



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 25, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 25, 2010 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. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, 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. Burton, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with 4 votes to approve the Minutes of March 11, 2010 as circulated. Motion carried 4 – 0 with Mr. Wheatley abstaining.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of March 17, 2010 as corrected. Motion carried 5 - 0.

OLD BUSINESS

C/U #1816 – application of **ANDREW AND CAROL WALTON** to consider the Conditional Use of land in a MR Medium Density Residential District for a marina with restaurant, retail and 4 multi-family dwelling units to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.84 acres, more or less, lying southwest of Oak Orchard Road, northeast of Pine Street and northeast of Bay Road in Oak Orchard.

Mr. Lank advised the Commission that this application was withdrawn on March 16, 2010.

C/Z #1675 – application of **BARRY BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Old Orchard Road (Road 269-A) and approximately 1,200 feet southeast of New Road (Road 266), to be located on 9.33 acres, more or less.

The Commission discussed this application which has been deferred since February 25, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1675 for Barry Baker for a change in zone from AR-1 Agricultural Residential to MR Medium

Density Residential based on the record made at the public hearing and for the following reasons:

- 1) The land is in the Environmentally Sensitive Developing District according to the County Comprehensive Land Use Plan. MR Zoning is appropriate in this area according to the Plan.
- 2) The MR Zoning is appropriate for the site since it will represent a transition between the adjacent residential single family zoning and C-1 General Commercial zoning. Across Old Orchard Road is a MR zoned subdivision and the Village of Five Points across the railroad tracks is a MR-RPC.
- 3) The proposed uses will also be consistent with uses on neighboring properties, which include commercial sites, townhouse style homes, multi-family dwellings, and single family dwellings.
- 4) The property will receive sewer service from the City of Lewes.
- 5) The property has central water available to it through Tidewater Utilities.
- 6) Site Plan approval for any use on the property will be subject to the review and approval of the 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.

C/U #1853 – application of **BARRY BAKER** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less, lying northeast of Road 268-A (Old Orchard Road) approximately 1,115 feet southeast of Road 266 (New Road).

The Commission discussed this application which has been deferred since February 25, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1853 for Barry Baker for 24 multi-family duplex-style units based upon the record made at the public hearing and for the following reasons:

- 1) The property is in an area where other residential development has occurred, including townhouse, multi-family and single family developments. The project is consistent with those developments, and will provide a transition between the adjacent single family uses on one side and C-1 commercial zoning on the other side of the project.
- 2) The project is in a Development District according to the Sussex County Comprehensive Land Use Plan.
- 3) The project site was known as the Donovan Site. The removal and disposal of solid waste from the site has been entered into the DNREC Brownfield Program. According to the Applicant, DNREC has stated that the site is also suitable for development. Cleaning up the site through redevelopment under a DNREC Contaminated Materials and Soils Management Plan will benefit the environment and provide for the health and safety of the inhabitants of the project and the surrounding area.
- 4) With the stipulations placed upon this approval and based upon Brownfield remediation program, there will be no adverse impact on neighboring or adjacent properties.

- 5) This recommendation for approval is subject to the following conditions:
- A. There shall be no more than 24 residential dwelling units.
 - B. The removal, disposal and monitoring of waster from the project site shall be in compliance with all DNREC requirements.
 - C. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, and any other common areas.
 - D. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
 - E. The project shall be served by central sewer through the City of Lewes Board of Public Works under a written "Utility Service Agreement". Sewer service by the City of Lewes shall be available at the site prior to the issuance of the first residential building permit.
 - F. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
 - H. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along at least one side of all streets.
 - I. As stated by the Applicant, there shall be a buffer around the entire perimeter of the site. The buffer shall comply with the requirements of Ordinance No. 1984. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design for the site, including the buffer areas.
 - J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
 - K. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Departments.
 - L. The Applicant shall cooperate with the local school district's transportation manager to establish a school bus stop area. The bus stop area shall be shown on the Final Site Plan.
 - M. The Final Site Plan shall contain the approval of DNREC or the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - N. The Final Site Plan shall depict an easement for access to the property at the rear of the site.
 - O. All site plans and condominium documents shall contain a notice that the site is a Brownfield Site. The Final Site Plan shall identify the methods of monitoring the site before, during and after cleanup.
 - P. The Final Site Plan and condominium documents shall contain a notice similar to the agricultural use protection notice that the site is in the vicinity of a concrete plant, and the dust, noise, traffic, etc. associated with that plant.
 - Q. The Final Site Plan for the development shall be subject to approval of the 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 and with the conditions stated. Motion carried 5 - 0.

C/Z #1694 – application of **CMF BAYSIDE, LLC** for an Ordinance to modify Condition No. 24 imposed on Ordinance No. 1433 for Change of Zone No. 1393, the application of CMF Bayside, LLC, for “Americana Bayside”, a MR-RPC Medium Density Residential District – Residential Planned Community, to allow revised commercial entrance locations as may be approved by DelDOT, and to permit the commercial use of a 1.27 acre parcel on the north side of Route 54 (Tax Map #5-33-19.00-17.01).

The Commission discussed this application which has been deferred since February 25, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of the requested modification of Condition No. 24 imposed on Ordinance No. 1433 for Change of Zone No. 1393 for the application of C.M.F. Bayside, LLC based on the record made at the public hearing and that the modified Condition No. 24 should read:

“All commercial activities shall be limited to the south side of Route 54, except for a 1.27 acre parcel designated Tax Map 5-33-19.00 Parcel 17.01, located on the north side of Route 54 on which commercial use shall be permitted subject to commercial entrance approval from DelDOT. Entrance to the commercial area located on the south side of Route 54 shall be a minimum of 300 feet from Route 54, except for a single right-in/right-out commercial entrance to a parcel designated as Tax Map 5-33-19.00 Parcel 16.00 which is subject to approval from DelDOT”.

This motion for modification of Condition No. 24 carried the following stipulations:

- 1) The site plan for Parcel “H” shall show an additional pedestrian and vehicular connection to and from Founders Avenue within Americana Bayside MR-RPC.
- 2) The Final Site Plan is subject to the approval of the Sussex County Planning and Zoning Commission.

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

PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be conducted.

Subdivision #2008-18 – application of **JAMES GUY VANDERWENDE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred, Sussex County, by dividing 10.99 acres into 6 lots, located east of Road 569, 250 feet northeast of Road 573.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since only strip lots are proposed; that lots 1 through 4 were approved in

2006; that lot 5 was approved in 2008; that the applicant has exceeded the number of “by-rights” lots permitted; that DelDOT issued a Letter of No Objection for lots 5 through 8; and that a Letter of No Objection is needed for lots 9 and 10.

James Vanderwende and Trey Hardesty, Real Estate Agent, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that there is no known opposition to the request; that DelDOT has approved the entrance locations for four of the lots; that DelDOT would only review 4 lots based on the County’s minor subdivision definition; and that they are aware that DelDOT would have to grant an entrance approval for lots 9 and 10.

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. Smith stated that he would move that the Commission grant preliminary and final approval of Subdivision #2008 – 18 for James Guy Vanderwende, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 6 lots on 10.99 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 6 lots within the subdivision.
 - B. All entrances shall comply with all of DelDOT’s requirements.
 - C. Preliminary and final site plan approval for this subdivision may be granted by the staff upon receipt of DelDOT entrance approval for lots 9 and 10.

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

Subdivision #2008-19 – application of **CHRISTIE A. RAINWATER** to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 12.00 acres into 4 lots, located east of Road 374 (Blackwater Road), 157 feet north of Road 353 (Burbage Road).

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since only strip lots are proposed; that the applicant has exceeded the

number of “by-rights” lots permitted; and that a Letter of No Objection is required from DelDOT.

Michael Rainwater was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he agrees with the application; that the proposed lots are for family members; and that the remaining 6 acres will be an extension to an adjoining parcel.

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

Mr. Smith stated that he would move that the Commission grant preliminary and final approval of Subdivision #2008 – 19 for Christie A. Rainwater, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth on the County.
2. The land is zoned GR, General Residential, which permits medium density residential development. The proposed subdivision density of 4 lots on 12.0 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 4 lots within the subdivision. Any further subdivision shall require another public hearing.
 - B. Final site plan approval shall be granted by staff upon receipt of DelDOT entrance approvals for the 4 lots.

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

C/Z #1670 – application of **NENTEGO PROPERTIES, LLC** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southeast of Route 24, approximately 2,500 feet westerly of Route 5 and Road 297 (Oak Orchard Road), to be located on 19.541 acres, more or less.

The Commission found that on February 1, 2010 the Applicant submitted an Exhibit Booklet which contains an Executive Summary with a boundary survey and site plan; an overview of current site conditions; references to the PLUS reviews and responses; references to compliance with zoning regulations; references to the Environmentally Sensitive Developing District Overlay Zone; 27 figures, maps, letters; and suggested proposed Findings of Fact. The Commission was also provided with copies of reduced copies of the Exhibit Boards being

presented during the public hearing, and a copy of a letter from Kevin Barrett, Principal of KLN B Retail Commercial Real Estate Services. The Exhibit Boards depicted: 1) an aerial rendering of the combination of the CR-1 boundaries, the existing C-1 boundaries, and a revised layout of the MR-RPC; 2) an aerial rendering of the previously conceptual C-1 and MR-RPC layout; and 3) an aerial map overlaid with commercial zoning in the area.

The Commission found that on January 26, 2010 the Sussex Conservation District submitted a memorandum which references that there are two soil types on the property; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood hazard areas or tax ditches are affected; that if may be possible that off-site drainage improvements will be required; and that on-site drainage improvements will be required.

The Commission found that on March 23, 2010 the County Engineering Department Utility Planning Division submitted a memorandum which references that the site is located in the Oak Orchard Sanitary Sewer District; that wastewater capacity is available for up to 4.0 EDUs per acre; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,352.00 per EDU; that the project is located in the Expansion No. 1 area of the Sewer District; that sewer service is not available to the parcel at this time; that regional infrastructure will have to be installed by the developer and the County in order to receive sewer service; that conformity to the North Coastal Planning Study and the Oak Orchard Expansion Area #1 Facilities Plan will be required; that the project is located in the Environmentally Sensitive Developing Area; that the County will serve a portion of the area during future sewer construction; that pipe line layouts have been identified to serve the project; that the developer has agreed to build regional sewer infrastructure that will serve the project and benefit several existing communities; that regional infrastructure to be built by the developer includes a pump station and segment of a new force main to the treatment plant; that in addition, the developer has agreed to fund a proportionate portion of a new force main to be construction by the County in order to serve the project and other areas; that County Engineering supports the project so long as it connects to the Sewer District and the total project does not exceed 4.0 EDUs per acre based on a total project size of 106.8 acres; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; and that a sewer concept plan must be submitted to the County Engineering Department for review and approval prior to the design of the sewer system.

The Commission found that Mark Handler, Principal of Nentego Properties, LLC was present with Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A., Scott Aja, Professional Engineer with McCrone, Inc., and D.J. Hughes, Professional Engineer with Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the developers feel that reduction of the RPC and expansion of the commercial area will better serve the area; that this rezoning includes two sites, 15.73 acres along Route 24 frontage and 3.68 acres behind the existing C-1 commercial zoning; that revised site plans for the reduction of the RPC will be submitted at some later date; that the number of residential units in the RPC will be reduced since acreage is being taken from the site; that the density will remain the same; that the site is located in a Low Density area and the Environmentally Sensitive Developing Area according to the Comprehensive Land Use Plan; that the site is located in an

Investment Level 2 according to the State Strategies; that Tidewater Utilities will provide water to the projects; that interconnectivity will be provided between this project, the existing C-1 commercial zoning, and the adjoining Riverside Plaza for both pedestrian and vehicular traffic; that the interconnections will allow residents of the Oak Orchard area to access the properties without traveling out onto Route 24 since there will be a connection to Oak Orchard Road; that they will provide a 60-foot setback minimum from Route 24; that a multi-modal path will be provided in the widening of Route 24 right-of-way; that 30-foot setbacks will be provided on the side property lines and that 50-foot easements for landscaping will be provided along the rear of the commercial zoning to buffer the RPC from the commercial areas; that they will exceed the minimum parking requirements; that that uses will be limited to those permitted in the B-1 Neighborhood Business District and the CR-1 Commercial Residential District; that they do not intend to apply for any additional Special Use Exceptions for development of the site; that PLUS has reviewed the site a couple of times; that they have requested the additional depth to be able to comply with DelDOT requests for a service road through the projects for a safer vehicular access; that they will meet water quality standards for the Inland Bays; that they will comply with the TMDL standard of a 40% reduction of nitrogen; that no rare or endangered species were found on the site; that there are no wetlands on the site; that an open space management plan is proposed as indicated in the Exhibit Booklet; that the developer of this project and Riverside Plaza have agreed to the interconnectivity and access road location; that a Traffic Impact Study was completed, submitted and reviewed by DelDOT; that they will comply with all of DelDOT's requirements; that there should be no negative impact on Route 24; that they received no negative comments from PLUS; that DelDOT has encouraged development of the site; that the interconnection to Oak Orchard Road is between the Indian Museum and the Boys and Girls Club; that stub access locations can be provided for future use of adjacent properties between the site and Layton Davis Road; that they will probably develop one of the commercial parcels at a time and construction will be subject to the real estate market; that maintenance will be shared between the commercial uses and the RPC; that the service road is actually an access road and that there will not be any parking along the access road; that they may request subdivision of the parcel so that they can develop two separate projects with 75,000 square feet of commercial building on each; that Tidewater Utilities does have a wellhead protection area and that they will meet required regulations; that maintenance of stormwater management areas will be shared between the RPC and the commercial uses; that some infiltration will be provided; that parking lot water will drain through swales and open space areas then into stormwater ponds providing multiple treatment methods; that the existing C-1 commercial area was addressed along with the proposed CR-1 commercial area in the Traffic Impact Study; that the RPC should be reduced by 70 to 80 residential units; that townhouse projects generate one-half as much traffic as single family developments; and that the RPC should be reduced to approximately 74.13 acres.

In response to one of the Commissions questions, Mr. Lank read into the record the Final PLUS response of February 3, 2010 which references that while the State did not object to the rezoning of this property, the State did request that the Applicant work with the County to address concerns regarding sewer and the potential impact to the surrounding Long Neck area; and that it appears, after reviewing their letter that the developer is working with the County regarding their concerns, as well as addressing the concerns of the State agencies.

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

C/Z #1671 – application of **R.C. CARPETS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southeast of Route 24, 1,250 feet south of Route 23 (Long Neck Road), to be located on 13,500 square feet, more or less.

Mr. Lank advised the Commission that the site was approved for a Conditional Use (C/U #1435) for Chris and Sherry Cheeseman for retail sales of flooring and related home accessories on January 29, 2002. The Commission was provided with a copy of Ordinance No. 1520 for Conditional Use No. 1435, the application of Chris and Sherry Cheeseman; a site plan of the site; and a copy of a Lease Plat for the surrounding shopping center showing how this site relates to the shopping center.

The Commission found that on February 1, 2010 the Applicant provided the Commission with Exhibit Booklets which contain a copy of the application form; a site location plan showing the relationship to the commercial complex around it; a site location map; and proposed Findings of Fact for consideration.

The Commission found that on January 26, 2010 the Sussex Conservation District provided a memorandum which advises that the site contains Fort Mott-Henlopen complex soils; that the Applicant will be required to follow recommended erosion and sediment control practices during any 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 on-site or off-site drainage improvements.

The Commission found that on March 23, 2010 the County Engineering Department Utility Planning Division provided a memorandum which advises that the site is located in the Long Neck Sanitary Sewer District; that adequate capacity is available to serve the retail use; that Ordinance No. 38 construction is not required; that the parcel is served with one 6-inch lateral along the parcel's frontage; that conformity to the North Coastal Planning Study will be required; that the R.C. Carpets building was connected to sewer on April 29, 2005; and that a concept plan is not required.

The Commission found that Chris Cheeseman of R. C. Carpets was present with David Hutt, Attorney with Wilson, Halbrook & Bayard, P.A. and that they stated in their presentation and in response to questions raised by the Commission that the site is surrounded by a C-1 General Commercial shopping center complex which includes a Super Giant supermarket; that when he applied for the original conditional use there was a moratorium on rezoning; that the Conditional

Use was limited to retail sales of flooring and related home accessories; that the use of the site as a conditional use limits the uses to those described in the Conditional Use; that R.C. Carpets exists in the building on the site; that Mr. Cheeseman has owned the property for approximately 10 years and located the business there upon approval of his Conditional Use; that when he applied for the Conditional Use the site was surrounded by woodlands; that central water and sewer are provided to the site; that he would like to expand his business by adding the sale of paints and paint supplies; that when applying for loans or financing the banks prefer that the property is zoned for the use without restrictions by Conditional Use; that the rezoning will be in compliance with the Comprehensive Land Use Plan since the site is located in the Environmentally Sensitive Developing District; that the site is located in an Investment Level 2 according to the State Strategies; and that the rezoning will be consistent with surrounding area development of commercial uses and zoning.

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

Mr. Lank read a letter from Preston Lynch Dyer on behalf of Bayshore Plaza II, L.L.C. expressing concerns about the requested rezoning and referencing that as developers of the surrounding shopping center, they tried to encourage the applicants to dedicate the right-of-way along the frontage of their parcel to facilitate continuity with the Bayshore Plaza II roadway improvements required by DelDOT; that the applicants refused to provide the additional right-of-way which severely limits the access and flow to the Bayshore Plaza II property; that the particular property did not at the time of the development of the Bayshore Plaza II property appear to have addressed their stormwater management issues as they received a waiver or were not required to do so when originally constructed; that as developers, they never provide opposition to other landowners attempting to utilize their property in a reasonable and profitable manner and do not oppose this rezoning, however, they strongly believe that the dedication and entrance situation and the stormwater management issues need to be addressed prior to any vote on rezoning.

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 #1671 for R. C. Carpets based upon the record made at the public hearing and for the following reasons:

- 1) The site is surrounded by existing commercially zoned properties with substantial commercial uses on them. This rezoning will make all of the zoning in the area consistent.
- 2) The site is located in a Developing District according to the County Comprehensive Land Use Plan.
- 3) The rezoning will not have an adverse effect on the neighboring properties or the community. Since the property currently is the subject of a Conditional Use for carpet sales there will not be any significant change in traffic due to the rezoning.
- 4) The site is located within a County operated and maintained sanitary sewer district.
- 5) The rezoning is consistent with the purpose of the CR-1 Commercial Residential zoning classification.

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

C/U #1819 – application of **CANDLEBERRY CREEK C/O MICHAEL RHUE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of Conditional Use No. 1265 (Ordinance No. 1284) antiques and craft shop and wildlife and folk art by adding the sale of swing sets, sheds and garden products to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.05 acres, more or less, lying west of Route One, 3,540 feet north of Road 198 (Truitt Road).

Mr. Lank provided the Commission with a copy of Ordinance No. 1284 for Conditional Use No. 1265 filed on behalf of Nancy C. Rhue for the original antiques and craft shop and wildlife and folk art shop, and a copy of the site plan proposed.

Mr. Lank advised the Commission that DelDOT comments were not requested when the application was filed on September 2, 2008 since this application is for an expansion of the existing use on the site. If the use is approved a site plan shall be required to be submitted and DelDOT comments will be required on the entrance improvements prior to final site plan approval.

The Commission found that on March 23, 2010 the County Engineering Department Utility Planning Division provided a memorandum which references that the site is not in a County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that the Applicant intends to use an on-site septic system; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the North Coastal Planning Study will be required; that the 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 on March 15, 2010 the Sussex Conservation District provided a memorandum which references that there are two soil types on the site; 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 areas 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 Michael Rhue was present and stated in response to questions raised by the Commission that he proposes to display no more than 30 sheds and 8 swing sets; that currently there are 18 sheds and 6 swing sets on the site; that his typical business hours are from 10:00 a.m. to 5:00 p.m. Tuesday through Saturday and that due to the seasons he would like to be able to be open 7 days per week; that his existing entrances have been approved by DelDOT; that he would like to expand the existing business by adding the sales of sheds, swing sets, garden products, i.e. yard ornaments, decorative windmills, etc.; that the current sign on the premises is adequate; that no additional employees are anticipated; that he was advised by Planning and Zoning staff that he needed to apply for the shed and swing set sales; that he found that he needed to expand his business to continue and that the business serves a community need; that he

has sold 25 to 35 sheds over the last year or so; and that the manufacturer of the sheds delivers the sheds to a buyer's site.

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

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

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

ADDITIONAL BUSINESS

In reference to C/Z #1677, the application of Old Towne Pointe, LLC, Mr. Lank provided the Commission with copies of all written comments received up to 4:30 p.m. today, the close of written comments since deferral on March 11, 2010. Any further comments shall have to be addressed to the Sussex County Council. Mr. Lank advised the Commission that C/Z #1677 will be on the agenda for April 8, 2010 under Old Business.

Meeting adjourned at 8:00 p.m.