



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF JUNE 18, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, June 18, 2008 in the County Council Chambers, County Administrative Office Building, 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. Benjamin Gordy, Mr. I.G. Burton, Mr. Michael Johnson and Mr. Rodney Smith, with Mr. Vincent Robertson – 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 Revised Agenda as amended by removal of Item 4 from Other Business. Motion carried 5 – 0.

CONSENT AGENDA

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Consent Agenda as circulated. Motion carried 5 – 0.

The Consent Agenda included:

Subdivision #2004 – 10 - - application of WINDSOR FARM, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County by dividing 171.83 acres into 21 lots, located north of Road 527, 1.35 mile northeast of Route 18.

This is the final record plan for a standard 21-lot subdivision application. The Commission granted preliminary approval for 21 lots on April 7, 2005 and granted one-year time extensions on March 1, 2006, May 16, 2007 and March 19, 2008. The final record plan meets the requirements of the subdivision and zoning codes and all agency approvals have been received.

Subdivision #2004 – 44 - - application of FRAN GONZON to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 161.91 acres into 205 lots (Cluster Development), located south of Road 227, east of Road 226 and north of Road 231.

This is the final record plan for a 180-lot cluster subdivision. The Commission granted preliminary approval for 180 lots on October 13, 2005 and granted one-year time extensions on February 20, 2007 and August 15, 2007. The Commission granted a revised preliminary

approval on August 15, 2007. The final record plan meets the requirements of the subdivision and zoning codes, the conditions of approval and all agency approvals have been received.

Subdivision #2005 – 3 - - application of DOUGLAS D. AND JUDITH K. BREEDING to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 37.13 acres into 46 lots (Cluster Development), located north of Road 224, approximately 1 mile east of Road 213.

This is the final record plan for a 46-lot cluster subdivision. The Commission granted preliminary approval for 46 lots on November 17, 2005. The final record plan meets the requirements of the subdivision and zoning codes. All agency approvals have been received. If final approval is granted, a time extension will be required. 2, one-year time extensions, retroactive to the anniversary date of preliminary approval will be needed.

Subdivision #2006 – 5 - - application of SHIP BUILDERS, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 61.808 acres into 47 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 432, 400 feet south of Road 471.

This is the final record plan for a standard 46-lot subdivision. The Commission granted preliminary approval for 47 lots on May 16, 2007. The final record plan meets the requirements of the subdivision and zoning codes, the conditions of preliminary approval and all agency approvals have been received.

Time Extensions

a. CU #1681 – W. Edward Metz

This is a request for a one-year time extension. The conditional use for a campground and boat and RV storage was approved on June 5, 2007. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and will be valid until June 5, 2009.

b. CU #1678 – Marine Farm, L.L.C.

This is a request for a one-year time extension. The conditional use for a recreational/therapeutic equestrian facility was approved on June 27, 2006. The Commission granted a one-year time extension on July 18, 2007. This is the second request for an extension and the last one that the Commission has the authority to grant. If an extension is granted, it will be valid until June 27, 2009.

c. CU #1651 – Jeff Hamer/Oasis Property

This is a request for a one-year time extension. The conditional use for multi-family dwelling structures was approved on June 6, 2006. The Commission granted a one-year time extension on July 18, 2007. This is the second request for a time extension and the last one that the

Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and will be valid until June 6, 2009.

d. Subdivision #2003 – 50 - - Kaplan, Gallo & Howett

This is a request for a one-year time extension. The Commission granted preliminary approval on April 19, 2007. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until May 25, 2009.

e. Subdivision #2005 – 40 - - Paul and Doris T. Barron

This is a request for a one-year time extension. The Commission granted preliminary approval on May 25, 2006 and granted a one-year time extension on September 19, 2007. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until May 25, 2009.

f. Subdivision #2005 – 36 - - Betty D. Black

This is a request for a one-year time extension. The Commission granted preliminary approval on May 11, 2006 and granted a one-year time extension on May 16, 2007. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until May 11, 2009.

g. Subdivision #2005 – 30 - - Salvatore Cangiano

This is a request for a one-year time extension. The Commission granted preliminary approval on July 6, 2006 and granted a one-year time extension on July 18, 2007. This is the second request for a time extension. If an extension is granted, preliminary approval will be valid until July 6, 2009.

h. Subdivision #2006 – 9 - - Ellis Grove

This is a request for a one-year time extension. The Commission granted preliminary approval on June 20, 2007. This is the first request for a time extension. If an extension is granted, preliminary approval will be valid until June 20, 2009.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the items on the Consent Agenda as noted. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2006 – 58 - - application of WRIGHT H. PARKER to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar Creek Hundred, Sussex County, by

dividing 20.09 acres into 19 lots, and a waiver from the forested buffer requirements, located north of Road 38, 1,700 feet east of Road 225.

The Chairman referred back to this application, which has been deferred since March 5, 2008.

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

OTHER BUSINESS

MTC Properties, L.L.C.
CU #1728 Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a site plan for an office, storage and steel truss manufacturing business located on 24.84 acres; that the Conditional Use was approved on April 8, 2008 with 13 conditions; that the conditions of approval are referenced on the site plan; that the site plan complies with the requirements of the zoning code and the conditions of approval; that the project will be built in 2 phases; that on-site septic and water are proposed; and that final approval could be considered since all agency approvals have been received.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

North Beach Community
CU #1507 Revised Site Plan – Road 360

Mr. Abbott advised the Commission that this is a revised site plan for approximately 900 additional square feet of paved area for parking spaces located in front of building #6; and that the owners of these units want their parking spaces in front of their units.

Gordon Meade of Davis, Bowen & Friedel, Inc. advised the Commission that the intent is to square up parking for the 2 end units in building #6 and that each unit will have an additional parking space in front of the unit.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the revised site plan as submitted. Motion carried 5 – 0.

P.G.S. Properties, L.L.C.
Preliminary Commercial Site Plan – Route 54

Mr. Abbott advised the Commission that this is a site plan for a 14,637 square foot pharmacy located on 2.32-acres; that the site is zoned C-1, General Commercial; that the setbacks meet the requirements of the zoning code; that 73 parking spaces are required and provided; that Sussex County will provide central sewer and Artesian Water Company will provide central water; that access to the site is from a cross access easement from the adjoining parcel to the north; that this

access is from Road 381 and there is not any direct access to Route 54; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Gordy 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 5 – 0.

BBM Ventures, L.L.C.
3 Parcels and 50' Right of Way – Road 567A

This item was removed from the agenda.

Victoria Harmon
Lot on 50' Right of Way – Road 280

Mr. Abbott advised the Commission that this is a request to create a 1.50-acre lot with access from an existing 50-foot right of way; that this would be the third lot with access from the right of way; that the request may be approved as submitted or an application for a major subdivision can be required; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Timothy S. Elder
3 Parcels and 50' Right of Way – Road 367B

Mr. Abbott advised the Commission that this is a request to create 3 parcels with access from a 50-foot right of way; that the proposed lots contain 0.82-acres, 1.64-acres and 6.88-acres; that the owner proposes to create the right of way over an existing lane; that this site received preliminary approval on May 26, 2005; that the owner never requested a time extension; that the request may be approved as submitted or an application for another major subdivision can be required; and that if the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Bobby J. and Diann Miller
2 Lots on Existing 50' Right of Way – Road 490A

Mr. Abbott advised the Commission that this is a request to subdivide a 2.50-acre parcel into 2 lots with access from an existing 50-foot right of way (Mallard Point); that the lots will contain 1.0258 and 1.4739-acres; that this is the first time that this parcel has been subdivided; that if approved, these lots would be the fourth and fifth lots having access from the right of way; and

that the request may be approved as submitted or an application for a major subdivision can be required.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Duane Kenton
Lot on 50' Right of Way – Road 626

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre lot with access from a 50-foot right of way; that the owner proposes to extend an existing 50-foot right of way to serve as access to the proposed lot; that if the request is approved, this would be the third lot having access from the right of way; and that if the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision will require an application for a major subdivision. Motion carried 5 – 0.

Jennifer and Jason C. Clagg
Parcel on 50' Easement – Road 632

Mr. Abbott advised the Commission that this is a request to create a 4.874-acre parcel with access from an existing 50-foot easement; that the residual land contains 30.131-acres and the owners propose to build a handicapped accessible dwelling for their son; that the request may be approved as submitted or an application for a major subdivision can be required; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Triple D and G Enterprises
Parcel and 65' Right of Way – Route 36

Mr. Abbott advised the Commission that this is a request to subdivide 21.842-acres into 2 parcels; that one of the parcels will contain 1.342-acres and has 157.76 feet of road frontage; that the residual land will contain 20.50-acres and 65 feet of road frontage remaining; and that the owner proposes to utilize this as access to the site.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Subdivision #2006 – 51 - - Wolfe Properties, Inc.
Reconsideration of Condition of Approval

Mr. Abbott advised the Commission that this is a request to delete condition of approval number 8; that the Commission granted preliminary approval with conditions on April 16, 2008; that condition #8 reads, "The project will be served by a community central sewer system. The location of the sewer treatment plant and disposal areas shall be relocated into the interior of the Subdivision on the south side of Sharptown Road where it can be integrated into the project and will be less of an impact on the existing homes than currently shown on the Preliminary Site Plan."; and that the applicant is requesting that the treatment and disposal areas remain as shown on the preliminary plan.

Jim Fuqua, Attorney, advised the Commission that the project received preliminary approval in April 2008 for 181 lots; that the applicant is requesting that the condition #8 be deleted and that the treatment plant and disposal area be able to remain in the location as shown on the preliminary site plan; that DNREC has issued a septic feasibility statement that indicates that the soils are suitable for a community wastewater design and that the proposed location meets their requirements; that the applicant has met with Mrs. Tamara Ward and that Mrs. Ward has signed an agreement that she is not opposed to the location as shown on the preliminary plan and submitted a proposed revised conditions.

The Commission discussed this request.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to revise condition #8 to read as follows "The project shall be served by a community central sewer system. Details regarding forest buffers, the treatment building and fencing related to the central sewer system shall be in compliance with the Applicant's Letter dated June 10, 2008 attached hereto and incorporated by reference." Motion carried 5 – 0.

Subdivision #2006 – 63 - - Deep Branch Road, L.L.C.
Reconsideration of Conditions of Approval 15, 16 and 17

Mr. Abbott advised the Commission that this is a request to amend three conditions of the preliminary approval that the Commission granted on May 14, 2008; and that a letter explaining the request was sent to each Commission member for their review and consideration.

Jim Fuqua, Attorney, and Kevin McBride of Morris Ritchie Associates were present and advised the Commission that the project was designed on the current ordinance; that the proposed density is permitted by the zoning and subdivision codes; that they have no problems reducing the development acreage that is across the road and reduce the project by 5 lots from 303 down to 298; that the code does not require deducting wetlands from density; that there are no wetlands on individual lots; that there will be significant buffers from wetlands; that there is no basis to deduct wetlands in calculating density; that they feel the design of the project is superior to a standard subdivision; that there are no requirements that all lots have to abut open space; that 85% of the lots do adjoin open space; and submitted proposed revised conditions of approval.

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

Wetlands Jurisdictional Determinations Discussion

Mr. Abbott advised the Commission that the staff received a request from GMB requesting an exemption from providing an Army Corps of Engineers jurisdictional determination for a subdivision project; that their letter indicates that the Corps of Engineers does not want to issue these but the staff has not received such notice; that there are issues with the amount of time that it takes the Corps to issue a jurisdictional determination; and that this would reduce the Corps role in the approval process.

Steve McCabe; P.E., Ken Christenbury; P.E. and Jim McCulley advised the Commission that this requirement can take a lot of time to obtain; that the ordinance requires certification from a wetlands consultant and that they are abiding by this requirement.

The Commission took no action.

ADDITIONAL OLD BUSINESS

Comprehensive Land Use Plan

Mr. Lank noted that the Commission had received the latest draft of the Plan prior to the meeting.

Mr. Lank provided the Commission with copies of a June 13, 2008 letter from David B. Baker, County Administrator, to Constance Holland, Director of the Office of State Planning Coordination, in response to the PLUS (Preliminary Land Use Service) comments received April 18, 2008.

Mr. Robertson stated that he has found some additional editorial (typos) changes that need to be corrected and provided the staff with a copy of the latest draft marked to show the changes.

Mr. Lank advised the Commission that a request had been received for inclusion into the Town Center Area around the Town of Milton; that the request came from Baker Petroleum of Wilson Baker, Inc. for inclusion of their properties; that a portion of their property is presently improved by a propane, kerosene, diesel fuel storage and transfer facility which was approved with a Conditional Use; that they are intending to apply for industrial zoning and to create a railroad spur for access to rail service; that the site has been reviewed through the PLUS process; and that the parcel owned by the State of Delaware that is surrounded on three sides by the Wilson Baker, Inc. property should be included in the Town Center Area since it is improved by a Communication Tower approved by Conditional Use.

Mr. Lank advised the Commission that Mr. Kautz has met with representatives of the City of Milford and that the City has provided a corrective map of the City growth area and request that the corrective growth area be incorporated into the Future Land Use Plan Map.

There was a consensus of the Commission to incorporate the request of Baker Petroleum and the City of Milford into the Future Land Use Plan Map.

The Commission discussed the Comprehensive Land Use Plan Update, the necessary ordinances relating to the Plan, and the time limit on preparing and adopting the ordinances.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to recommend approval of the Revised Draft, dated May 2008, with the editorial corrections provided by Mr. Robertson and the staff, and with the two map modifications discussed. Motion carried 5 – 0.

Meeting adjourned at 5:05 p.m.