

MINUTES OF THE REGULAR MEETING OF APRIL 10, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 10, 2014, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton III, 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. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5– 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of March 27, 2014 as circulated. Motion carried 5 – 0.

OLD BUSINESS

Change of Zone #1742 – Seaside Communities, RDC, LLC

Application of **SEASIDE COMMUNITIES, RDC, LLC** to amend Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.516 acres, more or less, land lying northeast corner of Route 24 (John J. Williams Highway) and Tanglewood Drive, a private street providing access to Briarwood Estates Subdivision (Tax Map I.D. 3-34-18.00-40.00).

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

Mr. Robertson summarized the densities in other projects in nearby projects.

Mr. Ross questioned how the financial contribution system works for DelDOT.

Mr. Burton agreed that the Commission needs an explanation from DelDOT on how the system works.

Mr. Johnson stated that he was out of the State during the original public hearing; that he has listened to the recording of the public hearing; and would like more time to review the file and the record.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action. Motion carried 5 – 0.

Conditional Use #1983 – Gerald W. and Emily W. Hocker

Application of **GERALD W. AND EMILY W. HOCKER** to consider the Conditional Use of land in a C-1 General Commercial District for a food vendor to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.6 acres, more or less, land lying at the southeast corner of Route 17 and Route 26 (Tax Map I.D. 1-34-12.00-330.01).

The Commission discussed this application which has been deferred since February 27, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1983 for Gerald W. Hocker and Emily W. Hocker for a food vendor in a C-1 General Commercial District based upon the record made during the public hearing and for the following reasons:

- 1) This project is located on a 9.6 acre property that is owned by the Applicants that already has several commercial activities including a grocery store, hardware store, deli, gas pumps, and car wash.
- 2) The location along Route 26 is appropriate.
- 3) The use will be limited to take-out food.
- 4) The proposed use will not have any significant impact on traffic, area roadways or the surrounding community.
- 5) This recommendation is, however, subject to the following conditions:
 - a) The use shall be limited to a take-out style food and beverage vendor.
 - b) There shall be no more than 3 picnic tables on the site. The existing picnic tables shall be shown on the Final Site Plan.
 - c) The use shall be seasonal only, operating from April 1 through November 1, with hours of operation as stated by the Applicant.
 - d) Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - e) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, 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.

Conditional Use #1985 – Eugenia Athan

Application of **EUGENIA ATHAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a storage facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.6327 acres, more or less, land lying southeast of Route 17 (Roxanna Road) 3,200 feet northeast of Road 365 (Peppers Corner Road) (Tax Map I.D. 1-34-15.00-118.00 part of).

The Commission discussed this application which has been deferred since February 27, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1985 for Eugenia Athan for a 3 unit storage facility based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is within existing large stable buildings on an 11 acre tract.
- 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 the business will not generate a significant increase in traffic or noise.
- 4) There is a dwelling on the property for an on-site caretaker or manager.
- 5) No parties appeared in opposition to this application.
- 6) This recommendation for approval is subject to the following conditions and stipulations:
 - a) The use shall be limited to 3 units within the existing stable buildings.
 - b) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
 - c) No outside storage shall be allowed on the premises.
 - d) No chemicals shall be stored on the premises.
 - e) The storage building and garage shall not be used as a workshop or for the operation of power tools or other machinery.
 - f) The Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Smith, 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 and stipulations stated. Motion carried 5 – 0.

Subdivision #2013-5 – Gulfstream Glen Cove, LLC

Application of **GULFSTREAM GLEN COVE, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 8.84 acres into 17 lots, (Environmentally Sensitive Developing District Overlay Zone) and a waiver from the forested buffer requirements, located 500 feet west of the intersection of Road 352 (Windmill Drive) and Road 353 (Burbage Road) (Tax Map I.D. 1-34-12.00-374.01).

The Commission discussed this application which has been deferred since October 10, 2013.

Mr. Abbott advised the Commission that this application was deferred on October 10, 2013 and the record was left open for receipt of written comments and receipt of a Court Order Change for the tax ditch right of way easement; that on January 23, 2014 the Commission was provided written comments that were received from DNREC and with a copy of a revised preliminary plan; that on February 13, 2014 the Commission was provided written comments from the opposition and was advised that the preliminary plan has been reduced from 17 lots to 16 lots, that there is a proposed spoil placement area on the site and that the record was left open for receipt of an approved Court Order Change; that on February 22, 2014 staff notified the applicant that the sign advertising lots for sale is in violation since the applicants do not have an approved and recorded subdivision plan; that the Commission has been provided copies of all

letters received in opposition to the application and that the Commission was recently provided a copy of Court Order Change No. 17 that was approved on March 11, 2014.

Mr. Smith advised the Commission that he has reviewed the revised plan and the buffers around the tax ditch; that there has been a lot of interest in this application and that it is better to review the record for accuracy rather than time; that he would like to close the record and review and consider all the information that has been received; and raised questions in reference to the County's Clean Hands Ordinance.

Mr. Robertson advised the Commission that the illegal sign is not affected by the Clean Hands Ordinance and stated that there are provisions for fines in the Subdivision Code.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to close the record for this application and to defer action for further consideration. Motion carried 5 – 0.

Subdivision #2013-12 – John and Beverly Starr

Application of **JOHN AND BEVERLY STARR** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 2.29 acres into 2 lots, and a waiver from the street design and forested buffer requirements, located east of Route 5, approximately 800 feet south of Road 231 (Tax Map I.D. 2-35-7.00-156.00 and 158.00).

Mr. Abbott advised the Commission that this is the final record plan for a 2 lot subdivision; that the Commission granted preliminary approval for 2 lots and a waiver from the street design requirements on December 12, 2013; that the final record plan is the same as the preliminary plan, complies with the subdivision and zoning codes and the conditions of the preliminary approval; and that all agency approvals have been received.

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

PUBLIC HEARING

Subdivision #2013-14 – Dozer, LLC

Application of **DOZER, LLC** to consider the Subdivision of land in a AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 10.04 acres into 18 lots, (Environmentally Sensitive Developing District Overlay Zone) located north of Double Bridges Road (Road 363) approximately 1,400 feet east of Parker House Road (Road 362) (Tax Map I.D. 1-34-19.00-19.00 part of).

Mr. Lank advised the Commission that on March 31, 2014 the applicants submitted an Environmental Assessment and Public Facility Evaluation Report which contains an Introduction, a copy of portion of the Sussex County Comprehensive Plan Future Land Use Map, a CR-1-4 2010 Aerial Photograph Overlay, a NRCS Soils Map, an Existing Site Conditions BT-1-3 Boundary, Topography and Wetland Location Survey, a copy of a portion of the Flood Insurance Rate Map, a copy of the Proposed Subdivision Design, compliance with Subdivision

Ordinance No. 99-9C, proposed Findings of Fact and Conditions of Approval, and a copy of the Draft Declaration of Restrictions.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 17, 2014 is a part of the record and that the Commission has received a copy of that report.

Harold Dukes, Attorney, Wayne Lednum and Scott Lednum and Ken Christenbury, P.E. with Axiom Engineering, LLC were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application for 18 lots on approximately 10 acres; that there is a County pump station located on the site; that an Exhibit Booklet was submitted into the record; that the Comprehensive Land Use Map depicts the area as a mixed residential area; that the wetlands on the site have been delineated and submitted to the Army Corps of Engineers for a jurisdictional determination; that no impacts are proposed to the wetlands; that the site is not located in a flood plain; that the Exhibit Booklet contains a copy of the proposed preliminary plan; that the items referenced in Section 99-9C have been addressed in Tab #8 of the Exhibit Book; that the applicants have submitted proposed findings of fact, conditions of approval and a draft copy of the restrictive covenants; that the actual storm water management design has not been engineered at this time; that this application is similar to a cluster subdivision; that there is an existing connection point for County sewer on the site; that individual wells are proposed; and that the site is not located in a Tidewater or Artesian Water Company service area.

Mr. Robertson advised the Commission and the applicants that developments in the Environmentally Sensitive Developing District Overlay Zone proposing minimum lot sizes of 7,500 square feet are required to be served by central sewer and water.

Mr. Dukes advised the Commission that Artesian Water Company may provide a well on the site until a major connection can be provided to a larger system.

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

Kathleen Jacobs, Madeline Protuchi, Joe Protuchi and Mary Elizabeth Murray raised questions about the proposed lot sizes, proposed size of homes, entrance to the site, off street parking, the percentage of open space, the location of the County sewer easements, and whether residents will be forced into connecting to a central water system.

Mr. Robertson advised the Commission and the public that the Exhibit Booklet references the minimum lot size at 7,500 square feet; the minimum lot sizes of dwellings at 1,225 square feet for 1-story homes and 1,750 square feet for 2-story homes; that the entrance to the site must be 50 feet in width; and that each lot is required to provide 2 off street parking spaces.

Mr. Christenbury stated that 57% of the site is open space.

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

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

OTHER BUSINESS

Nassau Feed and Grain, Inc. Commercial Site Plan – Nassau Road

Mr. Abbott advised the Commission that this is a preliminary commercial for a maximum 4-story, 60 foot in height office/retail and storage building located on 3.94 acres; that this item was deferred at the January 9, 2014 meeting for receipt of comments from PLUS; that the building footprint contains 35,200 square feet and with 4 stories, the total square footage is 140,800 square feet; that 8,800 square feet is for office and retail space on the first floor; that the above floors will be used for storage; that the site is zoned C-1; that all setbacks have been increased by 1 foot for each foot over the height of 42 feet and meet the minimum requirements of the zoning code; that 109 parking spaces are proposed; that 13 spaces are within the front yard setback and are subject to site plan review; that ingress/egress is off of Nassau Road; that the project will be served by central sewer and water; that the site is not located in a flood zone; that there are not any wetlands on the site; that the final site plan needs to contain a landscape plan for the 20-foot highway corridor overlay zone; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan and a copy of the PLUS comments and the applicant's response to the comments.

Mr. Burton stated that this area is becoming more commercial in nature and that he sees no need for approving parking in the front yard setback as this will set a precedent; that the preliminary plan has 36 more parking spaces than what is required by Code; and that the 13 spaces in the front yard setback can be relocated on the site.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the site plan as a preliminary with the stipulations that the 13 parking spaces within the front yard setback be relocated out of the setback and that final site approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Burton Realty Long Neck, LLC Revised Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a revised commercial site plan for the inclusion of a landscaping business located on 1.17 acres; that the site is zoned B-1; that a 34-foot by 78-foot pole building with 9 landscaping bins are proposed; that the setbacks meet the minimum requirements of the zoning code; that the proposed building height is 25 feet; that the present use of the property is a real estate office and carpeting business; that 18 parking spaces are proposed; that ingress/egress to the site is off of Route 24 and to an existing cross access easement to the adjoining shopping center; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Alfonso Matos
CU #1945 Site Plan – Route 20

Mr. Abbott advised the Commission that this is a site plan for a small storage facility located on a 14,964 square foot parcel that is zoned AR-1; that this conditional use was approved on January 13, 2013 with 10 conditions; that the conditions of approval are noted and depicted on the site plan; that an existing 24-foot by 38.1-foot block building will remain and be used; that the building is a legal non-conforming building; that the project will be served by on-site septic and well; that all agency approvals have been received; that this item was deferred at the February 27, 2014 meeting pending receipt of additional comments from DelDOT that DelDOT approves of trucks and tractor trailers backing into and out of the entrance to this site; and that the Commission was previously provided a copy of the site plan and a copy of DelDOT's latest comments dated March 19, 2014.

Motion by Mr. Smith, seconded by Mr. Ross and carried 3 votes to 2, with Mr. Johnson and Mr. Wheatley opposed, to approve the site plan as a final. Motion carried 3 – 2.

Lacey Lafferty
Parcel and 50' Right of Way – Road 465

Mr. Abbott advised the Commission that this is a request to subdivide a 29.971 acre parcel into 4 lots, that Lot 1 contains 1.019 acres, Lot 2 1.003 acres, and Lot 3 2.439 acres; that the residual lands contain 25.41 acres and will have access from a 50-foot right of way; that Lots 1 through 3 all have frontage along the county road; that DelDOT has issued a Letter of No Objection; that the residual land is a horse training track; that the proposed entrance is located at an existing opening; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Tidewater Environmental Services, Inc.
CU #1792 – Amended Condition

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

Mr. Abbott advised the Commission that this is a request to amend a condition of approval; that this conditional use was approved on December 9, 2008 for a waste water treatment and disposal facility; that condition of approval 6C states "The facility shall not receive sanitary waste for treatment and disposal from any property or parcel that is located within a Sussex County Sewer Planning Area or Sewer District, excepting therefrom those properties or parcels which are

currently being served by other Tidewater Environmental Services, Inc. treatment and disposal facilities or approved for service as evidenced by a CPCN being issued by the Public Service Commission on or before the adoption of this conditional use ordinance.”; that this condition originated at the Commission level; that on September 10, 2013 the County determined the entire County as a planning area; that the applicants feel that the condition is now rendered meaningless and should be removed; and that the Commission was previously provided a copy of the letter submitted by the applicants along with other supporting documents.

Mr. Lank summarized comments from the Engineering Department.

Mr. Wheatley stated that legal counsel should be present and that the County Engineer should also be present for this discussion.

Mr. Ross agreed with Mr. Wheatley’s comments.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action so that legal counsel can be provided and to have the County Engineer present or to provide written comments in reference to this request. Motion carried 5 – 0.

Meeting adjourned at 7:35 p.m.