



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 12, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 12, 2009 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. 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. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of February 26, 2009 as amended. Motion carried 4 – 0.

OLD BUSINESS

C/Z #1632 – application of **PELICAN LANDING-ROUTE 24, LLC** 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 Indian River Hundred, Sussex County, land lying northwest of Route 24, 800 feet east of Road 279 (Camp Arrowhead Road), to be located on 14.549 acres.

The Commission discussed this application which has been deferred since February 26, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1632 for Pelican Landing Route 24, LLC for a Change of Zone from AR-1 to B-1 Neighborhood Business based upon the record and for the following reasons:

1. The site is appropriate for the change of zone to B-1 Neighborhood Business, given its location on Route 24 in the vicinity of other business and commercial uses.
2. The permitted B-1 uses are appropriate and will benefit the nearby residents of the low density and rural neighborhood since there is not a nearby town center and the project will eliminate the need for residents to travel to Route One or the Long Neck area for necessary retail shopping and personal service uses.
3. The change in zone will not adversely affect neighboring and adjacent properties or the community.

4. DelDOT has reviewed the Traffic Impact Study for the project and will require the applicant to participate in the funding of roadway improvements in the vicinity of this property.
5. The project will be served by central water and will be served by County sewer once that service becomes available to this parcel.
6. The Final Site Plan for any proposed use of the property will be subject to the review and approval of the Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

PUBLIC HEARINGS

APD #2009-1 – application of **PATRICIA JOYCE HASTINGS, TRUSTEE** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Little Creek Hundred for two (2) parcels of land totaling 218.33 acres, more or less, located southeast of Road 509 (Susan Beach Road) and southwest of Road 515 (Bacons Road), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that this property has 193.33 acres of cropland and 25.00 acres of forestland; that the application was received from the Department of Agriculture on January 21, 2009; and that there are two (2) parcels involved in the application, one containing 91.46 acres and the other containing 126.87 acres.

The Commission found that Patricia Hastings was present on behalf of this application and stated that her husband, John Hastings, passed away while in the process of applying for this District, and that her family wants to continue the process to preserve the lands in agricultural use.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be approved since the property is zoned correctly and meets the concept and precept of the Comprehensive Plan.

C/U #1769 – application of **THOMAS KUCHARIK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 41,244 square feet, more or less, lying north of Route 9, 262 feet west of Road 282, and being Lot 12 of Stamper Farms.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “E” will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that there are two (2) soil types on this property; that the Applicant will be required to follow

recommended erosion and sediment control practices during any construction and to maintain vegetation upon completion of construction; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it is not likely that on-site drainage improvements will be required.

The Commission found, based on comments received from the Sussex County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that three (3) letters in support have been received by the Department.

The Commission found that Thomas Kucharik was present and stated in his testimony and in response to questions raised by the Commission that he has been operating the landscaping business since 1994; that he has had a business license since 1994; that he receives no deliveries at this location; that it is a family business operated by he and his brother; that he did receive a violation from the Planning and Zoning Department; that he has no intent to expand the business; that normal business hours are from 7:00 a.m. to 3:30 p.m. Monday through Friday; that the site is improved with a dwelling; that they store some equipment and materials on the site; that they have no need for a large advertising sign, but would like the option of placing a small sign on the site; that the existing 24' x 24' garage is utilized for storage; that they would like to build a similar 24' x 24' garage to the rear of the site for the storage of equipment and materials to be able to make use of the front garage as an accessory garage to the dwelling; that some materials are brought back to the site if left over from other jobs; and that they do not do any retail sales on 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.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U 1769 for Thomas Kucharik to operate a landscaping business based upon the record made at the public hearing and for the following reasons:

1. This project is in an area that has developed with other small scale business and commercial uses, and this is consistent with those other uses.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. The operation of a landscaping business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site, and there are few if any deliveries to the site.
4. This recommendation for approval is subject to the following conditions and stipulations:
 1. There shall be no more than two (2) employees of the company on the site.
 2. The hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday.
 3. No retail sales shall occur on site.

4. One unlighted sign shall be permitted, not to exceed 32 square foot in size.
5. Any dumpster shall be located in a fenced enclosure behind the dwelling.
6. All vehicles, utility trailers and equipment associated to the business shall be parked to the rear of the dwelling.
7. Any security lighting shall be installed with downward illumination and screening so that it does not impact neighboring properties or motorists traveling along Route 9.
8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0.

C/U #1825 – application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional water facility to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing a total of 2.25 acres, more or less, with easement area “A” containing 2.0 acres and easement area “B” containing 0.25 acres, lying north of Wilson Road (Road 244) on lands of The Jefferson School.

The Commission found that prior to the meeting the Applicants provided an Exhibit Booklet which includes a copy of the application form, a description of the proposed use, a copy of a letter from The Jefferson School, a copy of a letter from Artesian Water Company, Inc. to The Jefferson School describing the intent, a copy of Order No. 7033 Certificate of Public Convenience and Necessity to Provide Public Water Utility Services from the State Public Service Commission, a copy of the proposed site plan, a map showing the proposed location, potential water service area and municipal boundaries, photographs, proposed Findings of Fact and proposed Conditions of Approval.

The Commission found, based on comments received from the Sussex County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Sussex Conservation District, that there are four (4) soil types on this property; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation upon completion of construction; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it is likely that on-site drainage improvements will be required.

The Commission found that Scott Pinder, P.E. of Artesian Water Company, Inc. was present with Dennis Schrader, Attorney with Wilson Halbbrook and Bayard, P.A., and that they stated in their presentations and in response to questions by the Commission that Dean Sherman,

President of The Jefferson School Board, and John Umschlag of The Jefferson School were also present, and that they are proposing to convert the existing water treatment facility at The Jefferson School into a Public Utility (Water Treatment Facility); that the State Strategies reference that the site is located in an Investment Level 4 area; that the County Comprehensive Plan Update references that the site is located in a Low Density area; that the two (2) proposed sites on the property are both easement parcels; that the existing water treatment facility and two (2) wells are located on 0.25 acre; that a 2.0 acre site is proposed for future facilities; that the 2.0 acre site is wooded; that they plan on retaining as many trees as possible when improving the 2.0 acre site; that the closest dwelling off-site is approximately 800-feet from the proposed facility; that DNREC will have to approve the facility; that the facility will be at least 200-feet from any property line and 300-feet from any production wells to any existing wells off-site; that some storage of chemicals will be required; that the facility will be improved with monitoring and alarm systems; that the proposed service area is not yet defined; that they may connect to their proposed system at the Elizabethtown project near Milton; that their Certificate of Public Convenience and Necessity has been approved by the Public Service Commission; that other agency approvals will be required; that their intent is to have the option to erect a water tower, if needed in the future; that the water tower would be 145-feet tall, plus or minus; that the water tower would be painted with a neutral color; that the water tower may have a capacity of 1,000,000 gallons; that the two existing wells have a capacity to draw 310,000 gallons of water; that generators will be housed outside in a Type 2 Hospital Level enclosure to reduce noise; that the only possible changes in the 0.25 acre easement area will be landscaping; that construction will take place during off-season school days; that the facility will be an un-maned facility; that periodic inspections will take place for maintenance; that a wooded buffer will be maintained; that the facility will be designed to exceed the minimum setbacks from property lines; that the 2.0 acre easement facility will be fenced; that they will utilize the 0.25 acre facility immediately upon approval and are uncertain of the scheduling of the building of the water tower; and that the use meets the purpose of a Conditional Use as a public utility.

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/U #1825 for Artesian Water Company, Inc. for a regional central water facility based upon the record and for the following reasons:

1. The proposed use of the subject property as a regional central water facility is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.
2. The regional water facility with the conditions placed upon it will not have any adverse impact upon the County, its residents, or the environment.
3. The regional water facility is appropriate for this site because it is in an area where central water is not otherwise available. In addition, Artesian Water Company, Inc. is going to take over the existing water facility owned and operated by The Jefferson School. The Jefferson School has consented to this application.

4. The proposed use is subject to the review and approval of the Public Service Commission, DNREC and the Department of Health.
5. This recommendation is subject to the following conditions:
 1. One unlighted sign shall be permitted on the site to identify the operator of the system.
 2. With the exception of emergency generators and wells that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.
 3. Any elevated water tower construction on the site shall be neutral in color and shall not include any signage other than that which is necessary for emergency identification.
 4. The Final Site Plan shall be subject to review and approval by the Planning and Zoning Commission. It shall include the proposed location of any elevated water storage tanks or towers, which shall not exceed a height of 150-feet. The water tower and other facilities on the 2.0 acre easement site shall be located on the western portion of the site. It shall also include a landscape plan showing all vegetation, buffers and existing trees that will remain.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

C/Z #1634 – application of **REHOBOTH BEACH FILM SOCIETY** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Paynter Lane and Truitt Avenue within Truitts Midway Development, which is south of Route 24 and west of Route One, to be located on 11,033 square feet, more or less.

The Commission found that prior to the meeting the Applicants submitted an Exhibit Brochure which included information on the Rehoboth Beach Film Society, a Tax Map of the Subdivision showing the zoning, a Tax Map of the area at the Midway Intersection of Route 24 and Route One, photographs of the site and surrounding area, aerial photographs, and a copy of a proposed Deed which includes restrictions on the use of the property.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service “D” of Route 24 will not change as a result of this application; and that access to this site shall be from the existing entrance along Paynter Lane.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains one soil type; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Planning Area; that wastewater capacity is not available to this project; that the sewer planning study assumption for the parcel is 1.0 Equivalent Dwelling Unit, reflecting residential parcels in a residential subdivision; that the County Engineering Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses; that the proposed commercial zoning and commercial use is located on residential lands not previously identified for commercial use by the County Planning and Zoning Department; that the proposed use does not conform to the Comprehensive Land Use Plan; that only 1.0 EDU per parcel is available; that the current System Connection Charge Rate is \$4,132.00 per EDU; that the location and size of laterals or connection points shall be determined by the County Engineer; that the parcel is served with one 6-inch sanitary sewer lateral; that a lateral upgrade, at the property owners expense, could be required; that if the existing structure is to be removed, it must be properly disconnected requiring a disconnect permit, disconnection by a County licensed plumber and inspection by the County; that conformity to the North Coastal Area Planning Study will be required; and that a concept plan is not required.

The Commission found, based on comments received from the Office of State Planning Coordination for the Preliminary Land Use Service (PLUS), that their office, based upon discussion with the developer and members of the Planning and Zoning Department and as well a site review, feels that the proposed project is in keeping with the adjacent proposed and existing land use activities and will not require the project to be seen by the PLUS process.

The Commission found that one (1) letter in support was received by the Department from Margaret Q. LaFond.

The Commission found that two (2) letters in opposition were received by the Department from Stacey Barros and Randi Barros, and Thomas P. Mellon.

The Commission found that Sue Early, Director, and Fritz Schranck, President, of the Rehoboth Beach Film Society were present with Jim Fuqua, Attorney with Fuqua and Yori, P.A. and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to rezone this property to B-1 Neighborhood Business for the purpose of continuing the operation of the administrative offices for the Film Society; that they purchased the property in June 2006, after losing their lease at another site; that the Film Society converted the dwelling into their administrative offices; that the Film Society was originally formed in 1997; that the Film Society was formed as a non-profit group with interest in independent films in 2007; that the Film Society is in a unique situation; that the Film Society acted in good faith; that the Film Society has 1,300 members; that their major fund raiser is the "Rehoboth Independent Film Festival" which is held on several days in November; that in 2008 18,000 movie tickets were sold; that representatives of the Film Society were cited with a violation and advised by a Zoning Inspector that they may need to apply for a Conditional Use; that they immediately started the process by making application to DelDOT for comments; that they then found out that since the property was zoned MR Medium Density Residential they could not apply for a Conditional Use and that to continue with use of the property they would have to apply for rezoning to B-1 Neighborhood Business; that whether the use is considered as a

Conditional Use or a Change of Zone their only intent is to utilize the site for an administrative office for the Film Society; that they would like to have a 6.0 square foot sign on the premises; that adequate space is available on the site for parking; that they have replaced the roof, improved the interior of the structure, and maintain the site; that they plan on replacing the siding and to remove an old shed from the premise; that the site is located in an older traditional subdivision with mixed zoning; that due to the existing commercial and business uses in the area they feel that the administrative office use is compatible; that they do not agree with the concerns of the residents of the area; that they have been good neighbors; that they have attempted to make the B-1 request as similar to a Conditional Use as possible; that they are proposing a voluntary deed restriction which includes that the ownership and use of the herein described property shall be subject to the following restrictions and conditions: 1) The subject property shall be used exclusively as the administrative office of the Rehoboth Beach Film Society or use as a single family residence. No other use of the property shall be permitted regardless of the zoning designation of the property under the Sussex County Zoning Ordinance. 2) Any building on the subject property shall maintain the style and appearance of a single family residential structure. 3) One unlit sign not exceeding six (6) square feet in size identifying the Rehoboth Beach Film Society shall be permitted. 4) This restriction shall not be amended or modified without the written consent of a majority of the owners of lots in Truitts Midway Development, a plot of which is of record in the office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 1, Page 209.; that they are surprised at the County Engineering Department comments; that the restrictions should satisfy the area residents; and that they have no intent to change the use from the existing activity that has been there since 2006.

The Commission found that Mr. Fuqua submitted a letter in support from Randi Barros in replacement of the original letter in opposition.

Mr. Robertson advised those present that there are some Conditional Uses permitted in the MR Medium Density Residential District, but not for this type of use.

The Commission found that the representatives of the Film Society continued by adding that there is room on the site for 12 vehicles if you count the grass area as overflow; that the Board normally meets at larger facilities off-site; that they are only aware of the original complaint received when they first started improving the structure; that it is their intent to prepare the deed and restrictions and if the County Council approved the rezoning to immediately record the deed and restrictions; that currently there are three (3) employees; that there is no need for a commercial dumpster; that they would like to erect the 6 square foot sign on Truitt Avenue across from the commercial area, and not on Paynter Lane, the residential side of the premises; that they propose to maintain a residential appearance of the property; and that their normal business hours are from 9:00 a.m. to 5:00 p.m.

The Commission found that David Racine, Janice Burns, and Jim and Janice Yingling, landowners within Truitts Midway Development, were present in opposition to the rezoning and stated that the subdivision has existed for over 50 years; that eight (8) property owners are present in opposition; that a petition will be submitted in opposition on behalf of seventeen (17) property owners; that two (2) letters in opposition will also be submitted; that their difficulty is not the Film Society, but the rezoning from MR to B-1; that they are already aware that another

application may be submitted if this application is approved; that approval of the rezoning will create a precedent; that the majority of the residents oppose the rezoning, not the use; that the Film Society has been a good neighbor; that they question if the site can provide adequate space for parking; that commercial zoning already surrounds the subdivision and that they are already dealing with truck traffic, vehicles parking along Truitt Avenue, noise, trash, etc.; and that they have a fear of the domino effect with additional rezoning requests.

The Commission found that Mr. Racine submitted the petition and two (2) letters in opposition.

The Commission found that Mr. Fuqua suggested that an additional restriction could be added to the proposed deed that the property be rezoned back to MR Medium Density Residential if the property is proposed to ever be sold.

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

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/Z #1635 – application of **CHARLES DAVIDSON** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a C-1 General Commercial District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying south of Route 9, 2,750 feet west of Road 258 (Hudson Road), to be located on 6.0 acres, more or less.

The Commission found that the Applicant submitted an Exhibit Booklet prior to the meeting which contains references to the project team, a color survey of the property, a conceptual site plan, qualifications of Mark Davidson of Design Consultants Group, L.L.C., a copy of the application form, a survey of the property, tax information and the deed to the property, an aerial map showing business and commercial uses and zoning in the area, a rezoning plot, copies of a letter, a Support Facility Report, and an E-mail from DelDOT, a letter from the Office of State Planning Coordination, and a series of maps and aeriels.

The Commission found, based on comments received from DelDOT, that the Department originally requested a traffic impact study; that after meeting with the Applicant to discuss their plans for the project, the Applicant agreed to the placement of deed restrictions on the property to prohibit the uses on the property, therefore a traffic impact study will not be required; that because of the proposed change of zoning and expanded use, the Applicant will need to apply for a “Letter of No Objection” to determine the necessary off-site improvements; and that after issued the Applicant will need to apply for an entrance plan approval.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains two (2) soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently has plans to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Office of State Planning Coordination, for the Preliminary Land Use Service (PLUS), that their office, based upon discussion with the developer and members of the Planning and Zoning Department and as well a site review, feels that the proposed project is in keeping with the adjacent proposed and existing land use activities and will not require the project to be seen by the PLUS process.

The Commission found that Charles F. Davidson and Elva H. Davidson were present with Mark Davidson of DC Group and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to change the zoning of the site from AR- 1 and C-1 to CR-1; that the front portion of the site is zoned C-1 and is improved with a commercial donut bakery facility; that to the rear of the site is a railroad; that to the west of the site is the Harbeson Business Park; that the area around the site contains several business and commercial uses, i.e. the business park, a furniture store, a masonry business, a farmers market, an auto repair, etc.; that the existing 7,700 square foot bakery operation produces and delivers pastries to other bakery retail facilities in and around the County; that the site is in a Developing Area according to the Comprehensive Plan Update; that the site currently has an on-site septic system, a commercial entrance, stormwater management facilities, and an on-site well; that they propose to expand the existing bakery facility and to add pad sites to the rear for future development; that the property is located on Route 9, a direct route to Route One and the beaches; that Artesian Water Company, Inc. serves the existing "Beaver Creek" community with water and wastewater as well as providing wastewater services to the surrounding area; that future connection to Artesian's water and wastewater has been discussed with Artesian and will be available for the future development of this site; that the existing use on-site utilizes an infiltration stormwater system that is vegetated and helps provide for groundwater recharge; that future development of this property will incorporate the same type of stormwater system and will meet the standards of the State regulations; that the Applicant will meet or exceed all of DelDOT requirements; that the project will not have an adverse effect on the neighboring properties or community; that highly complementary support and services related to nearby business uses should be expected; that the project is located in an area where commercial uses exist with varying types of business and social services; that the commercial utilization of the property will provide employment opportunities for the residents of the County; that development of the property will generate revenues for the County from building permit fees, impact fees, inspection fees, and real estate taxes; that B-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located primarily along certain existing major thoroughfares where a general mixture of commercial and service activities now exists; and that in this case, with the existing commercial use already located on the property and the adjacent and surrounding character of the area and with the project located along Route 9 the use falls within the stated purpose of the Commercial CR-1 District and the County Comprehensive Plan Developing Area.

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 #1635 for Charles and Elva Davidson for a Change of Zone from AR-1 and C-1 to CR-1 based upon the record made at the public hearing and for the following reasons:

1. This property has frontage on Route 9 and the first 300 feet of the parcel is currently zoned C-1 with a commercial use situated on it. This Change of Zone application would rezone the entire parcel to CR-1 so that it is all uniformly commercially zoned.
2. The re-zoning is consistent with neighboring and adjacent properties and their uses, which include retail, warehousing, contracting, truck repair and other commercial and business uses.
3. The application will not have a significant effect on traffic, particularly with the limitations that DelDOT has required, prohibiting the following uses of the property that is the subject of this application, with the exception of the existing use on the property on the C-1 portion of the site: retail bakery, bank, delicatessen, filling station, fast food and high turnover sit-down restaurant, convenience store and pharmacy.
4. In considering whether a PLUS review is required, the Office of State Planning Coordination has stated that it feels that the proposed project is in keeping with the adjacent proposed and existing land use activities and will not require the project to be seen by the PLUS process.
5. CR-1 Zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping, personal and miscellaneous service activities, and that such uses should be located along arterial roadways where a general mixture of commercial and service activities now exists. In this case, the project between Route 9 and a railroad falls within the stated purposes of the CR-1 District.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1682 – application of **NICHOLAS VARRATO, JR. AND JOANN T. VARRATO** 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 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.

Mr. Lank reminded the Commission that they had held a public hearing on this site on January 22, 2009 for rezoning from AR-1 to CR-1 and that the Commission had expressed some concerns about such a rezoning; and that on January 23, 2009 the Applicant withdrew his application and re-applied for B-1 Neighborhood Business.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "B" of Jersey Road could change to a Level of Service "C".

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the parcel is in a growth and annexation area for the Town of Millsboro, and is not in an area where the County expects to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains one (1) soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard area or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Nicholas Varrato was present and stated in his presentation and in response to questions raised by the Commission that the property is already improved with buildings previously used for a photography studio, etc.; and that he proposes to provide neighborhood type businesses, possibly office spaces; and that DelDOT deeded him Layton Avenue and that he maintains the street.

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 #1682 for Nicholas Varrato, Jr. and JoAnn T. Varrato for a change of zone from AR-1 to B-1 based upon the record made at the public hearing and for the following reasons:

1. This site has been historically used for commercial or business purposes. The Applicant has owned it for many years and operated a photography studio at this site.
2. Given the size of the site and the limited uses permitted under the B-1 zoning classification, this Change of Zone will not have a significant adverse affect upon the neighboring or adjacent properties.
3. The Change of Zone will be consistent with other zoning classifications in the area, which include many neighboring B-1 zoned properties as well as business and commercial uses.
4. B-1 zoning is appropriate for this parcel to serve the needs of a relatively small area, primarily nearby rural, low density or medium density residential neighborhoods.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

OTHER BUSINESS

Ilona E. Holland
2 lots on 50' Easement – Road 618

Mr. Abbott advised the Commission that this is a request to subdivide a 1.72 acre parcel into 2 lots with access from an existing 50' private road; that the proposed lots will each contain 0.861 acre; that the owner of the private road has agreed to grant an easement to the Holland's for the use of the road; that the Commission approved the private road in September 1998; that if the request is approved, this approval would make 3 lots having access to the private road; that the request may be approved as submitted or an application for a major subdivision can be required; that if it is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to grant approval of the proposed subdivision with the condition that any further subdivision of the parcel will require a major subdivision application and if the existing dwelling stays intact, the lot cannot be subdivided unless the dwelling is removed or relocated to conform to the required setbacks.
Motion carried 4 – 0.

Meeting adjourned at 9:15 p.m.