



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF MAY 10, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 10, 2007 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Richard Berl – 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 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of April 19, 2007 and April 26, 2007 as circulated. Motion carried 5 – 0.

### PUBLIC HEARINGS

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

**C/U #1687** – application of **ROBERT L. BUEHLER** to consider the Conditional Use of land in a B-1 Neighborhood Business District for an automatic car wash to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.091 acres, more or less, lying on the northerly side of Shawnee Road (Road 36) and the southeasterly side of Old Shawnee Road (Road 619).

The Commission found, based on comment received from DelDOT, that a traffic impact study was not required and that the existing Level of Service “B” of Shawnee Road may change to a Level of Service “C”.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated sanitary sewer and/or water district; that the site is located within the North Coastal Planning Area; that the project proposes to use an on-site septic system; and that the project proposed is in a Development Area of the City of Milford.

The Commission found that there was no one present on behalf of the application.

The Commission found that there were several people present with concerns about the application.

Mr. Wheatley stated that there may be some reason that the applicant was delayed and that the Commission should defer this application to the end of the public hearings to see if the applicant appears.

Minutes  
May 10, 2007  
Page 2

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer this application to the end of the public hearings.

At the conclusion of the public hearings, Mr. Wheatley asked if there was anyone present on behalf of the application.

The Commission found that there was still no one present on behalf of the application.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the lack of a record of support since no one was present in attendance on behalf of the application. Motion carried 5 – 0.

**C/Z #1612** – application of **DOREEN LUCAS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northwest of Route 9 (Savannah Road), 1,000 feet northeast of Route 12 at Wescotts Corner, to be located on 0.9183 acres, more or less.

Mr. Lank advised the Commission that he had submitted a letter to the Office of State Planning Coordination advising them of the history of business activities on this parcel; that the parcel had been the subject of two previous Conditional Uses, one for a custom sewing workroom and showroom and the other for expansion of the previous use to allow for additional display and an office, and that he suggest to the Office of State Planning Coordination that a waiver from the PLUS process would not be unreasonable.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Office had reviewed the materials provided on this application and agree with the County that the application will not have to participate in the PLUS process based upon the history of use for this parcel.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the West Rehoboth

Expansion Area; that wastewater capacity is not available; that the sewer planning study assumption is 2.43 EDUs reflecting the existing use on an AR zoned parcel; that the Engineering Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses; that the proposed B-1 commercial zoning and commercial use is not located on lands previously identified for commercial use by the County; that the current system connection charge rate is \$3,911.00 per EDU until June 30, 2007; that the rates for Fiscal 2008 have not yet been adopted; that the information sheet for the rezoning indicates on-site septic will serve the proposed real estate office; that the parcel is served with central sewer; that the existing buildings were connected to

Minutes

May 10, 2007

Page 3

sanitary sewer on March 3, 2000; that the parcel is serve with one 6-inch lateral along Savannah Road; that a 6-inch lateral may not be adequate for the proposed use or if the parcel is redeveloped; that conformity to the North Coastal Planning Study will be required; and that a concept plan is required.

The Commission found that Heidi Balliet, Attorney, was present with James Ferraro, property owner, and stated in their presentations and in response to questions raised by the Commission that Doreen Lucas has dropped the contract on the property; that Mr. Ferraro is the owner of the property; that he has a real estate license and is a Certified Chiropractor, licensed in the State of Delaware; that there have been two Conditional Uses approved on the site; that they propose B-1 Neighborhood Business uses for a real estate office and possible chiropractic office; that the predominant use in the area along Savannah Road is professional offices; that there are professional offices with Conditional Use approvals and on B-1 and C-1 properties along Savannah Road; that there is no intent to expand the existing improvements on the property; that there were no traffic impacts concerns expressed by DelDOT; that the use will be compatible with the area; that there are no known objections from neighboring properties; that the site has adequate space for parking; that normal business hours would be from 8:00 am to 5:00 pm Monday through Friday with some evening hours; that the use will be compatible with other uses in the area; that the use will not be out of character with the neighboring community; that there will be no adverse impact on property values; that the site is located in an Environmentally Sensitive Developing Area according to the Comprehensive Plan Update which references that there may be a need for additional business uses to serve the rapidly expanding population; that B-1 will permit consistency to other uses; that the rezoning will eliminate the need for re-applications to expand the use or change the use; that the parking will remain as it exists on the site; that the primary building will be used as the real estate office; and that the small rear building may be used for the chiropractic office.

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.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1612 to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

1. The project is located within the Environmentally Sensitive Developing Area according to the 2002 Update.
2. This change of zone will not have an adverse impact on the neighboring properties or community.

Minutes  
May 10, 2007  
Page 4

3. The project is in an area that contains other B-1 and C-1 zoned properties and Conditional Uses. Other uses in the area include doctor's offices, real estate offices, insurance offices, and other B-1 and C-1 uses.
4. The owner has stated that it will meet or exceed all DelDOT requirements.
5. B-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping and personal service activities, and that such uses should serve low density or medium density residential neighborhoods. This proposed change in zone is consistent with the stated purpose of the B-1 zone, and the location along Savannah Road is appropriate for such zoning.

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

**Subdivision #2006 – 8** - - application of **FRANCIS R. AND MARY S. HAZZARD** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Indian River Hundred, Sussex County, by dividing 12.09 acres into 12 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 288, 400 feet north of Road 280-B.

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

Tom Bartosiewicz, P.E. with Meridian Architects and Engineers was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this application is for 12 single-family residential lots with one street; that the street has a cul-de-sac at the end; that the site is adjacent to another subdivision; that the project is in character with the surrounding area; that there are no wetlands or historical features on the site; that there will be minimal tree removal; that the site is entirely tilled; that no objectionable features are proposed; that on-site septic and wells are proposed; that the design of the project meets all of the requirements of the subdivision code; that farmland will not be negatively impacted; that there will be no

negative impacts to schools, public buildings or traffic; that the area is residential and the use is compatible to the area; that there will be no negative effects on area waterways; that DNREC has not issued a septic feasibility statement yet; that the average lot size is 0.75-acres; that no changes in grading is proposed; that landscape screening will be provided along the storm water management areas; that a forested buffer is not required since the site is not adjacent to agricultural uses; that a school bus stop can be provided; that the restrictive covenants have not been submitted or finalized; that the geometry of the site creates a hardship for the applicant in the street design; that the applicants are

Minutes  
May 10, 2007  
Page 5

aware of the site being located in a wellhead protection; and that he is not sure about the length of the proposed cul-de-sac street since he did not design the project.

The Commission found that no parties appeared in support of this application.

The Commission found that Carlos Centeno, an adjoining property owner, was present in opposition to this application and expressed concerns about storm water run-off entering his property; concerns about possibly increasing the grade of the site; and concerns about the location of the storm water management areas.

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC and receipt of information concerning the length of the proposed cul-de-sac street and the dimensions of the lots and to give the Commission time for further consideration. Motion carried 5 – 0.

**Subdivision #2006 – 9** - - application of **R.W. DURHAM & ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 125.79 acres into 116 lots, located northwest of Road 506, 2,100 feet southwest of Road 498.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of October 25, 2006 will be made a part of the record for this application and that letters and photographs in opposition to this application have been received from Dale Fields, James Kimball, Gail Mauser, and Walter and Carol Scott and will be made a part of the record for this application.

John Murray with Kercher Engineering, Inc. and Debbie Brittingham with Laurel Realty were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 116, 0.75-acre lots are proposed; that the proposed density is 0.9 lots per acre; that on-site septic and wells are proposed; that streetlights will be provided; that the application was reviewed by the Office of State

Planning Coordination through the PLUS process and that the applicants responded to those comments; that restrictive covenants have been submitted; that a 30-foot forested buffer will be provided along lots 15 through 21; that a berm may also be provided; that there are approximately 10.0-acres of wetlands on the site; that no lots are located within the forested buffer and there are no wetlands located on any of the lots; that sidewalks are not proposed due to the size of the lots; that there are other single-family subdivisions in the area; that the applicants will provide a notice in the restrictions that hunting occurs on adjoining parcels; that the project will be built in phases; that there are no amenities proposed at this time; that there are no endangered species on the site; that there is room

Minutes

May 10, 2007

Page 6

for a school bus stop; that a jurisdictional determination has been requested from the Corps of Engineers; and submitted a non-binding septic feasibility statement received from DNREC.

The Commission found that no parties appeared in support of this application.

The Commission found that Jim Kimball, Carol Scott, Don Smith, Chad Dickerson, Wayne Dickerson and Beverly Bryant, adjoining property owners, were present in opposition to this application and advised the Commission that the project creates no valuable open space; that the topography drops 14 feet adjacent to Cod Creek; that only one entrance is proposed and this creates problems for emergency vehicles; that the area roads need improvements done to them; that the lots should be a minimum of 1.0-acre; questioned if the applicant will sell the project to another builder; that the number of proposed lots is too much for the area; that the site drains to the northeast; that there are 5 Bald Eagles in the area; that the project will create a loss of wildlife habitat; that the closest fire department is 8 miles away; that the project may cause negative impacts to the local school district; questioned the type of homes proposed; raised concerns about septic systems impacting the existing wells and septic systems in the area; that a buffer should be required from other projects; that storm water run-off will negatively impact adjoining sites; that the site was once used as a dump; questioned if any test wells have been installed; that the project will cause noise pollution due to construction of the project and homes; and that there is an old cemetery on the site.

The applicants responded that they have no knowledge of the site being used as a dump; that when Mr. Durham purchased the property, he cleaned it up; and that they will investigate the site to verify if there is a cemetery on the site.

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

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

**Subdivision #2005 – 100** - - application of **D.K. PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 86.53 acres into 103 lots, located at the end of Dove Knoll Drive and Turtle Dove Drive within Dove Knoll Subdivision on the north side of Route One.

Mr. Wheatley stated that the Commission is aware of the 51% of property owners consenting to this application; that both parties may address this issue if they desire; that the Commission understands that this issue is in dispute; that the Commission cannot make a decision on this issue at this time; that the Commission will hold the public

Minutes

May 10, 2007

Page 7

hearing; and that the record will be left open for Counsel and the staff to determine if the 51% consent requirement has been met.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of August 23, 2006 will be made a part of the record for this application; that the applicants submitted an Exhibit Booklet and a revised plan on May 7, 2007 and that these will be made a part of the record and that there are 50 property owners who support the application and 62 property owners who oppose the application; that 9 letters in support have been received and that 141 letters in opposition have been received and that these will also be made a part of the record for this application.

Robert Benson, a partner with D.K. Properties, L.L.C., along with Dennis Schrader, Esquire, and Mark Davidson and J.C. Owens with DC Group, L.L.C., were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that on May 9, 2007 the applicants had the required 51% approval of the property owners; that the applicants also had the required 51% approval when the application was filed; that the Commission needs to determine a date when the 51% counted; that an Exhibit Booklet and revised plan has been submitted; that the Exhibit Booklet contains the applicants response to the PLUS comments; that this site is for 103 lots located on 86.50 acres; that the site is wooded; that Sussex County will provide central sewer to the site and Tidewater Utilities will provide central water; that none of the lots contains any wetlands; that the minimum lot size is 20,000 square feet; that the proposed density is 1.19 lots per acre; that 29% of the site is open space; that there are 18.92 acres of wetlands; that there is an Environmental Assessment Report located in the Exhibit Booklet; that the proposed storm water management ponds are located in the middle of the project; that the ponds will be wet ponds; that the storm water management design will decrease pollutants in the area; that the applicants will work closely with the Sussex Conservation District with respect to utilizing Best Management Practices; that a Nutrient Budget Report is included in the Exhibit Booklet; that street trees will be provided; that the developers have acquired an easement from lots 85 and 86 in Midway Estates for central water to be run to the site; that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that there

is a pump station adjacent to lots 38 and 41; that the pump stations will be upgraded per the regulations of the Sussex County Engineering Department; that DelDOT did not require a traffic impact study; that the applicants will comply with all requirements of DelDOT; that the streets will be dedicated to public use; that DelDOT has issued a Letter of No Objection; that there are no endangered species on the site; that a wetlands delineation has been completed and there are 18.92 acres of wetlands on the site; that the delineation has been submitted to the Corps of Engineers for a jurisdictional determination; that there will be no disturbance to wetlands and the applicants have provided a 10-foot buffer from the wetlands; that there will be a 15-foot access easement to the wetland areas; that the amenities will include a clubhouse, swimming pool and a

Minutes

May 10, 2007

Page 8

bus stop; that sidewalks will be provided; that streetlights will be provided in this section and in the old section; that walking trails will be provided; that the site is located in the Environmentally Sensitive Developing Area; that the design of the project protects the Inland Bays; that single-family detached dwellings are proposed; that the applicants will comply with all regulations; that the items referenced in section 99-9C of the Subdivision Code have been addressed and are referenced in the Exhibit Booklet; that Tidewater Utilities has submitted a letter indicating that they are able and willing to provide central water; that the existing community is a community of exceptional circumstances; that there is a homeowners' association with 1 page of restrictive covenants; that the project is not marketable today; that the developers had 2 options on revising the plan; that this is the best option available; that the applicants are trying to do what is best for all involved; that when the project was originally approved, there were no requirements for storm water management; that the original subdivision plan is outdated and too much of a burden to build; that the applicants are taking an old development and making it new; that there will be no burdens to the existing property owners; that this project will create one community with shared amenities; that this section will have a separate homeowners' association; that the existing development will control the majority of the community; that new expenses will be paid by the new homeowners' association; that the existing community will not be burdened for upkeep of the new project; that the project will increase property values in the area; that the existing design provides no open space; that the existing density is 1.7 lots per acre; that this project will be an economic benefit to the older section of Dove Knoll; that there will be a 30-foot setback from the wetlands including the buffer; that a connector road to Bay Crossing is not proposed; that the average lot size is 30,000 square feet; that there will be no sidewalks to the shopping center; that the homeowners' association will have to approve any clearing of lots; that there is an average 80 to 100 foot buffer from Pot Hook Creek; that there will be two storm water management ponds; that there will be landscaping around the clubhouse; and submitted proposed conditions of approval and findings of fact into the record.

Peter Holston, Roland Gattel, Susan Donohue and Henry Clark were present in support of this application and advised the Commission that the project is something that the community will be proud of; that the project will benefit the existing section of Dove



Knoll; that the design creates a cohesive neighborhood; that the plan is better than what was originally approved; that property values will increase; and that there will be costs savings for the existing community.

Bill Heisey, Linda Demayo, Dee Minnich, Pam Walpole, Larry Grassi, Mike Mock, Mabel Granke, Mike Tyler, Dick Deskis, Debbie Kauffman, Francis Dugan, Terry Grosseller and Christine Bowen were present in opposition to this application and advised the Commission that they purchased their lots on the approved plan; that the new design will create negative impacts on the environment; that there will be a loss of wildlife habitat to the area; that there is an ancient Indian burial site on the property; that Indian

Minutes  
May 10, 2007  
Page 9

artifacts have been found on the site; that the project should be built to the approved plan; that the applicants do not have the required 51% property owners approval; that 85% of the property owners are opposed to the new design; that the density is too high; that there will be a loss of open space; that the new design only benefits the developers; that there are over 60,000 approved lots in the County; that section 99-13 protects the property owners; that the original plan was a good design; that the project will decrease property values; that there are other available lots in the area; that if the developers want to void the previous approved plan, they should come back with the same number of lots; that the developers are threatening the property owners; that if the project is approved, the staff and Commission should decide the conditions of approval and not the developers; that there are minimal buffers provided from wetlands; that the forested areas should be preserved as much as possible; that there are traffic and transportation problems that have not been addressed; that the hearing should not have been held since the property owners have not agreed to the resubdivision of the plan; that there are rare plants in the forested areas; that a majority of the residents are on a fixed income; that the developers should not be trying to buy the property owners votes; and submitted 9 written statements into the record.

The Commission found, by a show of hands, that there were 9 people present in support of this application, and 61 people present 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 and to leave the record open in order for the Commission to receive legal and staff counsel on the 51% requirement. Motion carried 5 – 0.

Meeting adjourned at 10:15 p.m.