



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF MARCH 26, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 26, 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. Benjamin Gordy, 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. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of March 12, 2009 as amended and the Minutes of March 18, 2009 as amended. Motion carried 5 – 0.

### OLD BUSINESS

**C/Z #1633** – application of **HERTRICH PROPERTIES V, INC.** 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 Broad Creek Hundred, Sussex County, land lying at the southwest corner of U.S. Route 13 and Road 485 (O'Neals Road), to be located on 2.708 acres, more or less.

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

Mr. Lank advised the Commission that they had deferred action pending receipt of a response from PLUS and that Constance Holland, Director of the Office of State Planning, had responded that in reviewing the recently adopted Sussex County certified plan, it appears that this area is marked as commercial on the "Future Land Use" Map, and that with that in mind and noting the other similar commercial in the area, the State has no objections to the rezoning of this parcel.

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z #1633 for Hertrich Properties V, Inc. to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

1. The change of zone will not have an adverse impact on the neighboring properties or community.
2. The property is at an intersection of U.S. Route 13 and O'Neals Road that contains other C-1 zoned properties. These include a large automobile dealership owned by the Applicant, offices, a tractor sales and rental facility, a radio station and other uses. This change of zone would make this corner of U.S. Route 13 consistent with the uses and zoning of the other three corners of the intersection.
3. The Applicant has stated that it will meet or exceed all DelDOT requirements.
4. CR-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and miscellaneous service activities generally serving a wide area, 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 proposed rezoning to CR-1 along U.S. Route 13 falls within the stated purpose of the CR-1 District.

Motion by Mr. Gordy, seconded by Mr. Smith, 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/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 discussed this application which has been deferred since March 12, 2009.

Mr. Johnson stated that he has some sympathy toward the Film Society, but is concerned that the site is a part of a residential subdivision in a MR Medium Density Residential Zoning District; that he is concerned about the potential impact to the subdivision if a precedent is established by approval of this application; that the applicant did proffer some suggested deed restrictions to protect the neighborhood; and that he has a fear that it is like a contract with no jurisdiction to enforce; and questioned if it is an appropriate change.

Mr. Burton agreed that the neighbors will have to enforce the restrictions.

Mr. Smith referenced that there were 20 of 24 landowners in opposition to the zoning, not the use.

Mr. Wheatley referenced that the Commission only makes a recommendation and that the County Council has to make the final decision; and that he does not disagree with the other Commissioners comments.

Mr. Johnson stated that he would move that the Commission recommend a denial of C/Z #1634 for the Rehoboth Beach Film Society for a change of zone from MR to B-1 based on the record made at the public hearing and for the following reasons:

1. The property is currently zoned MR Medium Density Residential, and is part of an existing plotted residential subdivision. While there are commercial and business uses in the vicinity of this site, those uses are oriented to Route One. This site is entirely within a single family residential subdivision, and a change of zone to B-1 would not be consistent with the residential neighborhood.
2. Although the Applicant has stated that its intended uses are limited, a change of zone to B-1 would potentially allow more intensive uses that are not compatible with 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 denied for the reasons stated. Motion carried 4 – 0 – 1 with Mr. Gordy not voting since he was not present during the public hearing.

## PUBLIC HEARINGS

**Subdivision #2007-28** – application of **GEORGE G. KEEN** to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 2.58 acres into 7 lots, located southeast of Park Place within Plantation Park and south of Road 363 and west of Road 362.

Mr. Abbott advised the Commission that the subject parcel was labeled as reserved for future development on the original record plan; that on August 16, 2006 the Commission reviewed this subdivision under Other Business and determined that a public hearing would be necessary, that the lots would have to meet the minimum lot width requirement of 150-feet, that the 50-foot setback from State Tidal wetlands could be discussed during the public hearing, and that 51% of the property owners would have to consent to an application being filed; that on June 18, 2007 the Sussex County Board of Adjustment granted a variance for the lot width to be 75-feet; that the applicants provided the required 51% property owner's agreement when the application was filed; that the application was not reviewed by the Technical Advisory Committee since the right of way is existing; and read a letter received from Andrew T. O'Neill and Patricia O. and Richard A. Saxton in opposition to this application.

Jeff Clark of Land Tech Land Planning and George Keen were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the original 23 lot Plantation Park Marina subdivision was approved by the Planning and Zoning Commission on April 18, 1988 and recorded shortly thereafter; that Park Place is a 50-foot right of way; that there is an area of bulkheaded land served by Park Place that is labeled reserved for future development; that there is a proposed outlot with a community boat ramp for the launching of small boats; that until Sussex County extended regional wastewater collection piping into this area, the initial 23 lots were served with an on-site wastewater treatment plant; that the large mound that currently exists on the property which has been abandoned will be removed; that currently the existing 23 lots are served by central wastewater;

that restrictive covenants for the existing 23 lots were recorded in Book 726 Pages 769 – 776 and have been amended twice; that the proposed 7 lots will be subject to the restrictive covenants; that the Board of Adjustment granted a variance from the 150-foot lot requirement on June 18, 2007; that the developers have submitted proof that 51% of the property owners are aware of and agree with the application; that the buffer zone ordinance was adopted in July of 1988, 90 days after the existing subdivision was approved; that none of the existing 23 lots in the subdivision have any buffer; that the purpose of the buffer as stated in the Zoning Ordinance is in order to protect aquatic, wetlands, shoreline and upland environments from man made encroachments and disturbances; that the shoreline in front of the proposed subdivision is fully bulkheaded and is accomplishing the purpose of the Buffer Zone by protecting the aquatic, shoreline and upland environments; that the ordinance permits the Commission to waive this requirement if they so choose since subdivisions approved and of record in the Office of Recorder of Deeds prior to the adoption of this section, originally adopted July 19, 1988, or approved and similarly of record as of the effective date of this amendment, adopted July 2, 1991, may be developed as of record and shall be subject to setbacks or buffer restrictions established for the use when the plan was originally approved; that when this plan was originally approved, there was no setback for State Wetlands; that the Commission may waive this requirement if the amended plan represents an equal or less intrusive use on the buffer or setback area; that 12 out of the 23 property owners consent to the new application; that TAC review was not required since the existing right of way is already recorded; that the Plantation Park subdivision immediately across Road 363 and the existing Plantation Park Marina have been developed with identical lot sizes to what is proposed; that the 7 lots are actually larger than what is existing; that JCM Environmental inspected the site on June 18, 2007 and determined that there are no wetlands on the subject property; that there are no known historical features that exist on the site; that there is no plan to remove any bulkheading except as necessary for repairs; that the subdivision design as presented preserves the community boat launch area serving the entire Plantation Park Marina Subdivision; that the only proposed grade changes will be to remove the existing earth mound which is the abandoned wastewater treatment facility; that the volunteer vegetation which has grown on the lot areas will be removed to protect the integrity of the bulkhead; that the applicant plans to remove the only objectionable feature on the property which is the abandoned wastewater treatment facility; that Tidewater Utilities will provide central water to the lots; that a Sussex County Regional collection system is already serving the existing lots and would be extended to include the new lots; that a storm water and erosion control plan will be prepared and submitted to the Sussex Conservation District for approval; that the developers are requesting that the Commission allow the removal of the second entrance onto Route 363 at the cul-de-sac for Park Place; that the entrance next to Lot 1 currently exists and is adequate for the entire 30 lot subdivision; that it is the developer's opinion that removal of the second entrance would result in a safer traffic solution by eliminating the entrance at the foot of the bridge; that the length of Park Place is less than 1,000 feet; that given the proposed lots are similar in size to those existing in the neighborhood and will be subject to the same restrictive covenants, there will be no effect on area property values; that the subject land is not currently farmed and not able to be farmed; that the community boat launch facility has been retained and the effect of 7 new homes on schools and public buildings is in the developers opinion negligible; that the 7 new lots will use the same entrance as the existing 23 lots; that the proposed lots will not only be compatible but virtually identical to land uses within Plantation Park Marina and Plantation Park subdivisions; and that following an approved storm water and sediment control plan will prevent any negative effect on

area waterways; that parking of trailers will not occur on the outlot; that the lot lines extend to the bulkhead; and that water run-off will be treated prior to entering Miller Creek.

Harold Colvin, Secretary – Treasurer of the Plantation Park Marina Association Board of Directors advised the Commission that they are not opposed to this application since the new lots will become a part of the association; that Park Place will be repaved; and that the community boat launch area will be repaired.

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

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 28 for George G. Keen, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the subdivision code and protects the orderly growth of the County. It also meets the requirements of the subdivision code and the items in Section 99-9C of the Code have been favorably addressed.
2. This is an amendment to an existing subdivision, and more than 50% of the property owners have consented to the amendment.
3. The County Board of Adjustment has approved a variance to allow the lots to have a width of 75 feet.
4. The original subdivision was approved in April of 1988, prior to the enactment of Ordinance No. 521 and 774. The proposed lots are in an area that is currently bulkheaded, and this amendment is compliant with Ordinance No. 521 and 774.
5. The proposed new lots are consistent with other existing lots in the subdivision.
6. The additional new lots will not adversely impact schools, public buildings and community facilities or area roadways.
7. The new lots will be served by Sussex County sewer.
8. This approval is subject to the following conditions:
  - A. There shall be no more than 7 lots within the amended area of the subdivision.
  - B. The new lots shall be included as part of the existing homeowners' association which shall be responsible for the maintenance of the roads, storm water management facilities and other common areas.
  - C. The applicant shall comply with all of DelDOT's requirements.
  - D. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all new storm water management areas and erosion and sedimentation control facilities.
  - E. The new lots shall be served by Sussex County sewer.
  - F. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

**C/U #1770** – application of **STOCKLEY MATERIALS, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a 53.32 – acre borrow pit expansion to be

located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 94.89 acres, more or less, lying west of Road 317 and east of Road 318.

The Commission found that on March 16, 2009 the Applicant provided an Exhibit Booklet which included a plan of the property showing buffering from adjacent properties, a photograph of the entrance to the facility from Road 318, letters in support and a map showing nearby supporters, a Duffield Associates report confirming that the expanded borrow pit will have little to no impact on the quantity and quality of potable water, plans demonstrating the ground water drainage, a DelDOT letter confirming that no Traffic Impact Study is required, information and a DVD on Brigade White Noise Backup Alarms to be used on all on-site vehicles and equipment, a report on Mineral Demands, proposed Findings of Fact for consideration, and proposed Conditions of Approval for consideration.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the current Level of Service "A" of Cedar Lane (Road 318) will not change as a result of this application, and that the current Level of Service "B" of Peterkins 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 in the North Coastal Planning Area; that an individual on-site septic system could be 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, based on comments received from the Sussex Conservation District, that the site contains 6 soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that the property's northern boundary is Gills Branch; that it may not be necessary for any off-site drainage improvements; and that is likely that on-site drainage improvements will be required; and that no tax ditches are affected.

Mr. Lank advised the Commission that the Department has received 39 letters in support of this application.

The Commission found that Ken Adams of Stockley Materials, LLC was present with Mark Dunkle, Attorney, of Parkowski, Guerke & Swayze, P.A., and James Willey, Professional Engineer, of George, Miles & Buhr, LLC and that they stated in their presentations and in response to questions raised by the Commission that the existing borrow pit is substantially completed; that all buffers exceed regulations; that the entrance will remain as presently located; that the maximum number of vehicle trips per day could be 200 to 300 trucks; that alarms will be installed on all on-site trucks and equipment; that a need exists for materials for road construction; that the use is a permitted Conditional Use; that the use is for the use of fill dirt in construction of residential, commercial and road construction; that the proposed site is centrally located and will be used by the County; that the proposed site is the expansion of an existing smaller borrow pit; that the application will not have an adverse effect on nearby properties, public facilities or public highways; that the use will be subject to compliance with the

requirements of Section 11-172 (B) of the Zoning Ordinance; that no storm flood hazard areas will be affected and it will not be necessary for any off-site drainage improvements; that the use is of a public or semi-public character in that it will provide a source of fill dirt which will be used by the entire County; that the use is essential and desirable for the general convenience, health, safety, morals and welfare of the current and future citizens of Sussex County; that the primary business of the company is fill material; that the company provides a lot of fill material for road and shoulder work to DelDOT; that currently the smaller pit provides a couple of loads of material to over 100 loads per day; that the trucks can be loaded in a few minutes; that the use is based on demand for materials; that they will be using excavators, not dredging for materials; that an empty truck will weigh approximately 27,000 pounds; that a fully loaded truck could weigh up to 73,000 pounds, the legal load limit; that the only entrance to the site will be from Cedar Lane; that there will be no entrances only Peterkins Road; that for reclamation the slopes of the pit will meet the Zoning Code and will be subject to the Sussex Conservation District; that the buffer strips will be landscaped; that the landscaping will be maintained within a 30-foot wide strip within the proposed 100-foot wide buffer; that the plantings will be native species; that business activities will be as agreed upon with the immediate neighbors; that in visualizing the pit area a viewer will see landscaping, a berm, gradual slopes down to the water, and a water depth not to exceed 25 to 30 feet; that the existing pit will blend into the proposed pit; that based on demand it could take 25 to 30 years to complete the pit; that they are proposing to control nuisance geese by utilizing a strobe light product called "Goose Away"; and that the property will continue to be tilled until more area is needed for borrow.

Mr. Kautz suggested that the landscape plan should include reference to the native species proposed.

The Commission found that Jack Briggs and Dora George were present in support of the application and stated that they own Fish Hook Manufactured Home Community, immediately to the south of the site; that they have no objections to the borrow pit; that they do have high nitrates in the area; and that they would like to request that fencing be erected along their property line for safety reasons.

The Commission found that James Baxter, landowner across Cedar Lane, was present with no objections and stated that he has used the existing pit site for fill material for years; that his land is under farm land preservation; that the use is an asset to the County because of the quality of the material; and that he encourages approval.

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

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

Mr. Johnson stated that he had some concerns about the number of truck trips and the road surface.

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

**C/U #1771** – application of **HARRY MURPHY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for mini-storage units and boat and RV storage to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 8.449 acres, more or less, lying south of Swains Private Road, 570 feet west of Marshall Street (Road 225).

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

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the North Coastal Planning Area; that an individual on-site septic system may be 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 Sussex Conservation District, that the site contains 3 soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; that it may not be necessary for any off-site drainage improvements; and that is not likely that on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that Charles Auman, developer, was present with Harry Murphy of Charles D. Murphy Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the submitted site plan depicting 18 buildings and encompassing over 106,000 square feet of mini-storage and boat and RV storage is the ultimate scenario; that it could take years before all of the units can be built, and that all of the units may never be built; that the proposed gravel parking area, the stormwater management area, the landscaping buffer, and security fencing will be installed at the on-set of the project; that only one or two storage units will be built at the start; that as units are rented additional storage units will be constructed, based on the demand for storage units; that the security fencing will encompass the entire site; that an electronic gate will be provided; that the Applicant is willing to install the landscaping on either side of the fence; that the Applicant will install vinyl strips in the chain-link fencing for additional screening; that there will be security lighting on the site, either pole mounted directional lighting or wall mounted on the storage units; that the Applicant is willing to do whatever is necessary to work with his neighbors to have as little impact as possible; that the Applicant bought the property as an investment and does not intend to farm the property; that if the Conditional Use is not granted the Applicant will propose a residential subdivision for single family residential dwellings, most likely moderate to low income dwellings due to the adjacent industrial site; that the adjacent industrial site is occupied by Christiana Excavation and used as a construction yard; that the mini-storage buildings will be the typical metal units; that the open pole buildings will be utilized for RV and boat storage; that there may be some outside storage of RVs and boats until all of the buildings have been completed; that the gravel parking area will be improved with crusher-run material; that Phase I will include one pole building and 2 mini-storage buildings; that the landscaping areas will be 10



to 15 feet in width; that no mechanic work will be permitted; that the intent of the project is for storage only; that someone will be on-site daily; that the site will be accessible by key-code or a card system 24 hours per day; that the Applicant would like to install a small lighted sign at the entrance; that the gate will not be a beeping gate; that a landscaping plan will be submitted with the Final Site Plan if approved; that a dumpster location will also be depicted on the site plan; that this is the first attempt of the Applicant to operate a mini-storage facility; that mini-storage is in demand due to the current economic conditions; that a large number of people live in condominiums and apartments and have a need for storage; and that there are several thousand lots and homes proposed in the Milford area that will also need storage.

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

The Commission found that Tom Jester, a resident living on Swain Road, submitted a petition in opposition to this application containing 65 signatures and summarized the statement in the petition which references that they feel the traffic would be a dangerous hazard to all involved; that it will impact the decline in property values; that they are concerned about contaminants leaking into the ground from vehicles that would or could be stored at the facility for long or short terms; that they live in a quiet and safe neighborhood; that they are concerned about increases in crime in and around the neighborhood; and that a storage facility in their back yards could and would change their way of life. Mr. Jester added that they are also concerned about the narrowness of Swain Road with only a 15 or 20 foot width; that they are concerned about police response time; that they have heard that some storage facilities have had problems with squatters living in the units; and that they question the need for additional storage units in the area.

The Commission found that Brett Warren was also present in opposition to this application and stated that he has lived in the area for 31 years and is concerned about run-off.

The Commission found that Joseph Weil was present in opposition and stated that he operates a storage facility in the Milford area; that there are several storage facilities in the Milford area and they are all in commercial areas, not residential areas; that the neighbors will be affected by noise, dust, traffic, and lighting; that the use could impact the neighboring property values; that the existing storage facilities in Milford have not been built-out; that the existing facilities, containing approximately 900 storage units, are from 50 % to 78% occupied and that those sites could be developed with an additional 1000 units; that he questions the need for additional storage facilities; that the proposal is not in the best interest of the neighborhood; that the use should be located in a commercial area; and that if he has a request to store a vehicle, he prefers that the vehicle not be over 5 years old.

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/U #1771 for Harry Murphy for a mini-storage facility and boat and RV storage based upon the record made at the public hearing and for the following reasons:

1. The use as a storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of Sussex County residents.
2. The location, adjacent to lands zoned Heavy Industrial, is appropriate for this type of use.

3. The project, with the conditions placed upon it, will not have an adverse impact on the neighboring properties or community.
4. This recommendation for approval is subject to the following conditions:
  1. There shall not be any on-site boat or RV repairs. All boats and RVs shall be stored under roof.
  2. There shall not be any outside storage of building materials or other construction materials within the project.
  3. Any security lights shall be screened downward to avoid shining on neighboring properties or roadways.
  4. One lighted sign, not to exceed 32 square feet in size, shall be permitted. The proposed sign location shall be shown on the Final Site Plan.
  5. The location of a dumpster shall be shown on the Final Site Plan.
  6. Access to the facility shall be through a gate operated by key or code system.
  7. The driveway and parking areas outside of the storage buildings shall be stoned or paved.
  8. Stormwater management shall be maintained on site and shall be subject to the approval of the Sussex Conservation District.
  9. A landscape buffer of native vegetation shall be installed along the perimeter of the site, to screen the project from neighboring residential properties. The Final Site Plan shall contain a landscaping plan for the buffer areas and shall show a schedule of construction for the buffer areas and also the type of vegetation to be installed.
  10. A fence, with vinyl slats to screen the use from neighboring properties, shall be installed around the perimeter of the project. The fence shall be on the inside of the buffer. The buffer shall be maintained on a regular basis.
  11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried 4 – 1 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 – 1, with Mr. Wheatley opposed to the motion.

**C/Z #1636** – application of **MARK L. MUMFORD** 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 Lewes and Rehoboth Hundred, Sussex County, land lying at the southwest corner of Route 9 and Church Street, west of Five Points, to be located on 0.259 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the current Level of Service “E” of Route 9 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is not available for this project; that the sewer planning study assumption for the parcel is 1.0 Equivalent Dwelling Unit (EDU) reflecting a residential zoned parcel of less

than one acre; that the 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 Planning and Zoning; that the proposed use does not conform to the County Comprehensive Land Use Plan; that the current System Connection Charge Rate is \$4,132.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer; that the parcel is served with a 6-inch sanitary sewer lateral; that a lateral upgrade, at the property owner's expense, could be required; that if the existing structure is to be removed, it must be properly disconnected requiring a disconnection permit, disconnection by a County licensed plumber and inspection by the County; that conformity to the West Rehoboth Expansion Area Planning Study will be required; and that a concept plan is not required.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that although the standing Memorandum of Agreement between our offices would require this project to go through the PLUS process, the Office of State Planning Coordination, based on their discussion with the developer and members of the Planning and Zoning staff, as well as a site review; their Office 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 Mark L. Mumford was present with Steven Mumford, his brother, and stated in his presentation and in response to questions raised by the Commission that they purchased the property 6 years ago; that when they purchased the property it was improved by 3 mobile homes and a dwelling; that they have hauled vehicles and many dumpsters of materials away; that recently several business and commercial uses have been built across from the site; that the neighbors have advised him that the old dwelling on the site was occasionally used for the sale of illegal drugs and bathroom activities; that they intend a small commercial use similar to the uses across Route 9 from the site; that they do not have an exact intent at this time; that the area contains a drive-thru bank, a hardware store, a counter-top business, etc.; that the property is adjacent to a church, across Church Street and a church parking area to the south; that Church Street connects Route 9, Beaverdam Road and the access road to Henlopen Landing; that the site is not appropriate for residential use due to traffic, noise, etc.; that they purchased the property after having to pay all taxes, bills, fees, etc.; that they have improved the property to upgrade the property value; and that Church Street is State maintained.

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 wants to review the zoning of the general area.

Mr. Lank advised the Commission that if the property was rezoned the required setbacks for a commercial building would be 60-feet front (Route 9), 15-feet from the property line on Church Street (a corner), 20-feet from the side line; and 30-feet from the rear line since the property around the site is zoned AR-1.

There was a consensus of the Commission to research the area for consideration in an attempt to create an educated motion for the area.

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

**C/Z #1638** – application of **CHRISTOPHER AND LESLIE CORRADO** 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 Lewes and Rehoboth Hundred, Sussex County, land lying east of Road 271 (Glade Road), 600 feet northeast of Route One, to be located on 3.19 acres, more or less.

The Commission found that on March 16, 2009 the Applicant submitted an Exhibit Booklet which contained a purpose of the report, a site description, references to existing site conditions, site photographs, site considerations in reference to zoning, conformity to the surrounding area, the availability of central water and sewer, accessibility to major roadways, environmental concerns, PLUS comments, conclusions and 10 exhibits of maps, aerials, PLUS comments and responses, and proposed Findings of Fact for consideration.

The Commission found, based on comments received from DelDOT, that a Traffic Impact Study was not recommended and that the current Level of Service “A” of Holland Glade Road could change to a Level of Service “B”.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available for up to 12.76 EDUs; that the system design assumption for the parcel is 4.0 EDUs per acre for AR-1 zoning; that at the design assumption, capacity can be assumed for retail space that does not exceed 38,000 square feet; that if more capacity is required, additional information should be provided and a capacity review completed before approval; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that connection to the sewer system is mandatory; that sewer lines have not been extended to the parcel at this time and the County does not have a set schedule to do so; that the developer, at his expense, will be required to extend mainline sewer to the parcel from an approved connection point; that if more than 12.76 EDUs are required, it may be necessary to wait until downstream improvements and upgrades have been completed to the regional transmission system; that the developer may be required to complete or participate in those improvements; that the scope of those improvements will be determined and specified at a later date; that the Engineering Department is concerned that the total allowable EDU allocation will not be adequate for potential commercial uses; that the County requires design and construction of the collection and transmission system to meet County sewer standards and

specifications; that a sewer concept plan must be submitted to the Engineering Department for review and approval; and that all cost associated with extending sewer service will be the sole responsibility of the developer.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the rezoning of this property; that it is their hope that the builder will partner with DNREC and DDA to implement green design standards to protect the water resources located within this site; and that these comments will be addressed if the development of the property meets the criteria to be reviewed through the PLUS process.

The Commission found that Christopher Corrado was present with John Tracy, Attorney, and Stephen McCabe of George, Miles & Buhr, LLC and stated in their presentations and in response to questions raised by the Commission that they are proposing to rezone approximately 3.0 acres from AR-1 to CR-1; that the site is 600-feet northeast of Route One at the boundary line of the C-1 Zone and Highway Corridor Overlay Zone; that the Applicant purchased the property in 1990; that the Applicant also owns the 3 adjoining parcels within the C-1 Zone; that the proposed rezoning is consistent with the Comprehensive Land Use Plan, the State Strategies, and the Zoning Ordinance; that the area around the site is mixed in uses, with a City of Rehoboth water treatment facility to the southeast, a church to the northeast, and outlets to the northwest across Holland Glade Road and to the southwest across Route One; that the site is located in a Growth Area; that the site is located within an Investment Level 3 according to the State Strategies; that the State has voiced no objections in their PLUS response; that there are no impacted protected resources on site, i.e. wetlands, forest, floodplain, etc.; that the Tomato Sunshine garden center is located on the adjoining lands owned by the Applicant facing Route One; that according to DelDOT access to Holland Glade Road will be likely; that they will meet all of DelDOT requirements; that the Pastor of the Epworth Church to the northeast has voiced no objections; that the site is surrounded by C-1 zoning on 3 sides and a church on the 4<sup>th</sup> side; that a by-pass was originally intended in the area between the church and this site, and that an easement exists on the church site; that they propose to integrate the lots owned by the Applicant and to develop the site as combined; that central sewer and water are available; that part of the site is in an excellent ground water recharge area and a well-head protection area; that green technology will be utilized in the development of the site; and that less than 50% of the site will be impervious.

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 #1638 for Christopher and Leslie Corrado based upon the record and for the following reasons:

1. The property is designated “Highway Commercial Area” and “Environmentally Sensitive Developing Area” under the current Sussex County Comprehensive Plan, Future Land Use Plan.
2. The property will be served by public water and sewer.
3. The CR-1 zoning designation is appropriate for this property as it adjoins additional lands owned by the Applicant currently zoned C-1, located along an existing major thoroughfare and within the Combined Highway Corridor Overlay Zone.
4. The CR-1 zoning designation is consistent with other adjacent and nearby commercial-zoned properties.
5. The rezoning of this property will have no adverse impact on the uses or value of neighboring and adjacent properties in the area.
6. All entrances and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT requirements.
7. The Final Site Plan for any proposed use will be subject to the review and approval of 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.

Meeting adjourned at 8:55 p.m.