



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 10, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 10, 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. I.G. Burton, III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of April 26, 2012 as circulated. Motion carried 4 – 0.

OLD BUSINESS

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 discussed this application, which has been deferred since April 26, 2012.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1928 for Devin Rice for a Conditional Use for storage of equipment and a home office for a landscaping business based on the record made at the public hearing and for the following reasons:

- 1) The use is a benefit to Sussex County residents and provides a service to the County.
- 2) The Applicant intends to reside upon the property and use the existing structures, including a pole barn, for the business.
- 3) The Applicant has improved the site since his purchase of it, hauling away 10 loads of trash and debris.

- 4) The Applicant has stated that all equipment storage and repairs will be located inside the pole barn.
- 5) There is no indication that the use will adversely affect neighboring properties, the community, or area roadways. The use will also be consistent with other nearby uses, which include similar small-scale landscaping companies.
- 6) No parties appeared at the hearing in opposition to the application.
- 7) This recommendation is subject to the following conditions:
 - a. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
 - b. The Final Site Plan shall show the location for parking of trailers, trucks and equipment used for the business.
 - c. As stated by the Applicant, all lawnmowers shall be stored inside the pole barn.
 - d. As stated by the Applicant, all maintenance and repair of equipment shall occur inside the pole barn.
 - e. No junked or inoperable vehicles or equipment shall remain stored on the lot at any time.
 - f. As stated by the Applicant, the hours of operation shall be Monday through Saturday, from 7:30 a.m. through 6:00 p.m.
 - g. The location for a dumpster shall be shown on the Site Plan. It shall also be screened from the view of neighboring properties or the roadway.
 - h. Any security lights for the business area shall be screened so that they do not shine on neighboring properties or roadways.
 - i. No employees shall park on public roads or shoulders. All employee parking shall be on the Applicant's property.
 - j. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

C/Z #1715 – application of **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 discussed this application, which has been deferred since April 26, 2012.

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1715 for Twenty Storage, LLC for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) The project is located within a Developing Area according to the County Comprehensive Land Use Plan.
- 2) The property is located in an area that is developing with a series of small commercial enterprises, and the use proposed for this site is consistent with those commercial

activities. Most recently, the next-door property was rezoned to CR-1 Commercial Residential in July of 2011. Also, Twin Cedars, the property directly across Route 20, was re-zoned CR-1 Commercial Residential.

- 3) The site is served by the Johnson Corner Sanitary Sewer District.
- 4) The proposed use as an office for the proposed next-door mini-storage facility meets the purpose of the CR-1 zoning, and the rezoning is consistent with the character and trend of development in the immediate area and is consistent with the purposes of the Comprehensive Land Use Plan and the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.
- 5) The Applicant will meet or exceed all DelDOT requirements.
- 6) No parties appeared in opposition to the rezoning of the property.
- 7) Any proposed use will require Site Plan review and approval by the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, 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 4 – 0.

PUBLIC HEARINGS

C/U #1929 – application of **EVERETT DENNIS AND DAVID HARBIN** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a farm tractor and auto repair to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 20,437 square feet, more or less, lying southeast of Road 387 (Hudson Road), 0.6 mile north of Route 54 (Tax Map I.D. 5-33-17.00-179.00) (Part of).

Mr. Lank provided the Commission with copies of the survey/site plan for this Conditional Use.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on March 16, 2012, and that the Report references that a traffic impact study was not recommended, and that the current Level of Service “A” of Hudson Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum on May 8, 2012, and that the Memorandum references that the site is not in the area of a County operated and maintained sanitary sewer district; that the site is located in the Western Sussex – Town of Selbyville Area of Potential Expansion; that use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the Western Sussex Planning Study will be required; that the parcel is not in an area where the County expects to provide sewer service; and that a concept plan is not required.

The Commission found that a letter in opposition to this application was received from Dennis and Janice Marvel expressing concerns that the parcel is located in the Farmland Assessment Act with a dwelling; that the owners have carved out a smaller parcel to be used for the business with

only 61 feet of frontage; that the road frontage is currently being used as the entire shared entrance for a dwelling, a poultry farm operation, and the pole building; that the typical frontage requirement is 150 feet; that due to the odd shape and small size of the parcel, it would be hard to determine the boundaries and contain the business venture within the confines of the Conditional Use parcel; that with this type of business, vehicles, equipment, and tractors could be delivered and stored on the parcel while waiting for repairs or parts; that the aesthetics of this situation does not conform to the neighborhood; that currently much space is being used for the entrance and even more space will be needed to allow for additional traffic; that the odd shape and small size of the parcel does not provide adequate space to conduct this type of business; that they are concerned about the potential for growth of this type of business within the confines of the proposed boundaries; that it is their understanding that should the Conditional Use be approved, the use would be permanent in the event that the property would be sold or leased in the future; that it is also their understanding that for the use to be approved, it will require approvals by other agencies; and requesting that the application be denied.

The Commission found that Everett Dennis and David Harbin were present and stated in their presentation and in response to questions raised by the Commission that they apologize for starting the business without the appropriate approval of a Conditional Use; that the business would be operational from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays, with no Sunday hours; that they would like to erect a 4' by 8' lighted sign to advertise the business; that all repair work will be performed in the pole building; that they will not be open during poultry deliveries and pick-ups; that the repair work will include repairs on automobiles, trucks no larger than $\frac{3}{4}$ ton, and farm equipment with some welding work; that there will be no large heavy truck repairs; that all waste oils will be handled and hauled away by a licensed waste hauler; that they do not have a dumpster on site at this time, but may in the future; that Mr. Harbin hopes to not have any vehicles on site for longer than 24 hours; that Mr. Harbin is the only employee; that everything involved with the business are behind the dwelling on the site; that they have no objection to a condition requiring a tree planting buffer for screening; that all metal is recycled; that all cardboard is recycled; that trash is hauled to the landfill by a local hauler; that the area is mostly agricultural and residential; that the property is not designated as an Agricultural Preservation District; that another auto repair is located in close proximity; and that there are other business uses in the general area, including a storage facility and an electrical business.

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. Ross stated that he would move that the Commission recommend approval of C/U #1929 for Everett Dennis and David Harbin for a farm tractor and auto repair shop based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use will have no significant impact upon traffic.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.

- 3) The Applicant has stated that in addition to automotive repairs, he performs welding and repair work on farm equipment, which is a benefit to area agriculture.
- 4) The use is conveniently located for area farmers, and will reduce the distance they will need to haul their tractors and equipment on area roadways for service.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - a. The Final Site Plan shall show all required parking and equipment storage areas.
 - b. There shall not be any outside storage of junked or permanently inoperable vehicles, automobile parts, farm equipment, tires, or other materials used to repair cars or agricultural equipment.
 - c. No vehicles for sale will be displayed on the premises.
 - d. All repair work shall be performed inside the three bay garage/shop building. The only repair work shall be for automobiles, trucks and farm equipment.
 - e. The shop will only be operated between the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday, and 8:00 a.m. until noon on Saturday.
 - f. There may only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
 - g. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.
 - h. The location for a possible dumpster shall be shown on the Final Site Plan, and it shall be screened from view of neighboring properties.
 - i. The Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Ross, 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 and with the conditions stated. Motion carried 4 – 0.

C/U #1930 – application of **PENN CENTRAL, LLC** to consider the Conditional Use of land in B-1 Neighborhood Business District for a multi-family dwelling structure (3 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8,030 square feet, more or less, lying southeast corner of Pennsylvania Avenue (Route 51) and Bennett Road, and being Lot 3, Block 1, of Sussex Shores (Tax Map I.D. 1-34-13.15-159.00).

Mr. Lank provided the Commission with copies of the survey/site plan of the property, a copy of the survey of the property showing existing improvements, notes in support of the application for Conditional Use, and a copy of a survey showing the average setbacks from Pennsylvania Avenue.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on March 16, 2012, and that the Report references that a traffic impact study is not recommended, and that the current Level of Service “B” of Pennsylvania Avenue 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 on May 8, 2012, and that the Memorandum references that the System Design Assumption for this parcel is 1.55 EDU total

based on the current use of the parcel for a medical office; that the site is located in the Bethany Beach Sanitary Sewer District; that wastewater capacity may not be available for this project for three units; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$4,697.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel's frontage on Bennett Road; that conformity to the South Coastal Area Planning Study 2005 Update will be required; that the system design did not consider redevelopment of this parcel into multi-family dwellings at higher density; that the proposed project exceeds system design assumptions for the area; that the proposed project is a density of 16.30 units per acre; that the project exceeds the system design assumption of 1.55 EDU, which is the parcel's current EDU assessment for the existing use; that 1.55 EDU is higher than the standard capacity assumption for B-1 zoned land which is 6.67 EDU/Acre or 1.23 EDU for the parcel; that the Engineering Department recommends against approving a project that exceeds design assumptions and capacity allocations; that approval of projects at greater than system design assumptions has a negative impact on sewer system capacity and hastens the need to perform upgrades; that the existing structure on the parcel must be properly disconnected and the disconnection inspected by the County prior to removal, demolition, site work or issuance of a building permit for new construction; that one-time system connection charges will apply; and that a concept plan is not required.

The Commission found that Carol Schultz was present on behalf of Penn Central, LLC and stated in her presentation and in response to questions raised by the Commission that she would like to submit a handout which includes a concept plot of Sussex Shores Community with labels indicating the uses of the lots; that immediately to the south of her lot are two (2) six (6) unit multi-family buildings, and a commercial/business use; that to the north across Bennett Road are three business uses; that to the west across Pennsylvania Avenue there is a 12 unit multi-family project, and a furniture store; that the handout also includes some photographs of the referenced improvements; that she would also like to submit an Architect's rendering of the front elevation of the building that she hopes to build on the site; that her application is not different than the other multi-family dwelling structures in the area; that the existing one story medical office building on the premises will be removed; that adequate space is available on the site for parking; that parking will be provided below the units and on pads on site with space available to turn around on the site so that people do not back out into the streets; that there are currently 15 parking spaces on the site that back out into the streets; that she hopes to be able to get driveways on both Pennsylvania Avenue and Bennett Road; that the building will not exceed 42 feet in height; that she was not aware that there was a negative issue on the availability of sewer connection; and that she realizes that she will be required to file an application to the Board of Adjustment for a variance in the density for three units.

The Commission found that Robert Funk, an owner of a unit in Mallard Landing, the adjacent multi-family dwelling structure, was present, not opposing the application, and only present with questions if the existing series of pine trees on the property line will remain between the two projects, and questioning the required parking, the height of the building proposed, and the site yard setbacks.

The Commission found that there were no other parties present in support of or in opposition to the 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.

OTHER BUSINESS

Collins 54, LLC
CU #1920 Site Plan – Route 54 and Road 389

Mr. Abbott advised the Commission that this is a site plan for a storage garage for trucks and equipment and a parking area for employees of a pest control business; that this conditional use was approved on February 7, 2012 with 8 conditions; that the site contains 1.35 acres and is zoned AR-1; that the 8 conditions of approval are noted on the site plan; that the proposed garage is 30-feet by 164-feet; that the setbacks meet the requirements of the zoning code; that 10 parking spaces are provided for employees; that the parking area is proposed to be gravel; that access to the site is from a gravel driveway that is located on the adjacent property owned by the applicants; that there is no direct access to this parcel from Road 389; 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. Ross, seconded by Mr. Johnson and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Rehoboth Beach Animal Hospital
Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a commercial site plan for a 2,952 square foot animal hospital located on 0.36 acres; that the site is zoned C-1; that the setbacks meet the requirements of the zoning code; that access to the site is from a cross access easement from the adjacent parcel; that there is no new direct access to Route One; that 12 parking spaces are required and 18 spaces are proposed; that 10 spaces are within the front yard setback and are subject to site plan review; that other sites in the area have parking within the front yard setback; that the required 20-foot highway corridor overlay zone buffer provides for 10 plantings that complies with the zoning code; that sewer will be provided by Sussex County and water will be provided by the City of Rehoboth; that all agency approvals have been received; 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 approve the site plan as a preliminary and as a final. Motion carried. Motion 4 – 0.

Millville Organic Center
CU #1913 – Amended Condition

Mr. Abbott advised the Commission that this is a request to amend the Condition of Approval F, which states, "There shall be no composting, grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for composting, grinding and processing shall be shown on the Final Site Plan." to "There shall be no yard waste composting operations, including storage, composting and curing within 300-feet measured horizontally from an occupied dwelling and within 25-feet of a property line. There shall no yard waste grinding within the same setbacks previously stated within this condition. These setbacks for yard waste composting operations, including storage, composting and curing and yard waste grinding shall be shown on the Final Site Plan."; that the revised condition for composting only will adhere to the Guidelines for Yard Waste Composting Facilities, prepared by DNREC; and that the applicants have advised that these statements were made as a part of the record at the public hearing.

Mark Davidson of Pennoni Associates, Inc. was present and advised the Commission that the proposed language complies with DNREC regulations; that the approved site contains 17 plus acres; that the current condition only permits 3.89 acres to be used; that if the condition is revised, the preliminary and final plan would have the storage, grinding and composting area a minimum of 300 feet from any dwelling not on the site; that DelDOT has granted their entrance approval; and that other submittals have been delayed pending the outcome of the Commission's decision.

Mr. Robertson advised the Commission that the site will always have to be in compliance with any DNREC regulation.

Mr. Johnson advised the Commission that Mr. Smith had a lot of thought into his motion and that the Commission should defer action so that Mr. Smith has the opportunity to participate in this discussion.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to defer action so that Mr. Smith may participate in this discussion. Motion carried 4 – 0.

The Herola Family, LLC
CU #1716 – Amended Landscape Plan

Mr. Abbott advised the Commission that the Artisan's Bank site plan was approved by the Planning and Zoning Commission on April 22, 2009 and by the staff on April 8, 2010; that there is a service road to the rear of the site that connects an existing commercial road for Beebe Hospital and the service road to the rear of the Rehoboth Walmart site; that the approved site plan depicted a landscape plan for the entire length of the service road; that a total of 219 plantings are proposed; that the developer is requesting that the landscaping be installed as the proposed buildings are constructed; that in this case, the landscaping would be from the commercial road to the end of the Artisan's Bank site; that as new construction commences, the landscaping will be installed along the respective site; and that the Commission was previously provided a copy of a letter from the developer.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to permit the landscaping to be installed as the buildings are constructed. Motion carried 4 – 0.

ADDITIONAL INFORMATION

Mr. Lank advised the Commission that a Fairhousing Workshop will be held on June 5, 2012 at 10:00 a.m. at the West Complex and questioned if anyone is interested in attending.

There was a consensus of the Commission that they will attend.

Meeting adjourned at 7:10 p.m.