning Coordination to date.

Mr. Lank provided the Commission with a copy of an exhibit packet provided by the Applicant on February 18, 2014 which included a copy of the application form; a statement by the Applicant; a copy of the survey of the property; and a series of aerial photograph and aerial Google maps, and photographs of the properties around the site.

Mr. Lank advised the Commission that the site is located in a Developing Area according to the Sussex County Comprehensive Plan Update.

The Commission found that Charles and Cristy Greaves were present and stated in their presentation and in response to questions raised by the Commission that they are hoping to improve the value of the property; that the residence is surrounded by commercial properties on three (3) sides and across from commercial property; that the only historical property in the area is the Robbins Homestead across Route 16; that there are no burial grounds on this property; that an on-site septic system and well exist on the property; that he met with the Office of State Planning Coordination and the PLUS agencies; that retail and professional office space are proposed; that the building will not be used as a dwelling; that a 35 foot wide commercial entrance exist adjacent to the property; that they are proposing an antique store in the front and office space in the rear; and that there will not be any residential occupancy of the building.

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. Burton stated that he would move that the Commission recommend approval of C/Z #1743 for Charles and Cristy Greaves for a change of zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

- 1) The parcel is surrounded by commercially zoned property, and residential use is no longer the highest and best use of the property. A rezoning will make the parcel consistent with its surroundings.
- 2) The location along Route 16 is appropriate for a CR-1 zoning.
- 3) The rezoning will not adversely affect the adjacent properties, the neighborhood or area roadways.
- 4) No parties appeared in opposition to the application.
- 5) Any change in the site will require site plan approval from the Sussex County Planning and Zoning Commission.

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.

### **Change of Zone #1744 – Phillip Cross and Prentice Watkins**

Application of **PHILLIP CROSS AND PRENTICE WATKINS** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 4.85 acres, more or less, land lying south of Route 18 (Lewes Georgetown Highway) 1,500 feet west of Road 258 (Hudson Road) (Tax Map I.D. 2-35-30.00-55.00).

The Commission found that the site was originally approved on June 19, 2006 by the Sussex County Board of Adjustment for a Special Use Exception for commercial greenhouse and nursery on less than five (5) acres; that DelDOT granted approval for the existing commercial entrance on January 5, 2007; and that the Office of Planning and Zoning approved the site plan for the produce stand and greenhouses on March 2, 2007.

The Commission found that on February 26, 2014 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal 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.

Mr. Lank advised the Commission that the site is located in a Development Area according to the Sussex County Comprehensive Plan Update.

The Commission found that Phillip Cross and Prentice Watkins were present and stated in their presentation and in response to questions raised by the Commission that they operated the Veggie Shack on the site since 2007; that the property is for sale, and that they have had a lot of inquiries; that the Realtor suggested that they apply for rezoning; that other commercial uses and zoning (B-1 Neighborhood Business, C-1 General Commercial, CR-1 Commercial Residential, and Conditional Uses) exist in the immediate area; that some of those commercial type uses include Peachtree Acres Rehab., Donut Connection, an automotive repair, and a retail bird and supply store; that large commercial areas exist to the east and west of the site; and that the property runs back to the railroad.

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 move that the Commission recommend approval of C/Z #1744 for Phillip Cross and Prentice Watkins for a change of zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

- 1) The parcel has nearby and adjacent commercial properties; the parcel has been used in the past as commercial property for a vegetable stand; and the property has an existing commercial entrance.
- 2) The location along Route 9 (Route 18) is appropriate for CR-1 zoning.
- 3) The rezoning will not adversely affect the adjacent properties, the neighborhood, or area roadways.
- 4) No parties appeared in opposition to the application.
- 5) Any change in the site will require site plan approval from the Sussex 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 this application be approved for the reasons stated. Motion carried 5 – 0.

#### OTHER BUSINESS

Alfonso Matos  
CU #1945 Site Plan – Route 20

Mr. Abbott advised the Commission that this is a site plan for a small storage facility located on a 19,964 square foot parcel that is zoned AR-1; that this conditional use was approved on January 15, 2013 with 10 conditions; that the 10 conditions of approval are noted and depicted on the site plan; that an existing 24-foot by 38.1-foot block building will remain and be used for the business; that the building is a legal non-conforming building; that the project will be served by on-site septic and well; that all agency approvals have been received; that the Commission recommended that this application be denied; and that the Commission was previously provided a copy of the site plan.

The Commission discussed this item and expressed concerns about tractor trailers backing into the site and onto Route 20; that Route 20 is a heavily traveled road; and questioned if DeIDOT has thoroughly reviewed the site.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action pending receipt of written confirmation from DeIDOT that approves trucks and tractor trailers backing into and out of the entrance to this site from Route 20. Motion carried 5 – 0.

Americana Bayside  
Final Site Plan – Parcel H

Mr. Abbott advised the Commission that this site plan originally received final approval on August 9, 2012; that on July 16, 2013 Condition #24 of Ordinance No. 2110 was amended to allow for a right in/right out and left-in for the commercial parcel on the south side of Route 54; that the amended site plan allows for the revised ingress/egress; 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.



E.L. and M.A. Isaacs Farms Limited Partnership  
Agricultural Preservation District – Route 30

Mr. Abbott advised the Commission that this is an application for an Agricultural Preservation District located west of Route 30, north of Road 227 and east of Road 228A in Cedar Creek Hundred; that the site contains 315 acres of crop land; that the purpose of this application is for a recommendation to the Delaware Agricultural Lands Preservation Foundation that the site be determined as an Agricultural Preservation District; and that the Commission was previously provided a copy of the application.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that the site be approved as an Agricultural Preservation District. Motion carried 5 - 0.

C. Elmer and Edith L. Marine  
Lot on 50' Right of Way – Marine Road

Mr. Abbott advised the Commission that this is a request to create a 1.55-acre parcel out of an existing 14.06 acres parcel; that if approved, this would be the third parcel having access off of Marine Road (a private 50-foot right of way); that the residual land has frontage along Road 80; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision proposing access from the 50-foot right of way shall be required to go through the major subdivision process; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve this request as submitted as a concept with the stipulation that any further subdivision of the property having access from Marine Road will be required to go through the major subdivision process. Motion carried 5 – 0.

Robert Mark Hopkins  
Lot & 50' Easement – Road 88

Mr. Abbott advised the Commission that this is a request to create a 1.60 acre lot with access from an existing 50-foot easement; that if approved, this would be the second parcel having access from the easement; 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, final approval would be subject to approval from the Delaware Agricultural Lands Preservation Foundation since the proposed lot is located in an Agricultural Preservation District; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept with the stipulation that final approval shall be subject to receipt of

approval from the Delaware Agricultural Lands Preservation Foundation since the proposed subdivision is located in an Agricultural Preservation District. Motion carried 5 – 0.

Rocklan Reynolds  
Lot on 50' Easement – Route 30

This is a request to create a 0.75 acre lot with access from a 50-foot easement out of a 5.82 acre parcel; that the owner is proposing to create the 50-foot easement over an existing driveway; that the residual lands will contain 5.07 acre, more or less; 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. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Senators – Hawkseye Subdivisions  
Interconnection Deletion Request

This is a request to delete an interconnection road between the Senators Subdivision and the Hawkseye Subdivision; that if the request is approved, this area would become an open space area; and that the Commission was previously provided letters from both homeowners' associations, the developers, and copies of the approved and proposed plans.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request to delete the interconnection road. Motion carried 5 – 0.

Villages at Herring Creek  
Lot 102 Revised Setback

Mr. Abbott advised the Commission that this is a request to revise the corner side yard setback from 40 feet to 30 feet along Camp Arrowhead Road; that this is an AR-1 standard subdivision and the minimum front yard setback is 30 feet from a private street; that since this lot is considered a corner lot, the setback could be a minimum of 15 feet from Camp Arrowhead Road; that when this project received final approval, the developers imposed a 40-foot setback on themselves along Camp Arrowhead Road; that the proposed 30-foot setback is greater than the minimum allowed 15 feet; and that the Commission was previously provided a copy of the survey for this lot.

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

CU #757 Harrington Equipment Co.  
Interpretation

Mr. Abbott advised the Commission that this conditional use for storage, a shop and office building for reconditioning of canning equipment was approved in 1983; that this is a request to

change the conditional use from the approved use to equipment storage, shop and office space for a construction company; that the Commission needs to determine if the proposed use is similar to the approved use or determine if an amended conditional use application is required; and that the Commission was previously provided copies of the Minutes of September 22, 1983 and a letter from the proposed purchaser.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to permit the proposed use since it is similar and that the only operation that will not be conducted is the reconditioning of canning equipment. Motion carried 5 – 0.

Meeting adjourned at 7:25 p.m.