



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF APRIL 26, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 26, 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. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. 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 4 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of April 12, 2007 as circulated. Motion carried 4 – 0.

OLD BUSINESS

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 discussed this application, which has been deferred since April 12, 2007.

Mr. Burton stated that he would move that the Commission recommend denial of C/U #1684 for Frances B. Prekup, Jr. based on the record and for the following reasons:

1. Although there has been a produce stand on this property for years, I do not believe that the Applicant has clearly shown what he wants to do with the property besides the produce stand. Also, the drawing that was submitted does not contain enough detail for me to feel comfortable recommending approval of this application.
2. I am not satisfied that this parcel is suitable for all of the different uses proposed for it, including car sales, landscaping, mulch and stone sales, produce and firewood.
3. Given the extent of all of the different proposed uses and the lack of detail in the application materials and in the applicant's presentation, I can't recommend approval of this application.
4. If the Applicant re-applies with a plan prepared by a surveyor, I request that the fee be waived and that the application be expedited.

Motion by Mr. Burton, seconded by Mr. Gordy 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.

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 discussed this application, which has been deferred since April 12, 2007.

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1685 for Parker Block Co., Inc. based upon the record made at the public hearing and for the following reasons:

1. The application is for the expansion of an existing concrete block and cement plant and to add a concrete block crusher and future asphalt plant.
2. The existing plant is zoned LI-2. Through this Conditional Use, the expansion would be limited through the conditions that can be placed upon the expanded use.
3. The Applicant is only applying for the Conditional Use on 10 acres of a much larger tract that they own. This creates a buffer from the neighboring and adjacent properties.
4. The project is for the expansion of an existing industrial use along Route 24. So, there should not be a substantial increase in new traffic generated by this Conditional Use.
5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
6. The Applicant will still be required to obtain a Special Use Exception for the future concrete plant and asphalt plant from the Board of Adjustment. The details of these specific uses will be considered during a public hearing in which the public will have an opportunity to participate.
7. This recommendation for approval is subject to the following conditions and stipulations:
 1. Any security lights shall only be installed so that they do not shine on any neighboring properties.
 2. The site plan shall be subject to approval of the Planning and Zoning Commission.
 3. The future asphalt and concrete plants shall require a Special Use Exception from the County Board of Adjustment.

4. There shall be a landscaped berm along the entire perimeter of the Conditional Use site. The size and location of the berm and the type of landscaping shall be shown on the Final Site Plan.

Motion by Mr. Gordy, 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 and stipulations stated. Motion carried 4 – 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.

The Commission discussed this application, which has been deferred since April 12, 2007.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 3, for Southshore Builders, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision density is less than the maximum density permitted by the existing AR-1 zoning. The lots will all exceed $\frac{3}{4}$ of an acre in size.
3. The proposed subdivision is integrated into the existing terrain and surroundings.
4. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems. Water will be from individual wells on each lot.
7. A homeowners' association will be created to maintain streets, open space, storm water management areas and street lighting.
8. This recommendation is subject to the following conditions:

A. There shall be no more than 16 lots within the Subdivision.

- B. The Applicant shall prepare and record Restrictive Covenants Governing the development and shall form a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
- C. The storm water management system shall meet or exceed the Requirements of the State and County.
- D. All entrances shall comply with all of DelDOT's requirements. Also, an area for a school bus stop shall be established. The location of the bus stop shall be coordinated with the local school district and be shown on the Final Site Plan.
- E. A system of street lighting shall be provided by the Applicant, and the location of the streetlights shall be shown on the Final Site Plan.
- F. The Restrictive Covenants shall include the Agricultural Use Protection Notice.
- G. Lots 1 and 2 shall only have access via Daniel Drive.
- H. Street naming shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0.

PUBLIC HEARINGS

APD #2007-1 – application of **NORMA L. DERRICKSON (N & M BURTON FARM DISTRICT)** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Indian River Hundred for three (3) parcels of land totaling 241.42 acres, more or less, located on both sides of Road 302 (Harmon Hill Road), on both sides of Road 303A (Stevenson Road), and on both sides of Route 5 (Indian Mission Road), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that the Department of Agriculture provided a data packet of information that referenced that the property contains three (3) parcels of land containing 139.29 acres of cropland, 100.71 acres of forestland, and 1.0 acre for residential use; that there were no references to any unique/historical features; and that the Department staff recommends approval of the application.

The Commission found that Tiffany Derrickson was present on behalf of the applicant and submitted and read a letter referencing that the property is located in a Level 4 area

according to the State Strategies; that the property has been farmed by the family for the past 70 years; that the property contains two branches which are a part of the local watershed; that the property provides a much needed habitat corridor for many animal species that are rapidly losing their homes as near-by farms are being turned into developments; that the family has deep roots in Sussex County and are not interested in selling the property for development; that the family wants to be a part of the solution to Sussex County issues of over development and urban sprawl, not a part of the problem; and that the family wishes to protect and preserve the property by placing it into the Delaware Agricultural Lands Preservation Foundation.

The Commission found Michael Tyler, President of the Citizens Coalition, was present in support of this application and stated that this property is very pristine and should be preserved.

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.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved since the Department of Agriculture staff recommends approval of the District. Motion carried 4 – 0.

C/U #1686 – application of **MALONE ENTERPRISES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 12.77 acres, more or less, lying north of Long Neck Road (Route 23), 2.3 miles east from Route 22C (Pot Nets Road).

The Commission found that the applicant had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained information about the existing use of the property, the zoning, agency reviews, proposed improvements, site utilities, the entrances, the floodplain and wetlands, photographs of the site, and a series of maps including an aerial photograph, a tax map, a land use map, a zoning map, a USGS Quad map, a FEMA Floodplain map, a survey and existing conditions map, and a site plan.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “D” of Route 23 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 Long Neck Sanitary Sewer District; that wastewater capacity is available for this project; that Ordinance No. 38 construction will be required; that a gravity connection point is available in Long Neck Road; that the County Engineer must approve the final connection point; that the County owns and operates the existing on-site collection and transmission system serving existing structures on the site; that the County Engineer must approve abandoning any portion of that system; that proper disconnection of existing structures is required before structures are removed, demolished or site work begins; that disconnection permits are required and disconnections must be inspected by the County; that a building permit will not be approved until the disconnection has been inspected and approved by the County; that conformity to the North Coastal Planning Study will be required; that it will be the responsibility of the developer to install all wastewater facilities for the project; at the developers expense, in accordance with County standard procedures and specifications; that downstream and on-site upgrades may be necessary; that the developer, at the developers expense, would also perform necessary upgrades; that the developer should contact the Utility Planning Division to discuss requirements and necessary upgrades prior to submitting a sewer concept plan; and that a sewer concept plan is required.

The Commission found that Mario Malone was present with Eugene Bayard, Attorney, and Bob Strausky of Landmark Engineering and that they stated in their presentations and in response to questions raised by the Commission the applicant is planning the redevelopment of a mobile home park and campground into a multi-family project; that the existing uses on the site includes 43 mobile homes, 42 campsites and a marina with 106 boat slips; that they are proposing to develop 41 condominium units; that the site is located in the Environmentally Sensitive Developing Area; that PLUS review was not required since the project only includes 41 units; that a traffic impact study was not required since the number of units is being reduced and thereby reducing the traffic impact; that the project has been laid out per the Zoning Ordinance; that 1.7 acres of open space are proposed; that 0.5 acres is set aside for stormwater management; that the project adjoins Pot Nets; that the wetlands on the site are actually lagoons; that there will be no wetlands in areas of construction; that they have applied for a jurisdictional determination from the U.S. Army Corps. of Engineers; that they will comply with all Sussex Conservation District requirements; that the developer must resolve issues with tenants of the park based on the Landlord/Tenant regulations prior to proceeding with construction; that the site is allocated 53 EDUs which is more than the proposed project of 41 units; that the use is consistent with the area; that the applicant intends to offer two boat slips for each unit in the project; that the applicant does not intend to lease any slips; that the extra slips will be discontinued; that one entrance will be eliminated; that the structures will be elevated; that the applicant does not intend to elevate the site with fill;

that the site will drain to the stormwater management facility; that the wetlands determination was prepared by JCM Environmental; and that the boat slips are for homeowners only.

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. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/Z #1611 – application of **B & M PROPERTY DEVELOPMENT, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the southeast end of Route 58B, 0.50 mile north and east of Route 54, to be located on 146.68 acres, more or less.

The Commission found that the applicant had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained a presentation outline, a RPC concept master plan, environmental references, highway entrance references, a copy of the PLUS response, and proposed Findings of Fact.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is available for this project; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$4,273.00 per EDU; that the connection point for this project is at Manhole 25-1; that conformity to the South Coastal Area Planning Study Update of 2005 will be required; that all sewer construction will have to meet County Engineering Department standards and specifications, which includes the construction of a pump station on the site as well as forcemain and gravity sewer; that treatment capacity is available for the project as proposed; that there is insufficient capacity in Pump Station #30 near the intersection of Road 381 and Route 54, for the buildout of the sewer district; that the Engineering Department recommends a limit of 60 EDUs per year to allow time for the improvements to occur; that there will be no limit after the improvements are completed; that a sanitary sewer concept plan must be submitted and approved prior to any construction plan review; and that system connection charges will be due prior to receiving any building permits.

The Commission found that Coleman Bunting and Jay Murray were present with John Sergovic, Attorney, Jerry Friedel and Michael Wigley of Davis, Bowen and Friedel, Inc. and Ed Launay of Environmental Resources, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the site is adjacent or in close proximity to Mallard Lakes, Bayville Shores, and Bayview Landing; that they propose to develop 99 single family lots and 74 townhouses; that the use will be consistent with existing development in the area; that the adjacent project, Bayview Landing, is being developed in a mix of residential uses similar to this proposed project; that the site is located in the Environmentally Sensitive Developing Area; that no wetlands are being disturbed, except for a crossing at an existing ditch crossing; that DelDOT did not require a traffic impact study; that the roadway design divides the project for phasing and the creation of neighborhoods; that the roads will be improved to County and Fire Marshal specifications; that the single family lots will exceed Code; that the multi-family townhouse units will be developed as condominiums; that they will provide at least 3 parking spaces per unit; that the units are designed to achieve the maximum views of the bays and wetlands; that the parking is planned to provide garage parking, driveway parking and guest parking; that amenities include a clubhouse, swimming pool; gazebos, a pier, parks, trails, and play courts; that 1.5 miles of trails tie into pocket parks throughout the project; that sidewalks will be installed along at least one side of all streets; that the overall site density equals 3.11 units per acre; that the upland area density equals 3.86 units per acre; that the stormwater management facilities are designed as passive areas; that the wetlands have been delineated and that they are awaiting jurisdictional determination approval; that the project will be built to County sewer specifications; that Artesian Water will provide central water; that stormwater management features will be developed per Best Management Practices; that there will be minimum woodland disturbance; that DelDOT will require upgrades to Road 58B; that they have offered proposed Findings of Fact and suggested Conditions of Approval; that no tax ditches exists on the site; that no pier facilities are proposed into the Bay; that the restrictive covenants will include a reference that the owners may not apply for piers onto State wetlands and give notice that hunting activities do occur in the vicinity; that originally they had planned for 242 units, but chose to reduce the project to 173 units; that DelDOT has asked that the entire length of Road 58B be widened to 22 feet of pavement and shoulders and for improvements to the intersection of Road 58B and Route 54; that the intersection has improved since the removal of the poultry houses; that there will be no wetlands included within any lots; that the site plan can be adjusted to provide for a location for a bus shelter; and that the entrance to the project is at the location of the existing driveway to the property.

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. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Subdivision #2006 – 5 - - application of **SHIP BUILDERS, L.L.C.** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 61.808 acres into 47 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 432, 400 feet south of Road 471.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of September 20, 2006 will be made a part of the record; and that the applicant's engineer submitted a letter addressing the comments made by the Technical Advisory Committee and a revised plan addressing these concerns.

Zachary Crouch, P.E. with Davis, Bowen & Friedel, Inc. and William Warren were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located northwest of Millsboro; that the site is zoned Agricultural Residential and contains 61.81 acres; that 47, $\frac{3}{4}$ acre lots are proposed; that there is 3.56 acres of passive open space and 2 acres of active open space; that Tidewater Utilities will provide central water to the site; that the site adjoins a former Sussex County landfill; that DNREC has approved a septic feasibility statement and the site is suitable for individual on-site septic; that the streets will be private and built to Sussex County specifications; that sidewalks will be provided on at least one side of all streets; that streetlights will be provided; that 2 storm water management ponds are proposed; that there will not be any disturbance to wetlands; that buffers are provided from agricultural uses; that the Mapping and Addressing Department has approved the street names; that all comments and concerns raised by the Technical Advisory Committee have been addressed; that the County is purchasing a 100 foot buffer along the common boundary line; that there is an existing subdivision southwest of this site; that there are strip lots in the area; that farming is in the area; that the project is compatible to the area; that there will be selective clearing of lots; that the developer can restrict cutting of trees on individual lots; that no tax ditches exist on the site; that an area for a school bus stop can be established; that the restrictive covenants have been submitted; that a fence will be erected between this site and County lands; that a jurisdictional determination has been requested from the Corps of Engineers; and that manufactured homes will not be permitted.

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.

Motion by Mr. Gordy, seconded by Mr. Burton and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Subdivision #2006 – 6 - - application of **JEFF STONEBERGER** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 18.742 acres into 24 lots (Cluster Development), located north of Route One, 500 feet southwest of Road 14E.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of October 20, 2006 will be made a part of the record for this application; that a revised plan addressing these comments has been submitted; and that the restrictive covenants were e-mailed on April 23, 2007.

Cliff Baksh, Surveyor, and Jeff Stoneberger were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site contains 18 acres; that 24, ½ acre lots are proposed; that a bubble street has been removed at DelDOT's request; that the cul-de-sacs have been increased; that the site is integrated within the surrounding community; that no tree removal is anticipated; that there will not be any disturbance to wetlands; that no fill will be brought to or off of the site; that the site is not located in a flood plain; that the wetlands have been delineated; that a septic feasibility statement has been issued by DNREC; that there are no historical features on the site; that the open space will be maintained by a homeowners' association; that the site has not been farmed for awhile; that currently the site contains overgrown weeds; that no objectionable features are proposed; that there will be screening along Route One and the rear boundary line; that on-site septic and wells are proposed; that the project will not cause any pollution; that the storm water management design will utilize open swales and bio-retention ponds; that no run-off is proposed or anticipated; that the site contains no through roads; that the layout minimizes traffic, that open space has been provided; that the project will not cause any negative impacts to the area; that the project will protect and enhance area property values; that the price range of the dwellings will be from \$225,000 to \$300,000; that there will not be any affect on school buildings or public facilities; that the average family has 2 children; that there will be no negative impacts to traffic since Route One is built for large volumes of traffic; that the project complies with the items listed in Section 99-9C of the Subdivision Code; that the lots are ½ acre in size; that the design is a good stewardship of the land; that the project limits sprawl; that the impervious area has been reduced; that wetlands and trees are protected; that the project fits in with the area; that a fence could be erected along Route One; that an area could be set aside for a school bus shelter; that the streets will be public and dedicated to public use; and that the barbed wire fence along the site was erected by DelDOT.

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.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Subdivision #2006 – 7 - - application of **HOWARD AND VICKIE BARKER** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 2.45 acres into 2 lots, and a waiver from the street design requirements, located east of Route 5, 3,400 feet north of Road 47.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of October 25, 2006 would be made a part of the record.

Howard Barker was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that both lots are a little less than 1.0-acre; that one of the lots will be given to his daughter; that the other lot will be sold to a friend; that he is trying to help out his children; that no further subdivision of the property is proposed; that the street will be crusher run with a small swale to allow for drainage; that he will maintain the street; and that the street may be pulverized concrete.

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.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve this application as a preliminary and as a final with the stipulation that a deed restriction concerning the maintenance of the street be submitted and reviewed and approved by the Assistant County Attorney. Motion carried 4 – 0.

Meeting adjourned at 8:15 p.m.