



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 22, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 22, 2010, 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, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 8, 2010 as amended. Motion carried 4 - 0.

Old Business

C/U #1838 – application of **BRIAN L. WHITE AND LISA D. WHITE** to consider the Conditional Use of land in a GR General Residential District for a well drilling business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 6.0 acres, more or less, lying west of Road 279 (Camp Arrowhead Road) 390 feet north of Road 277 (Angola Road).

The Commission discussed this application, which has been deferred since July 8, 2010.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion. Motion carried 4 - 0.

C/U #1839 – application of **R. JOSEPH JOHNSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a shop/office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 21,962 square feet, more or less, lying north of Road 269 (Clay Road) 600 feet east of Road 276 (Shady Road).

The Commission discussed this application, which has been deferred since July 8, 2010.

Mr. Burton stated that he would move that the Commission recommend denial of C/U #1839 for R. Joseph Johnson, based upon the record made at the public hearing and for the following reasons:

- 1) The location is in an area along Clay Road that is predominantly residential. All of the lots on either side of the Applicant's property are used for residential purposes and it backs up to McNichol's Place Mobile Home Park. While there is a tank farm on an acre of property on the other side of Clay Road, it is surrounded by a large tract owned by the State of Delaware that will be farmed in perpetuity. The other C-1, B-1 and Conditional Uses are oriented to the Westcoats Corner intersection and are not in the immediate vicinity of this property.
- 2) The use as an electrical contracting business in a steel building will not be compatible with the surrounding residential uses.
- 3) I am not satisfied that the use will not adversely affect Clay Road, which is very narrow and currently very busy.
- 4) I believe there are other sites that are currently zoned for this type of use that are more appropriate than converting an existing residential property in a residential neighborhood to a business use.
- 5) A petition was presented containing 16 signatures from residents of Clay Road in opposition to the Application expressing concerns that the property is not compatible with the intent of the Zoning Code, that the property is adjacent to residential uses on both sides and to the rear and lies within 12 contiguous residential properties, that the land across the street is designated for agricultural uses in perpetuity, that the business use is out of character with adjoining uses and would diminish property values, and that the rezoning would set a precedent for future uses in this residential area. The Petition also contains objections based upon lighting, noise and other activities that would be associated with a business use in a residential neighborhood and concerns about traffic that would be created by the use.
- 6) I do not believe that the purposes in the Zoning Code for granting a Conditional Use are satisfied in this Application. This use would not be well adjusted to its environment and would not offer full protection to surrounding properties if granted.

Motion by Mr. Burton, seconded by Mr. Smith, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 0 with Mr. Ross not participating in the discussion or vote, since he was not present during the public hearing.

C/U #1840 – application of **JULIANE OLBER AND WILLIAM N. HEIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a screen printing, embroidery, vinyl sign business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 10,615 square feet, more or less, lying northeast of Route 24 (John J. Williams Highway) 275 feet southwest of Road 275 (Plantation Road).

The Commission discussed this application, which has been deferred since July 8, 2010.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion. Motion carried 4 – 0.

C/Z #1688 – application of **HARRY CASWELL, INC.** to amend the Comprehensive Zoning Map from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying north of Road 297 (Mount Joy Road) 0.8 mile east of Route 30, and west of Oak Street, a subdivision street, to be located on 22.66 acres, more or less.

The Commission discussed this application, which has been deferred since July 8, 2010.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion. Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #1843 – application of **RONALD SIMMONS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an awning and sunroom retail business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.14 acres, more or less, lying southeast of Road 266 (New Road), 2,600 feet northeast of Road 266A (Lynn Road).

The Commission found that comments were received from DelDOT on August 12, 2008 and that the comments reference that a traffic impact study was not recommended and that the existing Level of Service “B” of New Road will not change as a result of this application.

The Commission found that comments were received from the Sussex Conservation District on July 16, 2010 and that the comments reference that the site contains two soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it will not be necessary for any on-site or off-site drainage improvements.

The Commission found that comments were received from the County Engineering Department Utility Planning Division on July 15, 2010 and that the comments reference that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that central sewer has not been extended to the area; that the proposed project is not in an area where the County expects to provide sewer service; that the parcel is in the growth and annexation area of the City of Lewes and the City could provide central sewer service at some future time; that the Applicant should contact the City for their requirements and plans for sewer service and connection to their system; and that a concept plan is not required.

The Commission found that Ronald Simmons was present and stated in his presentation and in response to questions raised by the Commission that he has been in business for 9 years; that he stores materials in a barn on the adjacent property; that he proposes to convert the existing

garage into an office and to build a storage building; that he may have 5 to 10 customers per week; that there is no real retail sales performed on site; that he stores awning materials and components for sunrooms; that he promotes his business at home and/or trade shows and advertises; that he has an agreement with the neighboring property owners to use their driveway in perpetuity; that awning material and component deliveries are received by box trucks and/or small tractor trailers twice per week; that sunroom components deliveries are received by box truck twice per month; that he is proposing to build a sunroom addition on the front of the garage for display purposes; that he is proposing to build a 40' by 60' storage building to the rear of the garage for storage of materials and components; that he will have three employees, including himself, on site; that he will continue to utilize the existing well and septic on the site; that there is no manufacturing performed on site; that they may do some minor assembly of components on site; that the majority of the assembly and all of the installation work is performed on job sites; that security lighting will be screened and downward illuminated; that his existing sign, which measures approximately 2' by 3' is adequate; that business hours will be from 9:00 a.m. to 5:00 p.m. Monday through Friday and from 10:00 a.m. to 4:00 p.m. on Saturdays; that work crews could be on-site to pick up materials and components between the hours of 7:00 a.m. and 5:00 p.m., that adequate space exist on the site for a driveway without using the neighbor's driveway; and that he will not use his neighbors barn after building the storage building.

The Commission found that Mr. Simmons submitted a packet which includes a copy of the survey of the property depicting some parking, conceptual drawings showing the front view of the garage with the screen room attached, a floor plan of the proposed building, an isometric view of the proposed building, elevation views of the building, a series of photographs of the property and existing improvements, and copies of petitions containing eight signatures of area residents in support of the application.

The Commission found that Mrs. William Truitt, an adjacent landowner, was present and stated that she and her husband support this 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. Burton stated that he would move that the Commission recommend approval of C/U #1843 for Ronald Simmons for an awning and sunroom retail business based upon the record and for the following reasons:

- 1) The Applicant will continue to reside on the premises, which will maintain a residential character.
- 2) The use will not adversely affect traffic or neighboring properties.
- 3) The property is in a Development District according to the County's Comprehensive Land Use Plan.
- 4) This recommendation is subject to the following conditions:
 1. The use shall be limited to retail sales of sunrooms and awnings and the warehousing related to that use.
 2. All exterior lighting shall be screened so that it does not shine on neighboring properties or roadways.

3. This approval shall be subject to DelDOT's review regarding access to New Road.
4. The Applicant shall be entitled to maintain the existing sign or one of the same size.
5. The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday and 10:00 a.m. to 4:00 p.m. on Saturdays.
6. The Final Site Plan shall contain the location of all structures, parking areas, and any outdoor displays. There shall not be any outside displays within any setback areas.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1844 – application of **BRAD AND CAROLINE HAWKES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a storage facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 18.39 acres, more or less, lying north of Road 329 (East Piney Grove Road), 1,500 feet west of U. S. Route 113.

The Commission found that comments were received from DelDOT on June 17, 2008 and that the comments reference that a traffic impact study was not recommended and that the existing Level of Service "A" of Piney Grove Road will not change as a result of this application.

The Commission found that comments were received from the Sussex Conservation District on July 16, 2010 and that the comments reference that the site contains two soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it will not be necessary for any off-site drainage improvements; and that on-site drainage improvements may be required.

The Commission found that comments were received from the County Engineering Department Utility Planning Division on July 15, 2010 and that the comments reference that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the Western Sussex Planning Area #5; that an individual on-site septic system could be utilized; that the proposed project 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 on July 15, 2010 the Applicant provided a letter of explanation of his proposed project and photographs of the site and buildings.

The Commission found that two letters were received in support of the application. The letters were signed by Gary Conaway and Anna Mary Bartleson, area residents.

The Commission found that Brad Hawkes was present and stated in his presentation and in response to questions raised by the Commission that they purchased the property in the mid 1980s; that they have farmed the property and raised poultry in the two poultry houses; that they

are not aware of any conflicts with area residents to their proposed storage facility use; that they have never been violated by any agencies; that they propose to convert the two existing poultry houses into a storage business; that the property will appear to be agricultural; that they propose to utilize the existing driveway and buildings and to fence in an area for storage and privacy screening; that there are no residences in close proximity; that the proposed use should be a positive impact on the property; that the use will be less invasive than the existing poultry operation; that clients will access the property by appointment only, therefore controlling the hours of access; that there will be no employees since the intent is to operate a family run business; that signage will be minimal; that they want to maintain a low profile; that the site will be gated; that access to the storage facility will only be permitted during daylight hours, seven days per week; that they would like to fence-in the area between the poultry houses and the area behind the poultry houses for outside storage; that the remainder of the property will continue to be farmed; that the outside storage area will be improved with crusher run; that they live within ¼ mile of the site and also own the adjacent property; and that there is no need for restrooms on the property.

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 #1844 for Brad and Caroline Hawkes for a storage facility based upon the record made at the public hearing and for the following reasons:

- 1) The project, with the conditions and stipulations placed upon it, will not adversely affect traffic or the neighborhood. Also, this use is less intrusive than the property's prior use as a poultry farm.
- 2) The use as a storage facility is of a public or semi-public character that is desirable for the general convenience and welfare of Sussex County residents.
- 3) This recommendation is subject to the following conditions and stipulations:
 1. The storage area shall be accessible during daylight hours only.
 2. No maintenance of boats or vehicles shall be permitted on the site.
 3. As stated by the Applicant, there shall be no employees other than the Applicant's family.
 4. One lighted sign, not to exceed 32 square feet in size per side, may be permitted.
 5. Anyone visiting the site shall be accompanied by the Applicant or their family.
 6. Any lighting shall be screened from shining on neighboring properties or roadways.
 7. The Final Site Plan shall show the boundaries of the area covered by this Conditional Use. These boundaries shall run with the eastern and western walls of the existing poultry houses and shall extend in parallel lines in a northeasterly direction to the common boundary of the Applicant's property and the Townsend property.
 8. All outside storage areas shall be fenced.
 9. 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 forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0.

C/U #1847 – application of **BRIAN D. BUTLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for automotive metal fabrication/welding to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 2.06 acres, more or less, lying southeast of Sandhill Road (Road 569), 1,700 feet southwest of Route 404 (Seashore Highway).

The Commission found that comments were received from DelDOT on September 11, 2008 and that the comments reference that a traffic impact study was not recommended and that the existing Level of Service “A” of Woodenhawk Road will not change as a result of this application.

The Commission found that comments were received from the Sussex Conservation District on July 16, 2010 and that the comments reference that the site contains two soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it will not be necessary for any on-site or off-site drainage improvements.

The Commission found that comments were received from the County Engineering Department Utility Planning Division on July 15, 2010 and that the comments reference that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the Western Sussex Planning Area #1; that an individual on-site septic system is proposed; that the proposed project is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that a letter of support was received from Rose Fisher, an area resident.

The Commission found that Brian Butler was present and stated in his presentation and in response to questions raised by the Commission that he proposes to do custom metal work and fabrication; that he has been in business for a few years; that he wants to continue the business at this location; that business hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday; that there is minimal noise; that the dumpster can be relocated to the rear of the building and screened from view; that all customers vehicles will be stored indoors at night; that there will not be any stockpiling of vehicles or materials; that solar lighting already exists; that he has no signage at this time, but would like the option for a 32 square foot lighted sign; that he does some work on farm equipment and vehicles for area farmers; and that a storage building exists to the rear of the shop and is not shown on the site plan since it was built after the application was filed.

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.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration by the Commission, Motion carried 4 – 0.

C/U #1866 – application of **TRUSTEES OF CHURCH OF CHRIST** to consider the Conditional Use of land in a GR General Residential District for an expansion of an existing cemetery to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.205 acres, more or less, lying southwest of Frankford School Road (Road 92), 0.5 mile southeast of Thatcher Street.

Mr. Lank provided the Commission with a site plan for the proposed cemetery expansion. Mr. Lank advised the Commission that DelDOT comments were not requested since this application is for an expansion of an existing cemetery.

The Commission found that comments were received from the County Engineering Department Utility Planning Division on July 15, 2010 and that the comments reference that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the Roxana Planning Area; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed project is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Yvonne Sturgis was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that a need exists for expansion of the existing grave sites; that there is adequate space available for parking on the site for funeral services; that there is no need for signage; and that there is no need for fencing the cemetery.

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. Smith stated that he would move that the Commission recommend approval of C/U #1866 for the Trustees of the Church of Christ for the expansion of an existing cemetery based upon the record made during the public hearing and for the following reasons and condition:

- 1) The use as a cemetery is consistent with the use of the property as a church, and this is an expansion of the church's existing cemetery.
- 2) The expansion of the cemetery will not adversely affect the neighborhood or traffic.
- 3) The use as a cemetery is of a public or semi-public benefit to residents of Sussex County.
- 4) The Final Site Plan will be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, 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 condition stated. Motion carried 4 – 0.

Subdivision #2009-5 – application of **JOHN NOVOSEL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 152.35 acres into 160 lots, (Standard and Environmentally Sensitive Development District Overlay Zone), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 277, across from Road 277B.

Mr. Abbott advised the Commission that the Technical Advisory Committee report of August 31, 2009 is a part of the record for this application; that the applicants submitted an Environmentally Sensitive Development District Overlay Zone Environmental Assessment Report into the record on June 5, 2009, an Exhibit Booklet on July 9, 2010, a revised preliminary plan on July 12, 2010; and that four letters have been received in opposition to this application with seventeen signatures.

Stephen McCabe, P.E. with George, Miles and Buhr, John Novosel and Richard Holland were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application for 160 single-family lots located on 152 acres; that the site plan is good for the area and is in character with the area; that there are other similar subdivisions in the immediate area; that the proposed density is 1.07 lots per acre; that the property is zoned AR-1; that the site consists of seven parcels of land; that the site is located partially in an Environmentally Sensitive Developing Area; that the site plan has been reviewed by the Office of State Planning Coordination through the PLUS process and by the Technical Advisory Committee; that according to the State, the site is in a Level 4 area surrounded by Level 3; that there are two areas of wetlands on the site; that the site is forested; that a 30-foot forested buffer will surround the perimeter of the site; that the developers will retain as many trees as possible; that the original design was for over 200 lots; that the submitted plan has been reduced to 160 lots; that the revised plan increased the amount of open space; that 100-foot buffers are proposed from the wetlands; that no lots contain any wetlands or flood plains; that an environmental assessment report was submitted with the application; that central sewer and water will be provided by Tidewater Utilities; that all improvements on the site will be less than 10,000 square feet; that a community center is proposed; that the site is in a County sewer area; that the County Engineering Department has indicated that the site is in the Angola North Sanitary Sewer Study Area; that the site is eligible to be annexed into the Sewer District and submitted a letter from the County Engineer; that the adjoining Chapel Green Subdivision drains onto this site; that recreational amenities are proposed; that there will be a bus stop located near the community center; that streetlights and sidewalks on both sides of all streets are proposed; that the developers have met with all agencies and will comply with all regulations; that DelDOT did not require a traffic impact study; that the project will have a positive affect on property values in the area; that the area is a developing area; that sewer is planned for the area; that with central sewer, on-site septic systems will be reduced in the Inland Bays area; that there is presently about five acres of the site that is farmed; that the project will not result in a high loss of farmland; that the project will not have a negative affect on schools or community buildings; that the site is located in the Cape Henlopen School District; that the developers are not sure of a phasing plan at this time; and that the amenities will be installed as soon as possible.

There were no parties present in support of this application.

John Edwards, Paul Carr, James McDonald, Sandra Wharton, Donald Daisey and Josh Wharton were present in opposition to this application and expressed concerns that the area floods due to drainage problems in the area; that the site adjoins a sixty-year old landing strip; that there are already lots available in the area in other subdivisions; that the State does not support the application; that too much density is proposed; that there will be a loss of forest lands; that the project will have a negative affect on property values; that there will be a loss of wildlife habitat in the area; that the proposed buffer needs to remain forest land; that the ditch in the immediate vicinity of the site needs to be cleaned out to help with drainage problems; submitted letters in opposition from area residents; and that there are adjoining agricultural operations that need to be protected.

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

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Meeting adjourned at 8:15 p.m.