



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE SPECIAL MEETING OF JUNE 15, 2011

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday evening, June 15, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 3:00 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.

Mr. Lank noted that the purpose of this meeting is to provide the opportunity for the Commission and the staff to discuss issues relating to Ordinances, Policies, and Procedures.

Mr. Robertson stated that both County Council and the Planning and Zoning Commission have expressed a desire to review areas of the Subdivision and Zoning Codes that need to be corrected or updated, and that there are sections that are simply outdated or that do not necessarily agree with the County's current practice.

The Commission and staff discussed the Subdivision and Zoning Codes. As a result, the Commission identified the following areas that should be reviewed for the possibility of drafting Ordinances to adjust, correct or update particular areas of the Zoning (Chapter 115) and Subdivision (Chapter 99) Codes.

With regard to the Subdivision Code, the following changes, corrections, or updates were suggested:

- Section 99-9A. This needs to be corrected to reflect the current timing of hearings and decisions. It now refers to hearings and decisions during the "second regular meeting of the Commission", which is no longer applicable since the Commission meets regularly all the time.
- Section 99-5. A definition of "property owners" needs to be included within the Subdivision Code. This will clarify several areas where the term is used throughout the Code, including the method of counting votes for an amendment to an existing subdivision plan.
- Section 99-15F. This section contains reference to the location for commercial development and industrial development. This should be deleted from the Subdivision Code and inserted into the Zoning Code.

- Section 99-16D(1) contains a printer's error that needs to be corrected.
- Section 99-32A should be updated to specifically reference bonding for amenities. The County currently requires such bonding as part of the overall bonding for roads, stormwater and other improvements that are referenced in the Code. "Amenities" should be added for clarity.
- Section 99-9C should be clarified regarding its impact upon subdivision reviews, approvals or denials.
- There should be a requirement in the Code that septic feasibility or a site evaluation should be obtained from DNREC before any new lot is approved. This would avoid the possibility of approving an unbuildable lot due to lack of septic.
- Street cross-sections should be eliminated from the Code. All subdivisions must now comply with County Engineering's street design requirements, and the cross-sections depicted in the Code are very outdated.
- Section 99-8 needs to be modified to reflect the County's current practice for obtaining information about neighboring property owners. Section 99-8 requires the applicant to provide a notarized list of adjacent property owners for notification about an upcoming hearing. Instead, the staff has been obtaining this information itself for years. The concern is that if the applicant provides this information, staff has no control over the accuracy of it for notice purposes. With staff preparing this information and notifying adjacent property owners, there is a greater likelihood that the appropriate neighbors are actually being notified correctly. An amendment would bring the Code into conformity with County practice.
- There is currently a definition of "substantial construction" in Section 99-40 of the Subdivision Code but not one in the Zoning Code for Conditional Uses. It has been legal staff's uniform opinion that absent a definition, the Courts would look to the one contained in the Subdivision Code for applicability to Conditional Uses. Nevertheless, one should specifically be established for Conditional Uses.

With regard to the Zoning Code, the following changes, corrections or updates were suggested:

- Section 115-4, the definition of "filling station" should be updated since it is somewhat outdated in regard to what is currently the development trend for gas stations or convenience stores. This has a particular effect in the B-1 District where a "filling station" is a permitted use.
- The Commission expressed the desire to review the definition of "home occupation" contained in Section 115-4 to consider updating what falls under that category of use to avoid the potential unnecessary burdens (such as filing fees and hearings, etc.) imposed upon someone operating a small "in-home" business.

- The term "golf course" should be revised and updated. It currently only refers to golf activities, pro-shops, locker rooms, snack bars, etc. It does not recognize that just about every golf course has full dining facilities and many have large rooms used for weddings and other events.
- Section 115-69B, 115-77.1, 115-77B and 115-83.2B deal with the "big box" 75,000 square foot limitations. In the B-1 District, anything larger than 75,000 square feet is prohibited. In the C-1 and CR-1 Districts, the size triggers additional site design requirements. The Commission expressed the desire to close a loophole in the existing Ordinance that potentially allows a developer to get around these size limitations by subdividing a property, even though it is part of one common development scheme.
- There was also a desire expressed by the Commission to consider amending Section 115-77.1D(2). This Section requires additional parking for commercial structures that exceed 75,000 square feet. Specifically, once this square footage threshold is met, a 20% increase in parking is triggered. This creates additional, and often unnecessary, parking spaces and impervious areas. The Commission would like to explore the possibility of an applicant submitting a parking analysis of the type already contained in the Code for shared parking, with mandatory minimums. A developer would be allowed to present an analysis based upon established standards to show the amount of parking that is actually needed for the project, which could not be less than the minimum requirements that already exist in Section 115-162 for off-street parking. It would eliminate the automatic 20% increase, which may not be justified.
- The Commission expressed the desire to review the parking requirements for medical and doctor offices, which do not currently reflect the manner in which those practices operate with double and triple booking for patient services.
- Section 115-129 deals with completion guarantees for RPCs and states that they "may" be required. This should be modified to state that they "shall" be required to be consistent with the bonding and performance guarantee requirements that exist for subdivisions.
- There is reference in the Code to the fact that parking in the front yard setback for commercial or business uses should be discouraged. It is also prohibited for home occupations. The Commission has had a practice of reviewing parking in the front yard setback and prohibiting it unless mitigating factors exist. The Commission would like this long-standing practice to be more clearly codified. This prohibition would be contained within the Off-Street Parking section of the Zoning Code, and that Section specifically states that the Commission does have the ability to modify the parking requirements if circumstances warrant (like in the case where every other adjacent property already has parking in the front setback).

A Conditional Use for chicken houses on less than 5 acres should be deleted from the Zoning Code. This is an area issue, which is more appropriate for the Board of Adjustment.

- Section 115-194.1E(3) should be corrected to include the CR-1 Zoning District within the listing of applicable setbacks in the Highway Corridor Overlay Zone. When the CR-1 District was created, it was not added to this list, which outlines the setbacks for every other zoning district.
- Section 115-194.3B(3) deals with the submission of information as part of the Environmentally Sensitive Development District Overlay Zone. There is currently a requirement that "the Planning and Zoning Commission shall make a determination as to whether adequate information has been presented for the project to proceed." The question has been raised by both applicants and opposition whether this establishes a preliminary step prior to a hearing or is simply part of the public hearing process. In other words, is the Commission supposed to establish that adequate information has been presented for a later hearing to be scheduled? The Commission has interpreted this Code Section to mean that the determination must be made as part of the public hearing process and that the development cannot be approved unless a determination is made that adequate information has been presented. To clarify this, the word "proceed" should be replaced with the words "be approved" in the sentence quoted above.
- The Commission and Staff also discussed the need to clarify areas of the Sign Ordinance to address size of signs and whether temporary signs such as "feather flags" and the like need to be regulated more clearly.

It was noted that there may be a need to review all of the listed Conditional Uses and Special Use Exceptions in each zoning district to determine if some of the Conditional Uses would be more appropriate as Special Use Exceptions and/or if some of the Special Use Exceptions would be more appropriate as Conditional Uses.

The Commission asked Mr. Robertson to provide the County Council with a report on this meeting, and to receive any feedback from Council as to the topics that were addressed.

There appeared to be a consensus that it is the Commission's desire to address the amendments that are truly "corrections" first. Once drafted, they would be forwarded to Council for introduction followed by the normal public hearing process.

Meeting adjourned at 4:45 p.m.