



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF JULY 26, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 26, 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. Rodney Smith, Mr. I. G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Mr. Lank advised the Commission that C/U #1934 was withdrawn on July 23, 2012, and that C/U #1937 was withdrawn on July 16, 2012.

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

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 12, 2012 as circulated. Motion carried 4 - 0.

### OLD BUSINESS

Subdivision #2010-8 – application of Villages at Herring Creek Development Co., LLC to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.64 acres into 22 lots, and a waiver from the forested buffer requirements, located south of Sand Bay Drive within the Villages of Herring Creek, south of Road 277.

Mr. Lank advised the Commission that this is a final record plan for a 22-lot standard subdivision; that the Commission granted preliminary approval on April 28, 2010 with 7 conditions; that the final record plan meets the requirements of the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant final approval of the record plan for Phase II of The Villages at Herring Creek. Motion carried 4 – 0.

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).

Mr. Lank advised the Commission that this application was deferred for further consideration after the public hearing on July 12, 2012.

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

## PUBLIC HEARINGS

C/U #1933 – application of **MARK A. GIBLIN** to consider Conditional Use of land in an AR-1 Agricultural Residential District for a towing service and landscaping to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.374 acres, more or less, lying southeast of Route 17 (Roxana Road), 1,185 feet northeast of Road 382 (Zion Church Road) (Tax Map I.D. 5-33-6.00-60.02).

The Commission found that the Applicant submitted a survey/site plan with his application.

Mr. Lank advised that Commission that this application originated due to violations being issued for the business activities on the site, and that the Applicant has been to Magistrate Court and pleaded guilty to one count each of violation of conditional use for operating the towing service and the landscaping service without approval, and that two other counts were nolle prosequi.

The Commission found that on December 8, 2011 DelDOT submitted 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 Roxana Road will not change as a result of this application.

The Commission found that on July 19, 2012 the County Engineering Department Utility Planning Division submitted comments in the form of a Memorandum which references that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed; that conformity to the South Coastal Area Planning Study, 2005 Update will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that the Mark A. Giblin was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he has been operating the towing business for 12 to 13 years; that employees work from their homes since they are on call; that he thought that he had previously been approved; that since he found out that he had not been approved, he made application to get compliant; that he lives on the site and has an office on the site; that the towing business is on call 24 hours per day; that 85% of his hauls go to other sites, primarily in the Ocean City area; that he may have 7 to 10 vehicles in impound on the site; that the site is wooded behind the shop; that security lighting will not be directed toward neighboring properties; that the landscaping business is an occasional use, which

primarily provides topsoil and stones; that there are no automobile sales performed on the site; that all storage is to the rear of the residence; that there will not be any activities in front of the residence; that a bait and tackle shop exists on the adjacent property; that an air conditioning service business and other businesses exists in close proximity; and that his application includes towing, service, and landscaping.

The Commission found that James Mershon, an adjacent property owner, was present and expressed concerns that the Applicant has been operating several businesses before obtaining approval; that he opposes the impound yard use and the repair/service use; that he is concerned about the safety of his children; that vehicle owners have come knocking on his door trying to locate the impound lot; and that he does not have a problem with the towing service or the landscaping service, only the impound yard use and the repair/service use.

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

Motion by Mr. Ross, seconded by Mr. Burton, and carried with three (3) votes, to defer action for further consideration. Motion carried 3 – 0. Mr. Smith was absent during the vote.

C/U #1934 – application of **DARIN MCMAHON/PASSIVE INCOME, LLC** to consider Conditional Use of land in an AR-1 Agricultural Residential District for a garage for storage/warehousing to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.872 acres, more or less, lying northwest of New Road (Road 266) 2,112 feet southwest of Pilottown Road and 2,500 feet northeast of Canary Creek (Tax Map I.D. 3-35-8.00-9.02).

Mr. Lank advised the Commission that this application was withdrawn on July 23, 2012.

C/U #1935 – application of **JOHN HERHOLDT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a workshop for a family electrical business and a butcher shop to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.347 acres, more or less, lying east of Route 42 (North Union Church Road) 900 feet north of Road 207 (Fitzgerald Road)( Tax Map I.D. 1-30-6.00-45.02).

The Commission found that the Applicant provided a survey/site plan with the application.

The Commission found that on February 29, 2012 DelDOT submitted 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 “A” of North Union Church Road will not change as a result of this application.

The Commission found that on July 19, 2012 the County Engineering Department Utility Planning Division submitted comments in the form of a Memorandum which references that the site is located in the Western Sussex Planning Area #1; that use of an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that John Herholdt was present and stated in his presentation and in response to questions raised by the Commission that this is a family owned site; that they plan on moving Satterfield Electric to the site and to open a small seasonal butcher shop (deer butchering only); that there will not be any other retail sales in the butcher shop; that the butcher shop would be open 7 days per week during hunting season; that the family electric business would allow for a warranty center for electric generators with minimal repairs and storage of electrical supplies; that the electrical business is proposed to be open during normal daytime business hours Monday through Friday; that he would like to erect a lighted sign, no larger than 32 square feet per side; that just north of the site the family has a Conditional Use for a maintenance and dispatch office; that other business uses located in the immediate area include a concrete company, a power washing service, and home offices; and that Fitzgerald Salvage is in close proximity.

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. Burton stated that he would move that the Commission recommend approval of C/U #1935 for John Herholdt for a family electrical business and butcher shop based on the record made at the public hearing and for the following reasons:

- 1) Both uses will have little or no impact on the neighborhood. The butcher shop is seasonal, and the electrical business is basically for storage of generators.
- 2) The use for an electrical business is a minor expansion of the Applicant's nearby electrical business, which already has its own Conditional Use approval.
- 3) There are other small businesses in the area, and this use will be consistent with those other uses.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
  - a. The butcher shop shall be seasonal, from September 1 through March 1.
  - b. No retail sales shall occur from the butcher shop.
  - c. There shall not be any outside storage of electrical equipment, and all work shall occur inside.
  - d. One lighted sign, not to exceed 32 square feet in size, shall be permitted.
  - e. The hours of operation for the electrical business shall be Monday through Friday from 7:00 a.m. to 6:00 p.m.
  - f. 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. Ross, and carried with three (3) 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 3 – 0. Mr. Smith was absent during the vote.

C/U #1936 – application of **CHESTER TOWNSEND, IV** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a food vendor to be located on a certain

parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.0 acre, more or less, lying north of Route 26, 0.2 mile northeast of Road 342 (Sandy Lane Road)(Tax Map I.D. 1-34-11.00-3.00).

The Commission found that the Applicant submitted a survey/site plan with the application.

Mr. Lank advised that Commission that this application originated due to a violation being issued for the business activities on the site. Letters of violation were forwarded on March 30, 2012 and on June 19, 2012.

The Commission found that on May 1, 2012 DelDOT submitted 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 "D" of Vines Creek Road (Route 26) will not change as a result of this application.

The Commission found that on July 19, 2012 the County Engineering Department Utility Planning Division submitted comments in the form of a Memorandum which references that the site is located in the Vines Creek Planning Area: that use of an on-site septic system is proposed; that when the County provides sewer service, connection to the system is mandatory; that the County does not have a firm schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that Shirley Townsend was present on behalf of the application and stated in her presentation and in response to questions raised by the Commission that this will be their 4<sup>th</sup> summer season that they have conducted business in the area; that they originally setup on a commercial site near the Vines Creek Bridge; that they operate a neat/clean business; that Chester is a fisherman and enjoys cooking seafood; that they recently purchased this site; that the business is seasonal and that they are only open on Thursday, Friday and Saturday from 11:00 a.m. until 8:00 p.m.; that the business is primarily carry-out; that they have placed a few picnic tables outside; that restrooms are available; that no one occupies the dwelling on site, it is only used for storage, not a restaurant; that they live within one mile of the site; that other business uses in the area include, but is not limited to, landscaping, restaurant equipment sales, day care, etc.; and that they sell lobsters, soft crab, chicken and fish products.

Mr. Lank advised the Commission that the use of the trailer for the on-premise business, will require approval from the Board of Adjustment; that the 32 square foot requirement for signs with Conditional Use applications is actually a policy and not a regulation; that the Code would allow up to 200 square foot of signage for an on-premise ground sign for a Conditional Use; and that if the dwelling is converted to a restaurant for the business, a new Conditional Use application would be required.

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. Ross, seconded by Mr. Burton, and carried with three (3) votes to defer action for further consideration. Motion carried 3 – 0. Mr. Smith was absent during the vote.

C/U #1937 – application of **LISA M. ST. CLAIR** to consider the Conditional Use of land in a GR General Residential District for a bakery for baking dog treats to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.40 acres, more or less, lying northwest of Road 305 (Hollyville Road) 200 feet northeast of Road 306 (Inland Bay Road)(Tax Map I.D. 2-34-21.00-213.00).

Mr. Lank advised the Commission that this application was withdrawn on July 16, 2012.

#### OTHER BUSINESS

Mr. Wheatley stated that he had forgotten that there were representatives of Item #8 under Other Business that have another commitment and asked if the Commission would object to moving Item #8 to be first item under Other Business.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to move Item #8 to be the first under Other Business. Motion carried 4 – 0.

C/U #1217 – Potts Welding  
Revised Use – Route 13A

Mr. Lank advised the Commission that this site received Conditional Use approval for warehousing, light manufacturing, welding pre-fab pipe and assembly of sheet metal on January 6, 1997; that Pallet Masters would like to relocate part of their business to this site and repair pallets; that the Commission needs to determine if the proposed use is similar to the approved use or if a new Conditional Use application would be required; and that the Conditions of Approval for Conditional Use #1217, the application of Trinity Land Company, included: 1) Outside storage shall be limited to the rear portion (dock area) and the north side of the site subject to the approval of the State Fire Marshal; 2) Signage shall be limited to replacement of the same size signboard on existing sign at front of property; and 3) No fabrication work or related activities shall be conducted out of doors.

Mr. Wheatley stated that the only difference appears to be metal v. wood products, and that this is a large property.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to establish that the proposed use is similar to the previous use, and that if the site plan changes in any way, a revised site plan shall be required to be submitted to the Commission for review and consideration. Motion carried 4 – 0.

Hunter's Walk MR/RPC  
Revised Preliminary Site Plan – Route One

Mr. Lank advised the Commission that this is a revised preliminary site plan for 144 multi-family dwelling units; that the Commission granted preliminary site plan approval on May 20, 2009; that eight (8) 18 unit buildings are proposed; that the footprint of the buildings measures 165 feet by 49 feet; that the setbacks, building lengths and separations meet the requirements of the zoning code; that 260 parking spaces are required and 268 proposed; that central sewer and water will be provided by Sussex County and Tidewater Utilities respectively; that there are no encroachments into the wetlands; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals and a landscape plan being submitted.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the revised preliminary site plan, with the condition that the final site plan, with a landscape plan included, shall require Commission review and approval. Motion carried 4 – 0.

Bayside Mini-Storage  
Revised Preliminary Site Plan – Route 20

Mr. Lank advised the Commission that this is a revised preliminary site plan for a mini-storage facility; that the Commission granted preliminary approval for Phase 1 on August 25, 2011; that Phase 1 is the mini-storage units; that Phase 2 is for the existing house and proposed boat/RV storage and a stormwater management pond; that Phase 2 contains 1.0 acre; that sewer will be provided by Sussex County and water by Artesian Water Company; 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. Ross, and carried unanimously to grant preliminary approval of the Revised Preliminary Site Plan and that approval of the Final Site Plan shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Ty Hudson  
2 Parcels and 50' Easement – Route 72

Mr. Lank advised the Commission that this is a request to subdivide a 7.46 acre parcel into 2 parcels with access from a 50-foot easement off of Route 72; that Lot #1 will contain 0.767 acre and Lot #2 will contain 6.693 acres; that the owner proposes to create the 50-foot easement over an existing farm culvert to serve as access to the parcels; and that the request may be approved as submitted, or an application for a major subdivision can be required.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with three (3) votes to grant approval of the request as submitted. Motion carried 3 – 0. Mr. Smith was absent.

Chad E. Reed and Amy L. Reed  
2 Parcels and 50' Easement – Road 225

Mr. Lank advised the Commission that this is a request to subdivide a 16.61 acre parcel into 2 parcels with access from a 50-foot easement off of Road 225; that Parcel #1 will contain 9.67 acres and Parcel #2 will contain 6.94 acres; that the owners are proposing to create the 50-foot

easement over an existing driveway; that the request may be approved as submitted, or an application for a major subdivision can be required.

Motion by Mr. Burton, seconded by Mr. Ross, and carried with three (3) votes to grant approval of the request as submitted. Any further subdivision of the parcel shall require an application for a major subdivision and a public hearing. Motion carried 3 – 0. Mr. Smith was absent.

Grover W. Hearn and Frances M. Hearn  
3 Parcels and 50' Easement – Route 62

Mr. Lank advised the Commission that this is a request to subdivide a 62.41 acre parcel into 3 parcels with access from a 50-foot right-of-way; that Parcel A will contain 22.0378 acres, Parcel B will contain 22.4571 acres, and Parcel D will contain 17.9194 acres; that the request may be approved as submitted, or an application for a major subdivision can be required; 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; and that Parcel C is a proposed extension to an adjoining parcel only, and not a separate parcel.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with three (3) votes to grant approval of the request as submitted. Any further subdivision of the parcel shall require an application for a major subdivision and a public hearing. Motion carried 3 – 0. Mr. Smith was absent.

Jaime Martin  
2 Parcels and 50' Easement – Route 20

Mr. Lank advised the Commission that this is a request to subdivide a 2.81 acre parcel into 2 lots with access from a 50-foot easement; that Lot 2 will contain 1.519 acre and Lot 3 will contain 1.211 acre; that the request may be approved as submitted, or an application for a major subdivision can be required.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with three (3) votes to grant approval of the request as submitted. Motion carried 3 – 0. Mr. Smith was absent.

Glenn Williams  
2 Parcels on 50' Right-of-Way – Route 9

Mr. Lank advised the Commission that this is a request to subdivide a 6.70 acre parcel into 2 parcels with access from an existing 50-foot right-of-way; that both parcels will contain 3.35 acres; 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. Ross, and carried with three (3) votes to grant approval of the request as submitted. Any further subdivision of the parcel shall require an application for a major subdivision and a public hearing. Motion carried 3 – 0. Mr. Smith was absent.

Meeting adjourned at 7:21 p.m.