



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF April 26, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 26, 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.

Mr. Lank advised the Commission that item #3 under Other Business was removed from the Agenda today at the request of the Applicant's engineer.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Revised Agenda as amended by the removal of item #3 under Other Business, and by reversing the order of the two public hearings. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of April 12, 2012 as corrected. Motion carried 5 – 0.

OLD BUSINESS

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) (Tax Map I.D. 2-33-7.00 – 28.02, 30.00, 205.00 thru 331.00).

The Chairman referred back to this application, which has been deferred since March 22, 2012.

Mr. Smith stated that he would move that the Commission grant preliminary approval for Subdivision #2012 – 2 for HKS 4, LLC for a subdivision of land in an AR-1 District by dividing 63.59 acres into 138 lots based upon the record made at the public hearing and for the following reasons:

1. Although this is an Application for a new subdivision, it is essentially the expansion of 16 lots to an approved 122 lot subdivision within the Environmentally Sensitive Overlay District. The original subdivision was approved as Subdivision #2005 – 8.
2. The proposed lots conform to the permissible density within the AR-1 Zoning and the Environmentally Sensitive Overlay District.
3. While there are a small number of homes that have been constructed within the existing subdivision, these owners have not opposed the expansion and amendment of the existing Site Plan.
4. The revision of the existing Final Site Plan to include 16 additional lots will not have an adverse impact on neighboring properties, the existing lots, adjacent roadways or other community and public facilities.
5. This preliminary approval is subject to the following conditions:
 - A. All of the conditions originally imposed as part of Subdivision #2005 – 8 shall apply to this preliminary approval.
 - B. There shall be no more than 138 lots within the Subdivision.
 - C. The Final Site Plan shall contain the approval of the Sussex Conservation District upon it.
 - D. The Final Site Plan shall include the original conditions of Subdivision #2005 – 8 and these conditions of approval stated upon it.
 - E. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

Subdivision #2007-28 – application of **GEORGE G. KEEN** to consider the Subdivision of land in an GR General Residential District in Baltimore Hundred, Sussex County, by dividing 2.58 acres into 7 lots, located southeast of Park Place within Plantation Park and south of Road 363 and west of Road 362 (Tax Map I.D. 1-34-19.00-296.00).

This is the final record plan for a 7-lot expansion of an existing standard subdivision. The Commission granted preliminary approval for 7 lots on March 26, 2009 and granted one-year time extensions on April 14, 2010 and February 10, 2011. This application also received a time extension until January 1, 2013 based on an Ordinance adopted by the County Council. The final record plan complies with the conditions of preliminary approval and the subdivision and zoning codes and all agency approvals have been received.

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

C/Z #1713 – application of **WELLER'S UTILITY TRAILERS** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to 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 5595A (Spruce Road) (Tax Map I.D. 2-30-26.00-6.01 & 6.02).

The Commission discussed this application which has been deferred since April 12, 2012.

Mr. Burton stated that he has given this application a great deal of thought; that there are a lot of factors that he has considered about it, including whether it should be a Conditional Use, with the limitations that the County can place on that type of approval, or a Change in Zone; that he has also considered the location of this property along Route 16, in a place which does not have a lot of other commercially-zoned properties around it; that he has given consideration to the way this particular property has developed over the years to the point where it has a large commercial-type building with a history of commercial use; that based on these factors, he is ready to make a motion recommending approval, but, in making this motion, he also wants to make it clear that it is based upon the history of this particular piece of property, and should not be seen as a trend for future commercial development in this area of Route 16.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1713 for Weller's Utility Trailers for a change in zone from B-1 Neighborhood Business and a small area of AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

1. This parcel has a history of commercial-type use. It is fully developed with a large retail/warehouse structure on it with parking lots and stormwater management facilities, and it has been used intensively as a grocery store in the past. It previously had a Conditional Use approval that was upgraded to a B-1 zoning. This CR-1 rezoning would be consistent with the prior uses and zoning trends of the property.
2. The site is currently developed with all agency approvals, including commercial entrance approval from DelDOT. Because of the prior development of the property, DelDOT did not require a Traffic Impact Study.
3. Any use of the property that involves major changes to the existing structures and parking lots will require Site Plan approval by the Planning and Zoning Commission.
4. This property is located along Route 16, which is a major collector road.
5. The rezoning will not adversely affect neighboring properties, roadways, or traffic in the area.
6. There are letters from neighbors in support of the application, and no parties appeared in opposition to the application.
7. This recommendation is based solely on the way this particular property has developed over the years, and the prior zoning classifications that have been given to it. He does not intend for this recommendation to be an indication of how the County should treat the zoning and uses on adjacent or nearby sites.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 5 – 0.

C/Z #1714 – application of **WILLIAM F. GODWIN, JR.** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to 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) (Tax Map I.D. 2-32-21.00-1.01, 1.13, 1.14, & 1.15).

The Commission discussed this application which has been deferred since April 12, 2012.

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1714 for William F. Godwin, Jr. for a change of zone from AR-1 Agricultural Residential to GR General Residential based upon the record made at the public hearing and for the following reasons:

- 1) The Applicant is seeking GR General Residential zoning for 4 existing lots containing a total of 3.61 acres.
- 2) The purpose of this change in zone is to allow the Applicant or subsequent owners of these properties to place a single wide or double wide manufactured homes on each lot without the need for individual applications to the Sussex County Board of Adjustment which would be required if the zoning remains AR-1.
- 3) The placement of manufactured homes is appropriate in this area along Phillips Hill Road since there are other similar housing types in the vicinity, including 12 double-wide manufactured homes and 4 single-wide manufactured homes.
- 4) The change in zone will not have an adverse impact upon the neighboring properties or community.
- 5) The change in zone will not adversely affect traffic, roadways, utilities or public services.
- 6) The change in zone will not likely result in any increased density, since the configuration of the existing lots does not lead to further subdivision.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/Z #1715 – application **TWENTY STORAGE, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.00 acres, more or less, lying north of Zion Church Road (Road 20) 700 feet east of the intersection of Deer Run Road (Road 388) (Tax Map I.D. 5-33-11.00-78.03).

The Commission found that on April 13, 2012 the Applicant provided Exhibit Booklets for consideration and that the Exhibit Booklets contain a copy of the application form; a copy of the deed to the property; a copy of the survey of the property; a copy of an aerial photograph of the property and surrounding area; qualifications of Ken Christenbury of Axiom Engineering, LLC; a extract from Beers Atlas; a map of the zoning in the area; a copy of a letter from the Office of State Planning Coordination in reference to PLUS; a Soils Report; and suggested proposed Findings of Fact for consideration.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated January 26, 2012, which references that a traffic impact study is not required, and that the current Level of Service “C” of Route 20 (Zion Church Road), will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated April 23, 2012, which references that the site is located in the Johnsons Corner Sanitary Sewer District; that wastewater capacity is available for the project, if the proposed use does not exceed approximately 4.0 total EDU; that Ordinance 38 is not required; that the current System Connection Charge Rate is \$4,861.00 per EDU; that the parcel is served with one 6-inch lateral which may not be adequate for the proposed use; that an upgrade to an 8-inch lateral may be required; that the cost of the lateral upgrade would be the developer's responsibility; that conformity to the South Coastal Area Planning Study – 2005 Update and the Preliminary Engineering Report for the Johnson's Corner Sanitary Sewer District will be required; that the parcel is within the boundaries of the referenced District and connection to the system is mandatory; that the sewer planning and design assumption allocated 4.0 EDU per acre for residentially zoned parcels of 1 acre or larger; that additional information must be provided before an EDU calculation can be made; that the County Engineering Department opposes rezoning because of the potential for increased wastewater flow from commercial uses; that the existing home has connected to the sewer system; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated April 23, 2012, which references that there are two soil types on the site; that the Applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that no off-site drainage improvements are necessary; and that it is not likely that on-site drainage improvements will be necessary.

The Commission found that Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A. was present with Ken Christenbury, Professional Engineer with Axiom Engineering, LLC, and that they stated in their presentations and in response to questions raised by the Commission that last summer they appeared before the Commission for an application for the adjacent property to be rezoned for the purpose of a mini-storage facility and that the Commission recommended approval of said application; that the County Council also granted approval of the application; that this site is immediately adjacent to the proposed mini-storage project and is intended to be utilized for a resident manager with a room for an office to operate the mini-storage project; that rezoning of this property will be similar to an in-fill connecting two properties for development of the mini-storage project; that the commercial entrance for the mini-storage project has just been approved by DelDOT; that there are no wetlands on the site; that water will be provided by Artesian Water Company; that central sewer will be provided by the County; that the site is immediately adjacent to other CR-1 zoning and is in close proximity to other commercial, business and conditional use properties; that some of the commercial uses in the area include auto sales, auto repair, general store, etc.; that according to the State Strategies, the site is located in Investment Level 2 and Level 3 where growth is anticipated; that rezoning of this property will be consistent with the trend of development in the area; and that they do not anticipate more than the need for 1 EDU for the site.

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. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0. Mr. Smith was absent.

C/U #1928 – application of **DEVIN RICE** to consider Conditional Use of land in AR-1 Agricultural Residential District for storage of equipment and a home office for a landscaping business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.49 acres, more or less, lying northeast of Beaver Dam Road (Road 285) 0.3 mile west of Church Street (Tax Map I.D. 3-34-5.00-180.00).

The Commission found that the Applicant provided a survey/site plan on the property showing the location of the dwelling, shed, and proposed drive and parking area.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated November 18, 2011, which references that a traffic impact study is not required, and that the current Level of Service “B” of Road 285, Beaver Dam Road, will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated April 23, 2012, which references that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available for the project, if the proposed use does not exceed approximately 1.0 EDU; that the EDU Assessment for the proposed use is not known at this time; that the system design assumption for the parcel is 1.0 EDU reflecting a residential parcel in a residential subdivision; that Ordinance 38 is not required; that the current System Connection Charge Rate is \$4,590.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel’s frontage on Beaver Dam Road and the existing single family home is connected to the sewer system; that conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated April 23, 2012, which references that the soils on the site are Downer sandy loam with a 0 to 2 percent slopes; that the Applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that no off-site drainage improvements are necessary; and that it may be possible that some on-site drainage improvements will be necessary.

The Commission found that Devin Rice was present and stated in his presentation and in response to questions raised by the Commission that he lives on the premises and proposes to operate his office and landscaping business from the site; that he has six (6) employees, four (4) of which are part-time; that he will be storing lawn mowers in the pole barn to the rear of the site; that he has a few trucks and trailers for hauling the lawn mowers and equipment used in lawn maintenance; that there will not be any maintenance of equipment outside of the pole barn; that equipment will be maintained in the pole barn; that he has spoken to his neighbor and they

are pleased with the way he has improved the site; that he hauled away at least 10 loads of trash and debris from the site when he purchased the site; that business hours are planned to be from 7:30 a.m. to 6:00 p.m. six days per week, with no Sunday hours; that he does not need a sign on the site for advertisement; and that there are other businesses in the area, i.e. Lowe's Home Center, and several other landscaping companies.

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. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Smith to participate in the vote on this application if he so chooses. Motion carried 4 – 0. Mr. Smith was absent.

OTHER BUSINESS

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

Mr. Abbott advised the Commission that this is a request to amend 2 conditions of the preliminary approval; that this item was deferred at the April 12, 2012 meeting for further consideration; that the applicants are requesting to delete the required walking paths from the open space area and that sidewalks only be required on one side of all subdivision streets; that this application has not received final site plan approval therefore no lots have been conveyed; and that the Commission was previously provided a copy of a letter explaining this request.

The Commission discussed the need for a workshop in reference to applicants requesting that conditions of approval be amended; that some of these requests and a reaction to market realities; that the Commission may need to adopt guidelines and that it may be possible to have the County's intern look into this matter.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, to defer action for further consideration. Motion carried 4 – 0. Mr. Smith was absent.

Subdivision #2007 – 45 - - Deerfield Meadows, LLC Deerfield Meadows – Amended Condition

Mr. Abbott advised the Commission that this is a request to delete condition of approval L that requires a 5-foot asphalt-walking path on one side of all streets; that in lieu of the walking paths, the developer is proposing to install a gazebo and picnic area for future residents; that developers are concerned about maintenance and liability issues; that this application has not received final site plan approval therefore no lots have been conveyed; and that the Commission was previously provided copy of a letter explaining this request.

The Commission expressed the same concerns as the previous item.

Mr. Robertson advised the Commission that he has concerns about items being shown on a preliminary plan and then requesting to change the plan since there are design limitations and questioned what has changed in between the preliminary approval and now.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, to defer action for further consideration. Motion carried 4 – 0. Mr. Smith was absent.

Millville Organic Center
CU #1913 Site Plan – Road 347 (White's Neck Road)

This item was removed from the Agenda today at the request of the applicant's engineer.

Delaware Arthritis
CU #1820 Site Plan – Road 276 (Shady Road)

Mr. Abbott advised the Commission that this is a site plan for a 2-story, 9,982 square foot medical office building located on 1.05-acres; that the site is zoned AR-1 and the conditional use was approved on July 20, 2010 with 11 conditions; that the 11 conditions are depicted or noted on the site plan; that the setbacks meet the minimum requirements of the zoning code; that 33 parking spaces are required and 38 spaces are proposed; that 28 spaces are within the front yard setback and are subject to site plan review; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the parking area adjacent to residential areas is required to be screened; that the site plan contains a note that the screening will include 2 canopy trees, 4 understory trees and 10 shrubs for each 100 linear feet; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson advised the Commission that there are other sites in the immediate area where there is parking located within the front yard setback.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, to approve the site plan as a final. Motion carried 4 – 0. Mr. Smith was absent.

Beach Babies, Inc.
Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for a one-story, 4,886 square foot day care building located on 23, 995 square feet; that the site is zoned MR, Medium Density Residential; that the Sussex County Board of adjustment granted a special use exception on January 23, 2012; that the setbacks meet the minimum requirements of the zoning code; that 14 parking spaces are required and 21 spaces are proposed; that there are 7 overflow parking spaces proposed; that this area will utilize a geoblock pervious area; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the final site plan needs to contain the required 20-foot highway corridor overlay buffer; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency

approvals and the final site plan including the 20-foot highway corridor overlay buffer; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Burton, seconded by Mr. Johnson and carried 4 votes to none, 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 and the final site plan show the required 20-foot landscape highway corridor overlay zone buffer. Motion carried 4 – 0. Mr. Smith was absent.

Harbour Homes, LLC
3 Lots and 50' Easement – Road 290 (Cool Spring Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 3.32-acre parcel into 3 lots with access from a 50-foot easement; that Lots 1 and 2 will contain 0.75-acre; that Lot 3 will contain 1.33-acres; that the easement will contain 21,622 square feet; that the request may be approved as submitted, or an application for a major subdivision can be required; that DelDOT has issued a Letter of No Objection; 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. Johnson, seconded by Mr. Burton and carried 4 votes to none, to approve this request as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 4 – 0. Mr. Smith was absent.

Dorothy Parker
2 Lots – Big Oak Lane

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre lot with access off of Big Oak Lane; that the residual lot will contain 0.82-acre; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, to approve this request as submitted as a concept. Motion carried 4 – 0. Mr. Smith was absent.

Meeting adjourned at 7:10 p.m.