



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF April 12, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 12, 2012, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Revised Agenda as amended. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of March 22, 2012 as amended. Motion carried 5 – 0.

### OLD BUSINESS

C/U #1926 – application of **NANTICOKE SHORES ASSOCIATES, LLC**, an Ordinance to Amend Condition No. 8 of the Conditions of Approval in Ordinance No. 2204 for Conditional Use No. 1862 for Nanticoke Shores Associates, LLC as it relates to earthen berms around the perimeter of the property for a Campground/RV Park to be located on certain parcel of land lying and being in northeast of Long Neck Road (Road 22) 1 mile east of Pot Nets Road (Road 22C).

The Commission discussed this application which has been deferred for further consideration since March 22, 2012.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U 31926 regarding Nanticoke Shores Associates, LLC to amend Condition No. 8 of Ordinance No. 2204 (C/U #1862) as it relates to earthen berms around the perimeter of the property for a Campground/RV Park based on the record made at the public hearing and for the following reasons:

1. The Planning and Zoning Commission originally recommended a denial of the original application. The approval, and the conditions of the approval, were adopted by County Council.
2. The original approval had a condition that required a 6-foot earthen berm surrounding the area of the Campground/RV Park Conditional Use.

3. The Sussex Conservation District has determined that such an earthen berm around the project will obstruct lot drainage, and will obstruct the natural conveyance of water across the property to the adjacent marsh and “will act as an impoundment potentially creating flood conditions.” As a result, the Sussex Conservation District would not be able to approve the plans if they comply with this condition.
4. I feel confident that County Council did not intend to create an impoundment or impede the natural drainage of this property when it created this condition.
5. Condition No. 8 should be stricken and replaced with the following:  
A 50 foot vegetative buffer with a 6 foot wide earthen berm planted with indigenous trees shall be construction around that portion of the perimeter of the site which abuts any existing mobile homes in Rehoboth Shores, running parallel to Seagull Lane, Seahawk Lane, crossing Bayview Lane and ending at the Northern portion of the site at Baybreeze Lane, screening all existing mobile homes from view of the Campground/RV Park site. The balance of the perimeter of the property shall have a 50 foot vegetative buffer, with three rows of indigenous trees planted in the buffer area in addition to the trees that already exist on that portion of the perimeter of the property, thereby insuring that best practice storm water management will occur and that the potential for flooding the site and any portion of the developed area of Rehoboth Shores Community is minimized. The perimeter of the property shall be fenced, with a security gate at the entrance to the Campground/RV Park, with appropriate security lighting, and shall include a separate office for this project, with appropriate directional signage.

Motion by Mr. Johnson, seconded by Mr. Smith, 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/U #1927 – application of **TWO FARMS, INC.** to consider Conditional Use of land in AR-1 Agricultural Residential District for a convenience store with gas pumps to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 8.88 acres, more or less, lying east of U.S. Route 13 and south of Route 24.

The Commission discussed this application which has been deferred for further consideration since March 22, 2012.

Mr. Ross stated that he had a motion prepared, but asked if any of the Commissioners had any comments.

Mr. Johnson stated that it may have been more appropriate to rezone this property since a portion of the property is already zoned C-1 General Commercial, and since the site is between other commercial zones and uses.

All of the Commissioners agreed that it may have been appropriate to rezone the property.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1927 for Two Farms, Inc. for a convenience store with gas pumps based upon the record made at the public hearing and for the following reasons:

1. This site is appropriate for a use such as this. It is at the corner intersection of U.S. Route 13 and Route 24.
2. A portion of this site is currently zoned Commercial. The entire site is currently used for commercial or business purposes. The proposed use is consistent with the prior zoning and use of this property.
3. A convenience store with gas pumps is an appropriate use for a property such as this with frontage on U.S. Route 13. It is also in close proximity to the Town of Laurel.
4. The redevelopment of this property as a convenience store with gas pumps under either a Conditional Use or commercial zoning is in accordance with the current Sussex County Comprehensive Land Use Plan.
5. In making this recommendation, it is also my suggestion that the Applicant consider seeking a re-zoning of the property to CR-1 Commercial Residential zoning. That way, the entire parcel would be brought under one zoning classification with more clear guidelines for the site plan and development of the property. With the current split zoning of C-1 Commercial and AR-1 Agricultural Residential with a Conditional Use, designing the project is more cumbersome than it would be under a uniform commercial zoning for the entire site.
6. This recommendation is subject to the following conditions:
  - A. Unless the Applicants apply for commercial zoning for the entire property, the use shall be limited to a convenience store with gas pumps. This Conditional Use shall not affect the ongoing operation of O'Neal's Auction Center Store which also currently exists on the property.
  - B. The Applicants shall comply with all DelDOT entrance and access requirements.
  - C. A landscaping plan shall be included as part of the Final Site Plan approval process. The landscape plan shall include details about the buffer along U.S. Route 13 required by the Combined Highway Corridor Overlay Zone classification that applies to this property.
  - D. One lighted sign, not to exceed 32 square feet in size, shall be permitted on the Conditional Use portion of this site. The sign regulations applicable to commercial districts shall govern that portion of the site that is currently zoned C-1 General Commercial.
  - E. The Conditions of Approval shall be noted on the Final Site Plan.
  - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, 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 #2012-2 – application of **H K S 4, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 63.59 acres into 138 lots, (expansion of 16 lots to an approved 122-lot Environmentally Sensitive Overlay District), located south of Road 336 (Piney Neck Road) approximately 1,800 feet west of Road 335 (Bunting Road).

The Commission discussed this application which has been deferred for further consideration since March 22, 2012.

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

## PUBLIC HEARINGS

C/Z #1712 – application of **CAPTAIN'S WAY DEVELOPMENT, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to GR-RPC General Residential District – Residential Planned Community to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 154.90 acres, more or less, lying north of Route 16, south of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road).

Mr. Lank advised the Commission that this application was withdrawn by the Applicant on March 27, 2012, and that the Applicant may reapply for a similar application in the future.

C/Z #1713 – application of **WELLER'S UTILITY TRAILERS** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District and an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 6.954 acres, more or less, lying north of Route 16 and 520 feet west of Road 595A (Spruce Road).

The Commission found that on March 30, 2012 the Applicant provided a Survey/Site Plan of the property and an Exhibit Booklet, which contains a copy of the Application Form, a copy of the deeds to the property, an extract from the County Council Minutes for March 29, 2011 regarding Ordinance No. 2186 for rezoning the property from AR-1 Agricultural Residential to B-1 Neighborhood Business, application of S.J.Y., LLC, a copy of a portion of the Beers Atlas of the area, an area map, a copy of the Future Land Use Map from the Sussex County Comprehensive Land Use Plan, Department of Transportation documents, and suggested proposed Findings of Fact for consideration.

The Commission found that on April 9, 2012 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex Planning Area #1; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that the Department received a letter in support of this application from Jeffrey S. Reed and Judith V. Reed stating that they have no objection to the rezoning requested.

The Commission found that Jim Weller was present with Gene Bayard, Attorney with Wilson, Halbrook and Bayard, P.A. and that Mr. Bayard stated in his presentation and in response to questions raised by the Commission that this site is the old Sam Yoder Conditional Use parcel and the adjacent lot; that the 6.103 acre parcel is zoned B-1 Neighborhood Business and was previously a Conditional Use meat cutting and sales; that the 0.851 acre parcel is zoned AR-1 Agricultural Residential and was previously a Conditional Use for a retail gift shop; that Mr. Weller acquired the properties since his Route 113 Ellendale property is located in a realignment portion of the future interchange for Route 113 and Route 16; that the site has already been developed with all agency approvals; that a PLUS review was not required; that DelDOT did not require a Traffic Impact Study; that in March of 2012 DelDOT granted a new Commercial Entrance Permit for the site; that the intended use of the site is primarily for the sale of utility trailers; that the site is immediate to a Developing Area according to the Sussex County Comprehensive Land Use Plan, which references that commercial uses should be along major thoroughfares; that the rezoning process was chosen since banks are not lending funds for Conditional Use applications, since Conditional Use could be temporary uses, while rezoning is permanent; that CR-1 Commercial Residential zoning is an appropriate zoning at this location, and that the sale of utility trailers, a similar use to automobile sales, is an appropriate use in a CR-1 Commercial Residential District; that it is his opinion that the Conditional Use catchall provision is for uses not listed elsewhere in the Code; that a new site plan will be submitted to show the intended development of the site; that if the use of the dwelling, formerly used for the retail gift shop, changes DelDOT will require a new entrance permit; that the nearest commercial activity is the new Royal Farm Store at the northwesterly corner of the intersection of Route 113 and Route 16; and that Route 16 is a major thoroughfare.

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/Z #1714 – application of **WILLIAM F. GODWIN, JR.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 3.61 acres, more or less, lying southeast of Phillips Hill Road (Road 472) ¼ mile east of Johnson Road (Road 434A).

The Commission found that the Applicant did provide copies of the Minor Subdivision as recorded in Plot Book 131 Page 69 in the Office of the Recorder of Deeds.

The Commission found that on January 25, 2012 DelDOT provided comments in the form of a Support Facilities Report which references that a Traffic Impact Study is not recommended, and that the current Level of Service “A” of Phillips Hill Road will not change as a result of this application.

The Commission found that on April 9, 2012 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex Planning Area #5; that on-site septic is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that William Godwin was present and stated in his presentation and in response to questions raised by the Commission that he is having a hard time trying to promote the sale of his four lots; that he has applied for rezoning to GR General Residential in the hope of having the option of offering the lots for sale for the placement of site built dwellings, modular homes, double wide manufactured homes, and/or single wide manufactured homes; that there are 12 double wide manufactured homes and 4 single wide manufactured home in the vicinity of his property; that he has not proposed any deed restrictions; that the adjacent farm land has not been farmed recently and contains some woodlands; that a double wide manufactured home has been placed on Lot #2 of his 4 lot subdivision; and that the proposed improvements will be compatible to the housing in the area.

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

The Commission found that Raymond Loose was present in opposition to the application and expressed concerns about the density by subdividing the property, and that the acreage to the rear of the property is farmed.

Mr. Wheatley advised Mr. Loose that the subdivision already exist; that each of the 4 lots contain at least 1 acre of land; and that the lots have been approved.

Mr. Robertson stated that the size of the lots and the location of the lots has already been established; and that the Applicant is seeking an option to place a manufactured home or other single family use on each lot.

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

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

#### OTHER BUSINESS

Alfred Melson Trust  
Multi Family Site Plan – Yacht Basin Road

Mr. Abbott advised the Commission that this is a preliminary site plan for 2 detached units located on 25,960 square feet; that the upland area contains 11,047 square feet; that the site is zoned M, Marine; the proposed setbacks meet the minimum requirements of the zoning code; the proposed units are within a 165-foot by 165-foot building envelope; that 4 parking spaces are required and provided; that there are no encroachments into the 404 or State Tidal Wetlands; that

the parcel was created prior to 1988 therefore there are no setback requirements from the State Wetlands; that the site is located in an AE Flood Zone with a Base Flood Elevation of 7 feet above mean sea level; that the project will be served by central sewer and water; that the maximum allowed building height is 42 feet; 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.

Mr. Smith advised the Commission that he reviewed the site and that the proposed project is located near Bethany Marina, which is a townhouse project.

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

Sea Cliff MR/RPC  
Site Plan – Phase II – Piney Neck Road

This item was removed from the Agenda on April 2, 2012.

Subdivision #2005 – 78 - - Delmarva Woodlands Alliance  
Cool Spring Meadows – Amended Condition

Mr. Abbott advised the Commission that this is a request to amend a condition of approval that was granted by the Commission on November 14, 2007; that Condition #5 reads in part “the amenities shall include sport courts, trails, a tot lot and active open space areas on both sides of Stockley Road.”; that the developers are requesting that the trails be deleted since Condition #3 requires sidewalks on both sides of all streets; and that the Commission was previously provided a letter explaining this request.

Kevin Smith of Kercher Engineering was present and advised the Commission that the developers are also requesting that the condition requiring sidewalks on both sides of all streets be amended to require sidewalks on one side of all streets; that by removing the trails, the open spaces and wetlands will not be impacted; that the sidewalks will be located within the 50-foot right of ways and that no other deletions are requested.

Mr. Johnson stated that sidewalks should be required on both sides of all streets since the project is a cluster subdivision.

Mr. Ross advised the Commission that he has no problems with the sidewalks being on one side of the streets; and that by removing the trails, it eliminates an encroachment into the wetlands.

Mr. Smith advised the Commission that there is a 50-foot setback from the wetlands.

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

Donald Ward  
3 Lots on 50' Easement – Route 13A

Mr. Abbott advised the Commission that this is a request to subdivide 3.97-acres into 3 lots with access from an existing 50-foot easement; that Lot A will contain 1.20-acres, Lot B 0.89-acres and Lot C 0.79-acres; that the residual 1.09-acres will be an extension to adjoining lands; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivisions; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Michael Brummell  
Lot on 50' Easement – Road 575

Mr. Abbott advised the Commission that this is a request to create a 1.68-acre lot with access from an existing 50-foot easement; that if approved as submitted, this would be the third lot having access from the 50-foot easement; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Geraldine Burris  
Lot on 50' Easement – Road 575

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing driveway; that DelDOT has issued a Letter of No Objection; 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. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

David and Karen Greenhaugh  
2 Lots & 50' Right of Way – Route 24



Mr. Abbott advised the Commission that this is a request to subdivide a 1.85-acre parcel into 2 lots with access from an existing 50-foot right of way; that Lot A will contain 0.80-acres and Lot B will contain 1.05-acres; 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. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

The Communities of Beaver Creek  
2 Parcels and 50' Easement – Route 5

Mr. Abbott advised the Commission that this is a request to subdivide a 98.0-acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing lane; that Parcel A will contain 10.0-acres and Parcel B will contain 88.0-acres; 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. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Meeting adjourned at 7:40 p.m.