



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF APRIL 12, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 12, 2007 in the County Council Chambers, County Administrative Office Building, 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 22, 2007 as circulated. Motion carried 5 – 0.

PUBLIC HEARINGS

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

C/U #1684 – application of **FRANCIS B. PREKUP, JR.** to consider the Conditional Use of land in a GR General Residential District for used car sales and produce and landscaping business with sales to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.508 acres, more or less, lying at the northwest corner of Route 16 and Slim Street, 1,100 feet west of Road 212.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not required and that the Level of Service shall 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 not located in a County operated or maintained sanitary sewer or water district, that the site is located in the Milton Growth Area; that an individual on-site septic system is proposed to serve the site; and that the applicant should contact the Town of Milton for information regarding connection to the Milton sewer system.

The Commission found that Francis B. Prekup, Jr. was present and stated in his presentation and in response to questions raised by the Commission that he has improved the site since he purchased the property in 2000; that the office trailer has been removed; that the residents in the area are pleased with the way he has improved the site; that security lighting exists near the shed recently placed on the site and near the mulch stored to the rear of the site; that signage may be lighted; that the only signs on the site presently are located on the existing produce stand that has existed for many years on the site; that

Minutes

April 12, 2007

Page 2

he also has a sign on a hay wagon parked near the storage shed; that he removed the office trailer and replaced it with the shed; that the shed will be used for a yard office, storage and garden tool storage; that there will not be any automotive maintenance performed on the premises; that he only intends to offer one to three vehicles for sales at any one time; that the area along Slim Street is open to access to the site; that he has placed crusher run at the existing entrances to the site; that his primary intent is to operate the produce stand and the sale of produce, mulch, stone, top soil, firewood and landscaping materials and supplies; that the site is served by an on-site septic system; that he may permit customers to use his bathroom in the dwelling or he may place porta-johns on the site; that he lives in the dwelling; that business hours in the off-season will be from 8:00 a.m. to 4:00 p.m. five days per week, with no Sunday hours; that his seasonal hours will be from 8:00 a.m. to 5:00 p.m. weekdays and 8:00 a.m. to Noon on weekends; that he may have one part-time employee seasonally; that he purchased mulch, firewood, stone, top-soil, etc. from local wholesalers; that he will be purchasing some produce, flowers, and shrubs locally; that he does not need a dumpster; and that he placed the bins for the storage of the mulch, stone, top-soil, and other landscaping materials in March of 2006.

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.

C/U #1685 – application of **PARKER BLOCK CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of a concrete block plant, concrete plant, concrete/block crusher, and future asphalt plant to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 10.00 acres, more or less, lying 800 feet south of Route 24, 1,183.53 feet southwest of Road 409 (Mumford Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service “D” of Route 24 at this location 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 not located in a County operated or maintained sanitary sewer district or water district; that the site is located in the Western

Minutes
April 12, 2007
Page 3

Sussex Planning Study Area #5; that an individual on-site septic system is proposed; that the project is not in an area where the County expects to provide sewer service in the foreseeable future; and that a concept plan is not required.

The Commission found that a letter was received expressing some concerns from THORO-GOODS Concrete Co., Inc. and that the concerns referenced block crushers don’t need much space to operate; that there are six concrete plants within a 30-mile radius of Millsboro; that there are three asphalt plants within a 12 mile radius of Millsboro; that there are only so many products that will be used based on demand; and that neighbors in the area should be concerned about an asphalt plant.

The Commission found that Rex Timmons was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he and his partner have hoped to expand the business since purchasing the property 3.5 years ago; that part of the whole site presently is zoned LI-2 and is occupied by the existing block plant and related activities; that he has proposed a Conditional Use to allow for expansion of the uses on the site; that the present LI-2 site is fully occupied with improvements and storage; that he is willing to landscape and berm the perimeter of the site; that they propose to install and plant cypress trees, which are fast growing, along the bermed areas; that they have progressively increased the paving on the site for parking; that they plan on continuing with asphalt and concrete paving on site; that they are located approximately 1.5 miles from the Millsboro Volunteer Fire Company; that they presently store steel block plant racks on the property; that the site has not been farmed for approximately 4 years; that they have taken the 10 acres site out of the center of the larger tract to buffer the site from the neighbors; that the location of the future asphalt and concrete plants sites are adjustable; that the LI-2 site has an exiting surveillance system

and that the surveillance system will be expanded and will include fencing and security lighting.

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

Minutes
April 12, 2007
Page 4

C/U #1737 – application of **TERRANCE BABBIE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a professional office complex and some retail space to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 3.0 acres, more or less, lying north of Route 16, 650 feet east of Route 22A and east of Milton.

The Commission found that the applicant had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained information about the applicant; a series of maps; copies of maps from the County Comprehensive Plan Update; copies of maps from the Town of Milton Comprehensive Plan; a site evaluation report for septic; a well feasibility letter; a copy of the DelDOT Service Level Evaluation Request; a copy of the DelDOT Support Facility Report; letters of interest and support; a site plan and site rendering; proposed building elevations and floor plans; and proposed conditions.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated or maintained sanitary sewer district or water district; that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed to serve the project; that the project is not located in an area where the County expects to provide sewer service; that the applicant could contact the Town of Milton for information regarding sewer service and future expansion of their growth and annexation area; and that a concept plan is not required.

The Commission found that Terrance Babbie was present with Eugene Bayard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that their presentation somewhat mirrors their presentation for Change of Zone No. 1604 several months ago; that they had proposed rezoning to B-1 Neighborhood Business; that the Commission had recommended denial of the B-1

application with reasons and suggested that if the applicant should choose to reapply for a Conditional Use the application fee could be waived and the application could be expedited; that the applicant withdrew his application for B-1 and applied for this Conditional Use; that the site only contains 122 square feet of wetlands along the rear property line; that the wetlands will be left undisturbed; that the site is still located in a growth area; that the applicants intent is still the same; that they realize that conditions can be placed on the application; that they were not required to have a traffic impact study prepared; that they have prepared some suggested conditions of approval; that a professional office park is proposed to be limited to professional/business offices, home related retail and service businesses and referenced offices for doctors, lawyers, realtors, a showroom and office for the applicant's home construction business, and possible cabinet, countertop and lighting retail stores; that general retail uses is not proposed; that entrance signage is proposed to be similar to a subdivision entrance; that letters of interest

Minutes
April 12, 2007
Page 5

and support have been received from Del-Tex Properties, LLC, Dr. and Mrs. Sergio Huerta, Colvett/Colvett, Jefferson, Urian, Doane & Sterner, P.A., Bonnie M. Benson, P.A., Williams Insurance Agency, Inc., and Karl Richeson Photography, Inc.; that one of the opponents to the B-1 application has contracted to sell his property to the applicant; that there should be no negative impact on property values; that the use should improve the character of the area; that the site is suitable for septic; and that the majority of the applicant's construction business deals with subcontractors, not employees.

The Commission found that Tom Lynch, Jeff Wells, and Connie Lynch were present and spoke in opposition to the application and expressed concerns about the appearance of a business in an agricultural residential area; the possible impact on property values; the impact on poultry farms in close proximity; the impact on the dairy farm and grain farm adjacent and across from the site; that objections would not be heard if the site was adjacent to the Town of Milton; that there are at least four parcels zoned for commercial use on Route 16 in the Town of Milton that are for sale; that the use is out of character; that the owners, tenants of the units will be complaining about dust, odors, noise, etc, from the farming activities on the adjacent farms; that the stormwater management ponds will be an attraction the children in the area and could be a liability; that lighting will change of nighttime character of the area; and that they question placement of retail and office uses next to farms.

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 #1737 for Terrance Babbie for professional offices based upon the record and for the following reasons:

1. The site is within a Development District according to the County Comprehensive Plan Update.

2. The application is for professional or business offices, including home related retail and service businesses. This location is appropriate, given the close proximity to the Town of Milton.
3. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or community.
4. The use has a public or semi-public character and is desirable for the general convenience and welfare of the area. As a Conditional Use, the project will be limited. If it had been approved as a change of zone to business uses, any number of uses could have existed there.
5. This recommendation for approval is subject to the following conditions:
 - A. The offices shall be limited to business and professional offices. The offices may also be used for professional services such as home-related retail, service businesses, law firms, accountant offices, engineering offices, contractor or home builder showrooms and similar uses.

Minutes
April 12, 2007
Page 6

- B. No automobile garages, new or used car lots, auto repair shops, filling stations, fast food or other restaurants, laundromats, or funeral homes will be permitted.
- C. The use shall comply with all DelDOT requirements.
- D. Dumpsters shall be screened from view from any public roadways.
- E. Any security lighting shall be screened so that they do not shine on any neighboring properties or public roadways.
- F. One lighted sign shall be permitted.
- G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- H. The Agricultural Use Protection Notice shall be included on the Final Site Plan.

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.

Subdivision #2006-2 – application of **D. & N. PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 11.88 acres into 11 lots, located south of Road 72, 1,500 feet east of Road 70.

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of September 20, 2006 will be made a part of the record for this application; that the applicants submitted a revised plan on April 9, 2007 reducing the number of lots to 10 and addressing the comments raised by the Technical Advisory Committee; that revised restrictive covenants were received on April 4, 2007 and that manufactured homes are prohibited; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; and that a letter has been received from

DNREC Parks and Recreation stating that they would like to purchase the lots adjacent to Trussum Pond.

John Murray of Kercher Engineering was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the plan has been revised to 10 lots; that the required 30-foot forested buffer has been provided; that none of the lots encroach into the wetlands; that on-site septic and wells are proposed and that DNREC has issued a septic feasibility statement; that the streets will be private and built to County specifications; that the site contains limited woodlands; that the applicants have met with DNREC and will continue to negotiate with them in reference to the lots located along Trussum Pond; that buffers have been provided along the pond; that the wetlands will not be disturbed; that there is room for a bus shelter on lot 10; that the site is a former agricultural field; that there are strip lots located along the County Roads in the area; that all of the lots exceed 0.75-acres; that no grade changes are

Minutes

April 12, 2007

Page 7

proposed; that a homeowners association will be established; that the developers are willing to restrict the use of all terrain vehicles in the development; that the storm water management ponds will be either wet or dry ponds since the soils are suitable for both; that there is an outfall into Trussum Pond; that streetlights will be provided; and that at this time sidewalks are not proposed since they would be out of character with the area due to the size of the proposed lots.

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. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 2 for D & N Properties, L.L.C. 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 10 lots on 11.88 acres of land is significantly less than the allowed density.
3. The proposed subdivision will be a restricted residential development 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.

6. This recommendation is subject to the following conditions:
- A. Only 10 single-family lots shall be permitted.
 - B. Agricultural buffers shall be provided in accordance with the Subdivision Ordinance.
 - C. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of buffers, storm water management facilities, and other common areas. The restrictive covenants shall also specifically reference these maintenance requirements, including storm water management.

Minutes
April 12, 2007
Page 8

- D. The storm water management system shall meet or exceed the requirements of the State and County. All storm water management and ponds shall be within the perimeter of this site.
- E. All entrances shall comply with all of DelDOT's requirements.
- F. On the final site plan, all buffers shall be indicated.
- G. The Agricultural Use Protection Notice shall be included on the Final Site Plan and in the Restrictive Covenants.
- H. Street naming shall be subject to the review and approval of the County Mapping and Addressing Department.
- I. The Final Site Plan shall be subject to the review and approval of the County Planning and Zoning Commission.
- J. On the Final Site Plan, the Developer is encouraged to show a building restriction line along Trussum Pond that preserves the existing woods.

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

Subdivision #2006 – 3 - - application of **SOUTHSHORE BUILDERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 18.89 acres into 18 lots, located west of Route 5 across from Roads 257 and 259.

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of September 20, 2006 will be made a part of the record for this application; that the applicants submitted a revised plan on March 12, 2007 addressing the comments made by the Technical Advisory Committee; that this application is for 16 lots since lots 1 and 2 have already been approved through the minor subdivision process; that DelDOT issued an entrance approval on November 17, 2006; that DNREC has issued a septic feasibility statement indicating that the lots are suitable for individual on-site septic systems; and that the applicants submitted restrictive covenants on March 7, 2007.

Fred Townsend; Attorney, John Murray of Kercher Engineering, and Joe DeFrancesco; Developer were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for a standard 0.75-acre subdivision; that the applicants have responded to the comments made by the

Minutes

April 12, 2007

Page 9

the Technical Advisory Committee; that a 30-foot forested buffer has been provided; that a 10-foot multi-modal path has been provided along the frontage of the site; that restrictive covenants have been submitted; that the project complies with the requirements of 99-9C of the Subdivision Ordinance; that more restrictive covenants will be submitted; that 16 lots are proposed; that on-site wells and septic are proposed; that DelDOT and the Office of the State Fire Marshal have granted their approvals; that an additional 10-feet of right of way has been dedicated along the frontage of Route 5; that streetlights will be provided; that due to the size of the proposed lots, sidewalks are not proposed; that ingress/egress to lots 1 and 2 will be from the internal subdivision street; that a bus shelter could be provided on either lot 1 or 2 if required; that it will not be a problem to site any of the homes on the proposed lots; and that the dwellings will be stick built on the site.

Mr. Robertson advised the applicants and the Commission that the restrictive covenants need to address the maintenance of streets, buffers and storm water management areas.

Karen Kershaw, an adjoining property owner, spoke in support of this application and stated that she sold the land to the developers; that the design of the project is good for the community; and that the applicants build quality homes.

Kay Carpenter Dukes, an adjoining property owner, spoke in opposition to this application and expressed concerns with the right to farm and about traffic in the immediate area and read and submitted a letter into the record.

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.

ADDITIONAL BUSINESS

Mr. Kautz advised the Commission that DelDOT will be holding public listening meetings on the Sussex County Transportation Plan which will be utilized for the Mobility Element of the proposed Comprehensive Plan Update on April 23rd and April 25th in Bridgeville and Rehoboth Beach.

Meeting adjourned at 7:47 p.m.