



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 12, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 12, 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, Mr. Martin Ross and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Shane Abbott – Assistant Director.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of June 21, 2012 as amended. Motion carried 5 - 0.

PUBLIC HEARINGS

Mr. Robertson explained how the public hearings would be conducted and the procedures for hearing the applications.

C/U #1932 – application of **TANYA A. GIBBS AND KIMWUAN L. GIBBS** to consider Conditional Use of land in a GR General Residential District for an automotive sales lot to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 27,250 square feet, more or less, lying southeast of Road 285 (Beaver Dam Road), 2,500 feet south of Road 287 (Kendale Road)(Tax Map I.D. 2-34-6.00-13.00).

The Commission found that the Applicants submitted a survey depicting the improvements on the lot and a proposed area for displaying 4 or 5 vehicles for sale.

The Commission found that on April 5, 2011 DelDOT had provided comments in the form of a Support Facilities Report which references that a traffic impact study is not recommended and that the current Level of Service “C” of Beaverdam Road will not change as a result of this application.

The Commission found that on July 9, 2012 the County Engineering Department Utility Planning Division had provided comments in the form of a memorandum which references that the site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Tanya Gibbs was present and stated in her presentation and in response to questions raised by the Commission that they are proposing used car sales for additional income; that the Department of Motor Vehicles requires a dealer's license if you sell more than 4 vehicles per year; that her property is close to a welding shop at Kendale Road, and a couple of day care facilities; that she also operates a day care in her home; that they have no objection to a restriction being placed on the application limiting the number of vehicles that can be displayed; that there is adequate space on the lot to display vehicles; that their intent is to display the vehicles in the rear yard; that the car sales will not interfere with the day care business since they anticipate most of the car sales will occur on Saturdays when her husband is available ; that there will not be any auto repairs performed on the site; that they have no intent to provide lighting on the display area; that she now cares for 9 children in the day care; and that her husband will oversee the car sales business, if approved.

Mr. Robertson advised the Commission that an individual that sells more than 5 vehicles needs a dealer's license per State regulations.

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. Johnson stated that he has some concerns about the location and the lack of other business activities in the immediate area.

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

C/Z #1718 – application of **GARY L. HUDSON, TRUSTEE** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 8.53 acres, more or less, lying north of Route 9 and 1,000 feet east of Route 5 at Harbeson (Tax Map I.D. 2-35-30.00-27.00 and 28.00).

The Commission found that the Applicant submitted a survey/site plan for the property depicting the improvements, and an Exhibit Booklet which contains a copy of the Application form, a copy of the deeds to the property, a survey/site plan, qualifications of Kenneth Christenbury, P.E. of Axiom Engineering, LLC, a zoning map of the area, an aerial photograph depicting the zoning, letters in support of the application, a copy of the DelDOT Support Facilities Report, a copy of a

portion of the 2008 Comprehensive Plan – Future Land Use map, references to compliance with the Comprehensive Plan, and suggested proposed Findings of Fact.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on July 9, 2012 and that the memorandum references that this site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Gary L. Hudson was present with Shannon Carmean, attorney with Sergovic, Carmean and Weidman, P.A., and Ken Christenbury, P.E., of Axiom Engineering, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the site contain two shops and a dwelling; that the shop along Route 9 has been used commercially for years for auto repair and service with some automotive sales; that the site is sandwiched between commercial sites and some conditional uses along Route 9 in the Harbeson area; that the site is located in a Developing Area according to the County Comprehensive Land Use Plan (Plan); that DelDOT did not require a traffic impact study for the current uses; that the Exhibit Booklet contains 4 letters in support of the application from area landowners; that they have applied for rezoning so that the non-conforming uses can be expanded; that the Applicant intends to continue to operate the 5,000 square foot automotive care center, and eight (8) mini-storage units; that the Plan references: that Developing Areas are often located near main arterial roads that connect major destinations within the County, and that permitted uses in Developing Areas include a range of housing types, and that commercial uses should be allowed; that a variety of office uses would be appropriate in many areas; that portions of the Developing Areas with good rural access and few nearby homes should allow for business and industrial parks; that careful mixtures of homes with light commercial and industrial uses can be appropriate to provide for convenient services and to allow people to work close to home; that rezoning of this property is appropriate and compatible with the goals and directions of the Developing Area; that rezoning will provide compatibility with neighboring uses, which include a wide range of zoning classifications from commercial, industrial, and residential to Conditional Use for a regional water facility; that this amendment should have no adverse or detrimental impact on neighboring areas or uses; that rezoning of this property is appropriate legislative action; that the property is served by Route 9, a major arterial road which connects major destinations within the County; that DelDOT determined that there will be minimal, if any, impact on traffic as the proposed use would not generate more than 400 trips per day or 50 trips during any peak hour; that the rezoning will also provide a mixture of residential and light commercial uses which are appropriate in Developing Areas and provide for convenient services, and will allow residents to work close to home; that the shop building along Route 9 has existed since the 1940's and the storage building to the rear was built in the 1970's for personal storage use.

The Commission found that Wayne Hudson was present and stated that he is present in support of the application on behalf of 3 properties in the area, that the property has been well maintained, and that there are no known objections to the application.

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

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

Mr. Johnson stated that this application is an appropriate infill location and that he would move that the Commission recommend approval of C/Z #1718 for Gary L. Hudson, Trustee, for a change of zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based on the record made during the public hearing and for the following reasons:

- 1) CR-1 zoning is appropriate for this property. It is located along Route 9, which is a major arterial roadway.
- 2) The location is basically infill, with commercial zoning and commercial uses surrounding the property. It is also in the immediate vicinity of the Route 9 and Route 5 intersection, with the business and commercial uses located there.
- 3) The property has been used for commercial purposes for many years prior to the County's Zoning Code. For example, there was testimony that there was a service station on the property in the 1940's.
- 4) There were several neighbors who supported the project, and no parties appeared in opposition to it.
- 5) The rezoning will have no adverse impact on neighboring properties, traffic, or the community.
- 6) The site is in a Developing Area according to the Sussex County Comprehensive Land Use Plan.

Motion by Mr. Johnson, seconded by Mr. Smith, 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.

OTHER BUSINESS

Subdivision #2008-1 – Albert J. Bierman
Revised Preliminary

Mr. Abbott advised the Commission that this application received preliminary approval for 8 lots on August 27, 2009 with 9 conditions; that this revised plan reduces the site to 6 total lots and a large residual area; that during the public hearing held on August 13, 2009 it was stated that there were no wetlands on the site; that the revised site plan now contains about 70% wetlands as a new delineation has been performed; that the revised 6 lots contain wetlands on the lots; that each lot contains buildable upland areas; that the use of wetlands on individual lots are one of the 17 items that the Commission must consider when reviewing an application; that the Commission needs to determine if the revised plan is a material revision or not; that this item was deferred at the June 21, 2012 meeting for further consideration and to allow the Commission the opportunity to listen to the recording of the August 13, 2009 meeting; and that the Commission had previously been provided a copy of the revised site plan prior to the June 21, 2012 meeting.

Mr. Ross stated that he is prepared to make a motion to require a public hearing.

Mr. Robertson stated that the Commission needs to make sure that they are going through the proper procedure; that the Code requires that certain issues be addressed; that since it has now been found that there are wetlands on the site, there is a need to address wetlands; that the record indicates that the original subdivision plan referenced that there were no wetlands on the site, and now the revised subdivision plan indicates that 70% of the site contains wetlands; that a final subdivision plan must be in compliance with the preliminary plan; that this plan is substantially different; and that the procedural items need to be considered.

Mr. Ross stated that he did not include a waiver of the fee in his proposed motion since the revised plan is substantially different from the original plan, and that there could be septic issues due to the soils on the site.

Mr. Johnson stated that the change in the plan is substantial; that the revised plans should be considered after a new public hearing; and that the fee should be required since the County did not cause the hardship.

Mr. Ross stated that he would move that the Commission require the Applicant to have a new public hearing for the revised preliminary site plan that he has submitted, based on the following reasons:

- 1) During the original public hearing, there was testimony from the neighbors that there are wetlands on the site, even though that site plan did not depict any. In response, and based on information provided by a prior soil scientist, the Applicant's attorney and the Applicant's surveyor stated that there are no wetlands on the site. Now, the proposed revised preliminary site plan, based on new soil studies, shows 70% of it is wetlands.
- 2) Section 99-26A (17) requires that all wetlands (both State and Federal) shall be indicated by legal description with bearings and distances with each flag point numbered. A signed and dated statement by an experienced qualified professional shall be provided verifying the accuracy of the delineation.
- 3) Section 99-10 requires that the plat must be "Substantially in accordance with the approved preliminary plat". I am concerned that going from no wetlands to 70% wetlands with a reconfiguration of the lot lines, prevents the revised plan from being substantially in accordance with the earlier plan.
- 4) Section 99-9C(2) and C(10) of the Code require the Commission to consider "the minimal use of wetlands and floodplains" and the "minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized" during a public hearing. A new hearing is needed so that these Code factors can be properly considered, given the substantial changes shown on the plan.
- 5) Had the Commission known there were either State or Federal wetlands on the site, the wetlands notice contained in Section 99-6H would have been required.
- 6) Section 99-16 requires the Commission to determine whether the land is "suitable for subdivision or development due to flooding, improper drainage, steep slopes, adverse earth formations or topography or other features..." Based on the substantial change and

the concerns raised by the public during the prior hearing, a new hearing should be conducted on the revised plan to address this Code requirement.

- 7) With 70% of the site now determined to be wetlands, Section 99-24C of the Code requires the Commission to determine whether this is a “special physical condition...which may act as a constraint on normal development or may preclude development totally.” Section 99-24D also states that “if such special conditions are found to exist, the Commission shall not approve a preliminary site plan until it is determined that it is technically feasible to overcome such conditions.”
- 8) In summary, with the plan going from no wetlands to 70% wetlands, a new hearing should be required to ensure that all of the Code requirements have been addressed as a result of this change. This will also give the public an opportunity to provide input on the changes, too.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously that the Applicant be required to reapply with a new subdivision application to be reviewed through the required public hearing process based on the reasons stated. Motion carried 5 – 0.

Lewes Auto Mall

Revised Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for the redevelopment of a 12.10 acre parcel that is zoned C-1 General Commercial; that currently there are four (4) buildings on the site that will be removed; that an existing 7,069 square foot building will remain; that the developers are proposing to construct a 40,543 square foot building along with three (3) future buildings totaling 5,000 square feet, 5,000 square feet, and 3,500 square feet respectfully; that the building setbacks meet the requirements of the zoning code; that 305 parking spaces are required and 434 spaces are proposed; that there are parking spaces located within the front yard setback, which are subject to site plan review; that there currently is parking located within the front yard setback; that there are no wetlands on the site and the property is not located within a flood zone; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that there is a 20-foot landscape buffer proposed however the developers will be requesting a variance from the required plantings to the Board of Adjustment; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals provided that a variance is obtained for the 20-foot landscape buffer area or the plantings are installed; and that he had previously provided the Commission with copies of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the site plan as a preliminary concept only. Final approval shall be subject to the staff receiving all agency approvals provided that a variance is obtained for the 20-foot landscape buffer area from the Board of Adjustment or the plantings are proposed to be installed in the buffer. Motion carried 5 – 0.

C/U #1972 – Tidewater Environmental Services, Inc.

Discussion

Mr. Robertson advised the Commission that he would not be participating in this discussion.

Mr. Abbott advised the Commission that this Conditional Use for a regional wastewater treatment and disposal facility was approved on December 8, 2009; that the Commission granted two (2) one-year time extensions and the application also received a time extension valid to January 1, 2013 under Ordinance No. 2208 adopted by County Council on August 9, 2011; that since early 2009, the Applicants have been moving forward to obtain necessary permits for construction; that their approvals have been the subject of numerous appeals and a decision is still pending with the Supreme Court; that the Commission granted final site plan approval on May 26, 2011; that because of the lengthy approval process, on-going litigation and money spent to date, the Applicants are requesting that the Conditional Use be extended for an additional year until January 1, 2014 or that the Commission determines that the use is substantially underway; that the Commission may also want to consider the time period from when the decision is rendered by the Supreme Court; and that the Commission was provided with a copy of a letter from the Applicants detailing what has been done to date.

The Commission discussed previous processes relating to time extensions.

Mr. Lank advised the Commission that the normal process has been that when litigation is still pending the three (3) year clock does not start until the litigation is settled. Mr. Lank added that the Conditional Use was approved on December 8, 2009, and that the Code was amended on June 2, 2009 allowing a Conditional Use to have three (3) years to get substantially underway.

Mr. Johnson stated that he would suggest that the Commission find that the Applicant was given three (3) years to have the project substantially underway; that since this Conditional Use has been involved in litigation, and a decision is still pending with the State Supreme Court, and that past practices of the Commission has been to consider the time period to begin when the litigation is completed, he would move that the time period for implementation of this project begins when the litigation is completed.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously that the time period for implementation of this project begins when the litigation is completed. Motion carried 5 – 0.

REORGANIZATION

Mr. Wheatley appointed Mr. Lank as Acting Chairman for the purpose of holding an Election of Officers.

Mr. Lank opened nominations for Chairman.

Motion by Mr. Johnson, seconded by Mr. Burton to nominate Mr. Wheatley as Chairman.

Motion by Mr. Smith, seconded by Mr. Ross that the nominations for Chairman be closed.

Motion was adopted to nominate Mr. Wheatley as Chairman with 5 years.

Vote for Mr. Wheatley, as Chairman, by roll call:

Mr. Burton – Yea
Mr. Johnson – Yea
Mr. Ross – Yea
Mr. Smith – Yea
Mr. Wheatley – Yea

Mr. Lank opened nominations for Vice-Chairman.

Motion by Mr. Burton, seconded by Mr. Smith to nominate Mr. Johnson as Vice-Chairman.

Motion by Mr. Wheatley, seconded by Mr. Ross that the nominations for Vice-Chairman be closed.

Motion was adopted to nominate Mr. Johnson as Vice-Chairman with 5 yeas.

Vote for Mr. Johnson, as Vice-Chairman, by roll call:

Mr. Burton – Yea
Mr. Ross – Yea
Mr. Smith – Yea
Mr. Wheatley – Yea
Mr. Johnson – Yea

The meeting was turned over to Mr. Wheatley, the re-elected Chairman.

Mr. Wheatley appointed Mr. Lank as Secretary for the Commission, and authorized Mr. Lank and Mr. Abbott to sign record plots for recordation on behalf of the Commission.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that Ernest Megee, one of the first Planning and Zoning Commission members, had passed away earlier this week at the age of 93; that he will be missed by everyone that worked with him in the past; and that he served as a Planning and Zoning Commission member from September 14, 1967 through June 30, 1975.

Mr. Lank reminded the Commission that a Special Meeting is scheduled for next Wednesday, July 18, 2012, at 3:00 p.m. in Chambers for a workshop to discuss sidewalk issues and a presentation by the University of Delaware on the “Community Viz” program. Mr. Lank added that the meeting will be limited in time since another group has scheduled the Chambers for 6:00 p.m.

Meeting adjourned at 7:15 p.m.