

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 24, 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. James Griffin – 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 April 10, 2014 as circulated. Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Lank advised the Commission that the Applicants legal counsel has asked that the three applications be reviewed during one public hearing since they all inter-relate to each other.

There was a consensus of the Commission that the applications for Change of Zone #1746, Change of Zone #1747, and Conditional Use No. 1986 be combined for the purpose of a public hearing, and that the Commission would make separate decisions of each application.

Mr. Lank introduced the following applications:

**Change of Zone #1746 – Castaways Bethany Beach, LLC**

Application of **CASTAWAYS BETHANY BEACH, LLC** to amend Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.45 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of)).

**Change of Zone #1747 - Castaways Bethany Beach, LLC**

Application of **CASTAWAYS BETHANY BEACH, LLC** to amend Comprehensive Zoning Map of Sussex County from a MR Medium Density Residential District to a MR-RPC Medium Density Residential – Residential Planned Community to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.80 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of)).

**Conditional Use #1986 - Castaways Bethany Beach, LLC**

Application of **CASTAWAYS BETHANY BEACH, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.56 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 Part of).

The Commission found that the Applicants provided an Exhibit Booklet on February 3, 2014 for review and consideration, and that the Booklet contains references to the Consulting Team; an application letter referencing the applications; copies of the application forms, copies of checks for payment of fees; a copy of the deed to the property; surveys and legal descriptions; preliminary site plans and zoning density plans; an Environmental Assessment and Public Facility Evaluation Report and Plan; Preliminary Land Use Service (PLUS) comments and responses; considerations and responses to Subdivision Code Section 99-9C; supporting documents; copy of the approved “Seasons at Bethany” site plan for the same site; a DelDOT letter, dated January 6, 2014, with attached Support Facility Report, Service Level Evaluation Request, and traffic signal agreement; a letter from Sussex Shores Water Company; a letter from U.S. Army Corps. of Engineers; and a draft set of Restrictive Covenants.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on all three applications on April 23, 2014 referencing that the project site is located in a County operated and maintained Sanitary Sewer District, the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the proposed 45 single family lots and 30 multi-family units; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,935.00 per EDU (Equivalent Dwelling Unit); that the parcel has been served with one 8-inch stub located along the parcel’s frontage on Cedar Neck Road and a sewer connection point is available at the southern property line of the County’s pump station located on the north side of parcel 21; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer system will be mandatory; that the proposed project of 75 residential units is within system design assumptions; that the County requires design and construction of an on-site collection system to meet County Engineering Department requirements and procedures; that system connection charges will apply; and that a concept plan is required.

Mr. Lank advised the Commission that the Technical Advisory Committee comments received on or before March 24, 2014 are a part of the record and are the same or similar to the comments received in the PLUS report.

Mr. Lank advised the Commission that the Department has received 46 letters and emails in opposition to these applications and that a large number of these letters and emails make reference to opposition to a proposed campground and waterpark, which is not a part of these applications. Mr. Lank provided the Commission with copies of all of the letters and emails for their review and consideration.

Mr. Lank added that the applications include a downzoning from C-1 General Commercial to MR Medium Density Residential, a rezoning from MR Medium Density Residential to MR-RPC Medium Density Residential – Residential Planned Community for 45 single family detached dwelling lots, and a Conditional Use for multi-family use for 30 single-family attached dwelling units within ten (10) buildings.

The Commission found that Todd Burbage, a Principal in Castaways Bethany Beach, LLC, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A. and Jeff Clark of Land Tech Land Planning, LLC and that they stated in their presentations and in response to questions raised by the Commission that a recent news article in a local newspaper may have created some undue concerns to the area residents since the article referenced that a campground and waterpark were still proposed, when in actuality they were not proposed and that the developers are proposing only 75 residential units; that the 75 proposed units consist of 45 single family dwelling lots and 30 townhouse units; that the applications include a downzoning from C-1 General Commercial to MR Medium Density Residential, a rezoning from MR Medium Density Residential to MR-RPC Medium Density Residential – Residential Planned Community, and a Conditional Use for 30 townhouse type units; that to the east of the site is State lands with Federal and State wetlands; that to the north is a residential subdivision, The Reservation; that to the south is a C-1 General Commercial zoned mini-storage facility; that to the west is Cedar Neck Road and Hockers G & E general store; that the parcel contains 29.26 acres of land which currently is zoned C-1 General Commercial (1/3 of the site) and MR Medium Density Residential (2/3 of the site); that the site currently has a valid Conditional Use (C/U #1488) approved for 143 multi-family units; that the economic downturn impacted that proposal; that in July 2012 the Applicants filed an application for an RV campground and waterpark which included additional lands, including the adjacent mini-storage; that the mini-storage site is not now a part of this new application; that the Commission and the County Council both held public hearings on the RV campground and waterpark; that the Commission recommended denial of the request; that the Applicants withdrew the application for the RV campground and waterpark prior to the County Council taking any action in December 2012; that the proposed application should be consistent with the current development trend of the area; that approval of C/Z #1746 will reduce the permitted density from 12 units per acre to 4 units per acre; that Conditional Use #1986 will permit 30 single family townhouse units; that C/Z #1747 will permit 45 single family detached dwelling lots; that the applications are in accordance with the Sussex County Comprehensive Plan since they are located within an Environmentally Sensitive Developing Area, a growth area, which permits housing types of single family detached dwellings, townhouses, and multi-family units; that central sewer will be provided by the County; that central water will be provided by Sussex Shores Water Company; that a traffic impact study was not required by DelDOT since the project has been reduced to 1/2 of the original density; that the developer will comply with all of DelDOT entrance and roadway improvement requirements; that wetlands will not be disturbed; that the U.S. Army Corps of Engineers have approved the established wetlands boundaries; that the site plan depicts the lots and units, a pool facility, sidewalks, and street lighting; that the townhouses are designed with courtyard areas; that access to all lots shall be from internal streets and driveways; that the minimum lot size is 7,500 square feet with 60 feet minimum width; that the streets will have curb

and gutter; that a minimum of two parking spaces will be provided for each unit with some overflow parking areas for guests; that evergreen and deciduous plantings will be included in the landscaping plan with some berms; that the stormwater management facilities will include green technologies and designs including bio-retention, swales, and filter strips; that the central water system will include provisions for potable water and fire protection; that a County regional pump station is adjacent to Territory Trail, a street in The Reservations subdivision; that there are no records of any endangered or protected rare plant or animal species on the site; that all utilities will be provided; that TAB 6 of the Exhibit Booklet contains references to Subdivision Code 99-9C; that creating 45 single family dwellings and 30 townhouses is consistent with the Comprehensive Plan and consistent with and provides a response to the objections to the previous campground and waterpark applications, eliminates a C-1 General Commercial zoned parcel, and reduces the density from 143 residential units to 75 residential units, a reduction of 68 units; that the existing graded streets on the site are being totally revised based on the proposed site plan; that the stormwater management design has emergency outfalls that will be subject to agency approvals; that there are no open ponds proposed; that sidewalks are planned throughout the project; that all streets are curb and gutter with sidewalks on one side; that the traffic signal agreement has some history back to the original Conditional Use #1488 approved in 2003; that a 20 foot wide strip along Cedar Neck Road has already been dedicated to public use; and that there are no commercial activities proposed in this project.

The Commission found that Mr. Fuqua submitted suggested proposed Findings of Fact and suggested proposed Conditions of Approval for the Commission's consideration.

The Commission found that there were no parties present to speak in support of or in opposition to these applications.

At the conclusion of the public hearings, the Commission discussed these applications.

There was a motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action on C/Z #1746. Motion carried 5 – 0.

There was a motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action on C/Z #1747. Motion carried 5 – 0.

There was a motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action on C/U #1986. Motion carried 5 – 0.

#### OTHER BUSINESS

##### **Bay Forest Club MR/RPC Phase 3.1 Final**

Mr. Abbott advised the Commission that this is the final record plan for 67 residential units; that the Commission granted preliminary site plan approval on July 11, 2013; that 38 single-family lots, 13 cottages and 16 villas are proposed for this phase; that the final record plan is the same as the preliminary plan; that it complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant final approval of the record plan. Motion carried 5 – 0.

**Martin Family, LLC  
Commercial Site Plan – Martin Street**

Mr. Abbott advised the Commission that this is a preliminary site plan for an office building and storage facility located on a 1.42 acre parcel that is zoned C-1; that a 3-story, 8,856 square foot office building, a 9,960 square foot storage building and a 7,755 square foot storage building are proposed; that the setbacks meet the minimum requirements of the zoning code; that 36 parking spaces are required and 23 are provided on site; that 15 spaces are within the front yard setback; that the applicants have a shared parking agreement with the adjoining property owned by the Lutheran Church per a note on the site plan; that a copy of the executed shared parking agreement is needed before final approval can be granted; that 36 parking spaces are available per the site plan; that Sussex County will provide central sewer to the site; that the City of Rehoboth Beach will provide central water; that there are not any wetlands on the site and the property is not located in a flood zone; that the site plan is suitable for preliminary approval; that final site plan approval should be subject to the review and approval of the Commission upon receipt of all agency approvals and receipt of and approval be Mr. Robertson for the shared parking agreement; 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 grant preliminary approval of this commercial site plan. Final approval shall be subject to the staff receiving all agency approvals and Legal Counsel's approval of the shared parking agreement. Motion carried 5 – 0.

**Unitarian Universal Society of Southern Delaware  
Site Plan – Route 9**

Mr. Abbott advised the Commission that this is a preliminary site plan for a 3,600 square foot church located on a 5.32 acre parcel that is zoned AR-1; that Phase 1 is for 72 seats and 18 parking spaces are required; that 13 paved parking spaces and 46 gravel spaces are provided; that Phase 2 will total 200 seats and 50 parking spaces are required and 100 spaces are proposed; that Phase 3 is for additional parking; that at build out, 128 parking spaces will be provided; that the applicants are requesting that 115 of the parking spaces be permitted to be gravel; that the setbacks meet the minimum requirements of the zoning code; that on-site septic and well are proposed; that there are no impacts or disturbance to the wetlands; 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 grant preliminary approval of this site plan acknowledging that 115 of the parking spaces may be gravel. Final approval shall be subject to the staff receiving all agency approvals.

**Batson Creek Estates  
Revised Final Record Plan**

Mr. Abbott advised the Commission that this is a revised record plan for a 110-lot Environmentally Sensitive Developing District Overlay Zone subdivision application which received final approval from the Commission on September 26, 2013; that the applicants are requesting to remove a 4-foot nature trail from the community; that the nature trail was not a condition of approval, but was proffered by the previous applicant on the final record plan; that sidewalks on both sides of all streets are still proposed; that the revisions to the individual lots include making the lots deeper and narrower to better fit the proposed home products, removing lots away from the entrance to reduce the number of lots backing up to Bayard Road which allows for buffer landscaping and creating three park areas; that if a revised 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 revised record plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant approval of the revised final record plan subject to the staff receiving all agency approvals. Motion carried 5 – 0.

**R.T. Absher Jr. General Contracting, Inc.  
3 Parcels and 50' Easement – Road 570**

Mr. Abbott advised the Commission that this is a request to subdivide a parcel into 4 lots with residual land; that Lot 1 and the residual land both have access from Road 570; that Lots 2, 3 and 4 will have access from an existing 50-foot easement; that Lots 2 and 3 each contain 0.75 acre and Lot 4 contains 27.98 acres; 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 site will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

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

**Jane Locke  
Parcel and 50' Easement – Road 553A**

Mr. Abbott advised the Commission that this is a request to create a lot (Lot 5) with access from a 50-foot easement; that the owner is proposing to create the easement over an existing farm lane; 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. Smith, seconded by Mr. Ross, and carried unanimously to approve this concept as submitted. Motion carried 5 – 0.

Meeting adjourned at 7:05 p.m.