



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 9, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 9, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton III, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the agenda as amended after announcing the withdrawal of C/U #1900 for Doris D. Turner, withdrawal of Other Business for Richard and Randall Culver, and that no action was going to take place on C/U #1896 for Timothy Miller, since the application was going to be re-advertised for new public hearings since there was an error in the public notice. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 12, 2011 as corrected. Motion carried 5 - 0.

OLD BUSINESS

Subdivision #2010-7 – application of **A.J. BIERMAN, BIERMAN FAMILY, LLC**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 55.059 acres into 47 lots, located northwesterly side of Road 446 (Beaver Dam Branch Road) 525 feet southwesterly of Road 447 (Johnson Road).

Mr. Abbott advised the Commission that this 47-lot subdivision application has been deferred since March 24, 2011; that the Applicants have provided reports that the site has been accepted into the L & W Tax Ditch District; and that there is not an easement between Lots 16 and 17 of the Oscar Gordy Subdivision. The Commission was previously provided with copies of a letter from the Applicants attorney and engineer.

Mr. Ross stated that he would move that the Commission grant preliminary approval of Subdivision #2010-7 for A. J. Bierman, Bierman Family, LLC, based on the record made during the public hearing and for the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Code in that it provides 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 density permitted by the existing AR-1 zoning.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) The site was previously approved for a similar subdivision under Subdivision application #2005-21, but was withdrawn as a result of stormwater management issues that have now been resolved.
- 5) The site has been included into the L & W Tax Ditch.
- 6) The proposed subdivision will not adversely impact schools, public buildings, and community facilities or area roadways and public transportation.
- 7) DNREC has indicated that the site is suitable for individual on-site septic systems.
- 8) This approval is subject to the following conditions:
 1. There shall be no more than 47 lots within the subdivision.
 2. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 3. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 4. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 5. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 6. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 7. A buffer shall be shown along all boundaries as required by the Sussex County Code. The Final Site Plan shall contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 8. As proposed by the Applicant, sidewalks shall be located on one side of all streets in the subdivision.
 9. There shall not be any amenities, playgrounds, rights-of-way or other active uses of the strip of land between Lots 16 and 17.
 10. This preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan, either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to grant preliminary approval of Subdivision #2010-7 for A. J. Bierman, Bierman Family, LLC, for the reasons and with the conditions stated. Motion carried 5 – 0.

C/Z #1704 – application of **SEASHORE HIGHWAY ASSOCIATES, LLC.**, to amend Comprehensive Zoning Map from AR-1 Agricultural Residential and C-1 General Commercial to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.86 acres, more or less, lying north of Route 9 (Lewes Georgetown Highway) and 1,000 feet east of Road 281 (Josephs Road).

The Commission discussed this application, which has been deferred since May 12, 2011. Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1704 for Seashore Highway Associates, LLC for a change in zone from AR-1 Agricultural Residential and C-1 General Commercial to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) The property that is the subject of this application has C-1 General Commercial zoning that has been in place for many years over a portion of it.
- 2) The rezoning of the entire parcel to CR-1 Commercial Residential will bring the property under one zoning classification that matches the boundaries of the Applicant's property.
- 3) The Applicants has stated that they cannot reasonably redevelop their land under the current division of C-1 General Commercial and AR-1 Agricultural Residential zoning districts, since any new construction on the parcel would require the dedication of additional rights-of-way to DelDOT for Route 9 and greater setbacks. This would severely limit the buildable area under the boundaries of the existing C-1 General Commercial zoning.
- 4) This recommendation is based upon factors unique to this property, including the existing commercial zoning and recognition of the need to have zoning district boundaries match a property's boundaries. It should not be construed as an indication that other commercial or business re-zonings are appropriate along this area of Route 9.

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 stated. Motion carried 5 – 0.

C/U #1895 – application of **FREEDOM WORSHIP CENTER, INC.** to consider the Conditional Use of land in B-1 Neighborhood Business District for a private school to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.71 acres, more or less, lying southwest of Old Route 14 (Argos Corner Road) 1,000 feet northwest of Road 224 (Slaughter Beach Road) and across from Road 224A (Rutt Road).

The Commission discussed this application, which has been deferred since May 26, 2011.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1895 for Freedom Worship Center, Inc. for a private school within a B-1 Neighborhood Business District based upon the record made at the public hearing and for the following reasons:

- 1) This project is for the redevelopment of a site that has been abandoned for many years. It was previously used as a nursing home. The redevelopment of this property will improve both the site and the neighborhood.
- 2) The proposed use, as a school, is in accordance with the Sussex County Comprehensive Plan 2008 Update that references the need for more new schools and school expansions.
- 3) This site, which is currently zoned B-1 Neighborhood Business, is appropriate for the location of a school.
- 4) The project, with the conditions and limitations placed upon it, will not have an adverse impact on neighboring properties, the community or traffic.
- 5) The use as a school is in accordance with the stated purposes for granting Conditional Uses, and it promotes the health, safety and welfare of residents of Sussex County.
- 6) No parties appeared in opposition to the school project.
- 7) This recommendation is subject to the following conditions:
 1. The site shall comply with all agency requirements, including DelDOT.
 2. Any lighting shall be screened so that it does not shine on neighboring properties or roadways.
 3. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 4. The site shall be used for the school, and any activities that are typically associated with a school of this size.
 5. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Smith, and carried with four (4) votes 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, with Mr. Johnson abstaining since he was not present during the public hearing.

C/U #1896 – application of **TIMOTHY S. MILLER** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a mulch storage, processing and sales and boat and RV storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.729 acres, more or less, lying east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road).

The Commission discussed this application, which has been deferred since May 26, 2011.

Mr. Robertson had advised the Commission during the discussion on the Approval of the Agenda that no action would be taken on this application since the property had been incorrectly posted, and that it will be necessary that the application be rescheduled and re-advertised for future public hearings.

No action was taken on this application.

C/U #1897 – application of **RUSSELL V. BANKS** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 30.78 acres, more or less, lying east of Road 348 (Irons Lane) approximately 800 feet north of Road 349 (Old Mill Road).

The Commission discussed this application, which has been deferred since May 26, 2011.

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

C/U #1899 – application of **RICHARD M. INGRAM** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (16 units) to be located on certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 4.0 acres, more or less, lying northwest of Road 291 (Martins Farm Road) 675 feet southwest of Road 262 (Fisher Road).

The Commission discussed this application, which has been deferred since May 26, 2011.

Mr. Smith stated that he would move that the Commission recommend denial of C/U #1899 for Richard M. Ingram for the following reasons:

- 1) The Applicant did not address the relevant criteria contained in the County Zoning Code for granting a Conditional Use for Multi-Family Dwelling Structures.
- 2) The Applicant was unable to describe the proposed Conditional Use or the individual dwellings in sufficient detail to justify granting the requested Conditional Use.
- 3) In general, there is not a sufficient record that was made in support of granting the Conditional Use at all.
- 4) Multiple parties appeared in opposition to the proposed Conditional Use, expressing concerns about the current condition of the property, the method of wastewater treatment for all of the proposed multi-family dwelling units, water supply for the proposed units and other concerns. The Applicant did not adequately address any of these points during his presentation.
- 5) There are no similar multi-family dwelling structures in the vicinity of this site. The surrounding properties are all single-family homes on subdivided lots.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four (4) votes 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 with Mr. Johnson abstaining since he was not present during the public hearing.

PUBLIC HEARINGS

APD #2011-1 – application of **J.L. CARPENTER, SR., FAMILY LIMITED PARTNERSHIP** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for three (3) parcels of land totaling 264.1 acres, more or less, located on both sides of Road 259 (Carpenter Road) and 0.7 mile west of Road 257 (Diamond Farm Road), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that this property contains 264.1 acres of land with 205.9 acres of cropland, 33.2 acres of woodland, and approximately 25 acres of area around the

dwelling, manufactured home and farmland structures; that the Applicants are proposing to place three parcels into Agricultural Preservation; and that the type of farming operations include grain, vegetables, and poultry.

Mr. Lank added that the purpose of this review is to allow the Commission to make a recommendation to the Delaware Agricultural Lands Preservation Foundation on whether to accept these properties as an Agricultural Preservation District. The Delaware Agricultural Lands Preservation Foundation, the Planning and Zoning Commission, and the Sussex County Farmland Preservation Committee review the properties. At least two of the committees have to approve the properties to establish a valid District.

The Commission found that there were no parties present on behalf of the Applicants. The Commission found that John P. Reed, III was present in support of this application and recommended that the Commission grant approval since the property has been farmed for years.

The Commission found that there were no parties present in opposition.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be approved. Motion carried 5 – 0.

APD #2011-2 – application of **J.L. CARPENTER, SR., FAMILY LIMITED PARTNERSHIP** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for three (3) parcels of land totaling 371.24 acres, more or less, located on the north side of Road 257 (Round Pole Bridge Road), and 0.8 mile north of Route 88 (Cave Neck Road), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that this property contains 371.24 acres of land with 147.2 acres of cropland, 142.04 acres of woodland, and approximately 1 acre of area around the dwelling and farmland structures; that the Applicants are proposing to place three parcels into Agricultural Preservation; and that the type of farming operations include grain and vegetables.

Mr. Lank added that the purpose of this review is to allow the Commission to make a recommendation to the Delaware Agricultural Lands Preservation Foundation on whether to accept these properties as an Agricultural Preservation District. The Delaware Agricultural Lands Preservation Foundation, the Planning and Zoning Commission, and the Sussex County Farmland Preservation Committee review the properties. At least two of the committees have to approve the properties to establish a valid District.

The Commission found that there were no parties present on behalf of the Applicants.

The Commission found that John P. Reed, III was present in support of this application and recommended that the Commission grant approval since the property has been farmed for years.

The Commission found that there were no parties present in opposition.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be approved. Motion carried 5 – 0.

C/U #1900 – application of **DORIS D. TURNER** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.11 acres, more or less, lying southeast of Road 365 (Powell Farm Road) approximately 1,750 feet south of Route 26 intersection at St. Georges Church.

Mr. Lank had advised the Commission at the beginning of the meeting that this application was withdrawn on June 2, 2011.

Subdivision #2011-3 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 5.99 acres into 8 lots, (Environmentally Sensitive Developing District Overlay Zone), located southerly end of Marina Road approximately 850 feet south of Road 336.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of May 23, 2011 is a part of the record for this application; that the applicants submitted an Exhibit Booklet into the record on May 27, 2011; and that a letter from Brad Temple, PLS was received on June 7, 2011 disputing the right of way width on behalf of an adjoining property owner.

William Scott, Attorney, Mark Davidson and Steve McCabe, P.E. with Pennon Associates, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this project was denied by the Commission in 2010 due to the fact that a waiver from the forested buffer requirements was not advertised and that there were issues of whether the right of way is actually 50 feet in width; that this plan depicts the required 20-foot buffer around the project; that the applicant's engineers have spent a lot of time researching Delco's record and have found that there is 50 feet of right of way for Marina Road; that copies of deeds, surveys and other drawings are referenced in the Exhibit Booklet; that these records came from Delco's archives; that all landowners granted a 25-foot easement on both sides of Marina Road; that the preliminary plan includes a landscaping plan that is in compliance with Section 99-5; that the front portion of the site is wooded; that additional trees are proposed to the rear of Lots 3 through 8; that access to the project is from a 50-foot right of way; that the engineers have had many meetings with representatives of DelDOT; that records indicate that Marina Road is approximately 1,000 feet in length from Road 336 to Pepper Creek; that the site was referred to as an old boat yard; that the Exhibit Booklet contains copies of deeds that were signed by the adjoining property owners; that each deed references the centerline of a 25-foot dirt road; that once the dedication was completed, DelDOT accepted Marina Road as a state road; that the requirements of Section 99-9C are referenced in the Exhibit Booklet and summarized the 17 areas; that the proposed forested buffer will improve scenic views; that there are currently moderate trees located on the site; that the debris on the site will be cleaned up; that the project will not create any objectionable features; that all lots will be screened, that Tidewater Utilities will provide central water to the project; that central sewer will be provided by Sussex

County; that the project will not cause any negative impacts to groundwater; that modern storm water management designs will be implemented utilizing Best Management Practices; that the design of the project provides for safe vehicular and pedestrian access; that restrictive covenants have been submitted; that only on-site stick built dwellings are permitted; that the site is not currently in agricultural use therefore there will not be a loss of farmland; that there will be no negative impacts to public infrastructure; that the existing roadway will be improved; that streetlights are proposed in the project; that the site is bordered by two subdivisions; that there will be no negative effects on area waterways; that the project complies with the Subdivision Ordinance; that the Exhibit Booklet contains proposed findings of fact and conditions for preliminary approval; that the applicant will have to obtain entrance approval from DelDOT; that there will not be any further taking of right of way; that at this time, sidewalks are not proposed; that there are no amenities proposed other than the open space areas with picnic tables; that the street within the project will be private and built to County specifications; that the street will be bonded; that a 20-foot access easement is provided for 2 adjoining properties; that the applicants are trying to obtain approval from DNREC for the boat dock; that a wetlands delineation has been performed and submitted for approval; that if the project is approved, the applicants will move forward in developing the project; that all run-off will be contained on the site; that if DNREC approves the boat dock, only 8 slips are proposed; that a traffic management plan will have to be addressed with DelDOT; and that the existing boat ramp will remain.

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

George Merrick, E.J. and Carey Steen, Pat Frey and Dustin Thompson were present in opposition to this application and advised the Commission that they disagree with the width of the right of way; that the private boat yard was not open to the public; that Marina Road dead ends before the subject site; that there are no survey markers on the site and questioned if the site has been surveyed; that the site plan does not show an area for storm water management; that the proposed open space area near the boat ramp is always under water; that there are many vacant lots in the area and questioned the need for additional lots; that the proposed lots are small; expressed concerns about run-off; that the easement does not go to the subject site; that maintenance of Marina Road stopped at the Stevenson property; that there will be negative impacts to the bay; that the project will cause degradation of area waterways and there are concerns about sea-level rise.

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

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

Subdivision #2011-4 – application of **BRANSON S. SMITH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 31.93 acres into 15 lots, and a variance from the forested buffer requirements, located at the end of Anna Patrick Lane Extended, a private 50' easement, approximately 1,080 feet north of Road 535 (Middleford Road).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of May 27, 2011 will be made a part of the record for this application; that the applicant submitted revised restrictive covenants addressing Mr. Robertson's comments; and that a revised plan for 14 lots and residual land was submitted on April 15, 2011.

Donald Miller, PLS with Miller – Lewis, Inc. and Branson Smith were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 14 lots and residual land are proposed; that the street will be private and built to County specifications; that the 5 lots in front of this project have already been sold; that there is an interest for new lots in the area; that one lot may be lost for storm water management due to the soils on the site; that the plan has not been submitted to DelDOT for approval; that only stick-built dwellings will be permitted; that the street, buffers and storm water management will be maintained by the developer until they are turned over to a homeowners' association; that on-site septic and well are proposed; that a septic feasibility statement has not been issued by DNREC; that there is no plan for streetlights or sidewalks at this time; and that lots 1 through 4 all have an approved septic system located on them.

Dale Smith was present in support of this application and advised the Commission that he has no problems with the project as long as manufactured homes are not permitted in the project.

Cheryl Webster, Walter Sirman and Bart Hastings were present in opposition to this application and advised the Commission that there is a manufactured home on Lot 3; that there should be a septic approval prior to the project being approved; that there are drainage problems in the area; that trash, trespassing and traffic will cause problems in the immediate area; that there is flooding on the site; that they have concerns about run-off; that the site should not be developed; and submitted photographs of the site under water.

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

Motion by Mr. Ross, seconded by Mr. Johnson and carried 4 votes to none, Mr. Smith was absent, to defer action pending receipt of a septic feasibility statement from DNREC and for further consideration. Motion carried 4 – 0.

OTHER BUSINESS

Laurel Fire Department, Inc.
CU #1879 Site Plan – Road 479 (Fire Tower Road)

Mr. Abbott advised the Commission that this is a preliminary site plan for a 5,039 square foot fire department substation; that the site is zoned AR-1 and this conditional use was approved on January 4, 2011 with 2 conditions; that the setbacks meet the minimum requirements of the zoning code; that on-site water and septic are proposed; that 9 parking spaces are provided; 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 4 votes to none, Mr. Smith was absent, 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. Motion carried 4 – 0.

Subdivision #2009 – 10 - - H.P. Layton Partnership
Brickyard Landing Subdivision – Reconsideration of Condition of Approval

Mr. Abbott advised the Commission that this is a request for reconsideration and clarification of Condition of Approval A; and that the Commission was previously provided a copy of the request.

Mr. Burton stated that his motion for preliminary approval of the Brickyard Landing Subdivision was based upon a careful review of the information presented during the public hearing and was also made after his review of the applicant's proposed site plan; that he sees no reason to reconsider any of the conditions contained in the approval, and that he would move that the Commission deny the applicant's request for reconsideration.

Motion by Mr. Burton, seconded by Mr. Ross and carried 4 votes to none, Mr. Smith was absent, to deny the request for reconsideration. Motion carried 4 – 0.

Richard and Randall Culver
2 Lots and 50' Easement – Road 511 (Jackson Road)

Mr. Lank had advised the Commission at the beginning of the meeting that this item was withdrawn on June 3, 2011.

ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that a Special Meeting is scheduled for June 15, 2011 at 3:00 p.m. for a Commission and Staff discussion relating to Ordinances, Policies, and Procedures.

Meeting adjourned at 8:40 p.m.