



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 28, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 28, 2011, 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. Michael Johnson, with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Smith, seconded by Mr. Johnson, 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 14, 2011 as corrected. Motion carried 4– 0.

OLD BUSINESS

C/U #1901 – application of **CHRISTOPHER LOPEZ** to consider the Conditional Use of land in AR-1 Agricultural Residential District for an automobile service and repair garage to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 14,613 square feet, more or less, lying northeast of U.S. Route 113, 1,420 feet south of Road 321 (Woodbranch Road).

The Commission discussed this application which has been deferred since June 23, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1901 for Christopher Lopez for an automobile service and repair garage 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 have an adverse impact on the neighboring properties or community.
- 2) The location along Route 113 is appropriate for this use since it is a small business that generates a minimal amount of traffic for the site, and the site is in a Level 2 and 3 area according to the State Strategies for Spending, and DelDOT has stated that it would permit an entrance as the business would generate a minimal amount of traffic and that the Corridor Capacity Preservation Program has no objections.
- 3) The use will provide a service to Sussex County residents to meet the need for automotive repairs and services.

- 4) The use is adjacent to Seacoast Speedway and another small business.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - A. The Final Site Plan shall show all required parking areas.
 - B. There shall not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.
 - C. No vehicles for sale shall be displayed on the premises.
 - D. The only repair work allowed in the shop will be for automobiles and light trucks.
 - E. The shop will only be operated between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and 7:00 a.m. and 2:00 p.m. on Saturday.
 - F. There may only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
 - G. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.
 - H. The area for a dumpster shall be located to the rear of the garage building and shall be screened from view. The location of the dumpster area shall be shown on the Final Site Plan.
 - I. The Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Burton, 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 #1902 – application of **DOROTHY GARVEY** to consider the Conditional Use of land in AR-1Agricultural Residential District for medical offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,161 square feet, more or less, lying north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road).

The Commission discussed this application which has been deferred since June 23, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1902 for Dorothy Garvey for medical offices based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is appropriate for this section of Route 24, directly across from the Beebe Medical Center Campus.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 3) The use as a doctor's office benefits the health, safety and welfare of Sussex County residents.
- 4) In approving this use, I am not moving to approve the site plan. That requires significant revisions prior to its approval as a Final Site Plan by the Planning and Zoning Commission.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - A. The use shall be limited to medical offices only. No retail use shall be permitted.

- B. There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side. The sign shall not be illuminated between 9:00 p.m. and 6:00 a.m.
- C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
- D. No outside storage shall be allowed on the premises.
- E. Hours of Operation shall be limited to between 7:00 a.m. and 8:00 p.m., Monday through Saturday.
- F. There shall not be any parking in the front yard setback.
- G. The Final Site Plan shall not utilize the subdivision street to the rear known as Collins Avenue, unless the Applicant can confirm that the use of this right-of-way for access to medical offices is legally permitted.
- H. All entrances and roadway improvements shall comply with all of DelDOT's requirements.
- I. The use shall be served by County Sewer when that service becomes available and shall comply with the requirements of the County Engineering Department regarding any improvements to the system that are required to serve the property.
- J. The Applicant shall submit a revised Preliminary Site Plan addressing improved traffic flow, relocated parking areas, removal of the sheds, etc., for approval by the Planning and Zoning Commission.
- K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson and seconded by Mr. Burton 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. The Motion received 2 votes in support and 2 votes in opposition. Therefore the Chairman called for a Roll Call Vote with Mr. Burton – yea, Mr. Johnson – yea, Mr. Smith – nay, and Mr. Wheatley – nay. Motion was denied for lack of a majority.

Mr. Robertson stated that, based on the Rules and Procedures of the Planning and Zoning Commission, failure to receive three (3) affirmative votes shall be deemed to disapprove any matter.

Mr. Smith stated that he voted in opposition since he was not satisfied that a sufficient record was presented by the Applicant's representatives, and since there was no record of support by residents/owners along Collins Avenue. Although there was support from a prospective purchaser of the property, the burden of creating a record is on the Applicant, and not enough detailed information was presented by the Applicant.

C/U #1986 – application of **TIMOTHY S. MILLER** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a mulch storage, processing and sales and boat and RV storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.729 acres, more or less, lying east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road).

The Commission discussed this application which has been deferred since July 14, 2011.

Mr. Smith stated that he would move that the Commission recommend partial approval of C/U #1896 for Timothy Miller for mulching operations based upon the record and for the following reasons:

- 1) The use as a Mulch facility will benefit the citizens and the environment of Sussex County. By recycling tree trimmings and other tree materials, there will be a reduction of materials ultimately going to the landfills.
- 2) The use, with the conditions and limitations placed upon it, will not adversely affect the neighboring properties or community.
- 3) The use promotes the Conservation Element of the County's Comprehensive Land Use Plan, and it is consistent with the AR-1 Agricultural Residential zoning of the property.
- 4) This recommendation is for the mulch operation only, since that is consistent with the AR-1 Agricultural Residential zoning of the property. I do not recommend approval for RV and Boat Storage on this property, because: (a) it is inconsistent with the underlying zoning; (b) it is not consistent with the surrounding approved and existing residential uses; (c) the Applicant could not provide sufficient details about his plans for the storage, the area where it would be located, or how it would affect neighboring properties and uses; and (d) the Applicant generally failed to make a sufficient record in support of the RV and Boat Storage part of his application.
- 5) This recommendation for approval of the mulching facilities is however subject to the following conditions:
 - A. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps, or construction waste shall be accepted at the site.
 - B. The Applicant shall install a 6-foot tall solid fence along the boundaries of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan. No fencing shall be required along other properties owned by the Applicant or his family.
 - C. Grinding and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No Sunday hours shall be permitted.
 - D. There shall be no grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for grinding and processing shall be shown on the Final Site Plan.
 - E. The areas set aside for mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.
 - F. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday. The site shall be gated so that after-hours deliveries or dumping do not occur.
 - G. Sales and delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday with no Sunday hours.
 - H. Water shall be available to control dust and for fire prevention within the site.
 - I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with 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 – 1 with Mr. Johnson opposing the motion.

C/U #1903 – application of **TERRI L. MARTIN** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a commercial sunroom display to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.22 acres, more or less, lying south of Route 9 (Georgetown Highway) 0.6 mile east of Route 5 at Harbeson.

The Commission discussed this application which has been deferred since July 14, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1903 for Terri L. Martin for a commercial sunroom display based upon the record made during the public hearing and for the following reasons:

- 1) The purpose and use of this application is very limited. It is only for the display of a sample sunroom on the Applicant's property. No sales will occur on the site and it will not generate any additional traffic.
- 2) The use will not adversely affect the neighboring properties or community.
- 3) The location is appropriate along Route 9, which has other small to medium sized business and commercial uses along it.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
 - A. The use shall be limited to the display of a sample sunroom only. No retail or wholesale sales shall occur on the site.
 - B. The sample sunroom must be located outside of the front and side yard setbacks.
 - C. One lighted sign, not to exceed the size of the 12 square foot current sign shall be permitted. Its location shall be in accordance with County regulations.
 - D. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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 and with the conditions stated. Motion carried 4 – 0.

C/U #1904 – application of **JOSEPH MOCCI** to consider the Conditional Use of land in GR General Residential District for parking, storage and maintenance of equipment with an office to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.28 acres, more or less, lying west of Road 288 (Wil King Road) 0.3 mile north of Road 280B (Conley Chapel Road).

The Commission discussed this application which has been deferred since July 14, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1904 for Joseph Mocci for parking, storage and maintenance of equipment with an office based upon the record made at the public hearing and for the following reasons:

- 1) The use started in the nature of a home occupation approximately 12 years ago, and has expanded to the point where a Conditional Use is now required.
- 2) All of the excavation work or operation of equipment for construction purposes occurs off site.
- 3) The use will not adversely affect the neighborhood or traffic in the area. DelDOT has stated that the Level of Service "A" of Wil King Road will not change as a result of this application.
- 4) A dwelling will remain on the premises as a residence, and no additional buildings will be constructed on the site.
- 5) The use of the property for storage and maintenance of excavation equipment provides a service to residents and businesses of Sussex County. In addition to excavation, the Applicant also provides snow removal services in Sussex County.
- 6) This recommendation is subject to the following conditions:
 - A. The use shall be limited to parking, storage and maintenance of equipment for the Applicant's business with an office. No excavation or construction activities shall occur on site.
 - B. Any security lighting on site shall be downward screened so that the lights do not shine on neighboring properties or roadways.
 - C. The entrances shall be secured at all time with gates and fencing.
 - D. Per the Applicant, no additional buildings shall be constructed on the site.
 - E. No junked or inoperable construction vehicles shall be stored on the site. Only vehicles and equipment utilized in the excavation business are to be stored and maintained on the site.
 - F. Regular hours of operation shall be 7:00 a.m. to 6:00 p.m., with additional hours as needed to address snow removal operations in Sussex County.
 - G. The Applicant shall comply with all DelDOT requirements for the site. The Final Site Plan shall confirm the entrance approved by DelDOT for the property.
 - H. Planted vegetative buffers shall be provided around the perimeter of the property utilizing native species as recommended by the State Forestry Office. Six (6) foot high stockade fencing shall be erected along Oakwood Village as each phase is developed.
 - I. The Final Site Plan shall show all areas designated for the storage of vehicles and equipment as well as the vegetative buffer and fencing.
 - J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, 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 #1905 – application of **WEST REHOBOTH COMMUNITY LAND TRUST** to consider the Conditional Use of land in GR General Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and

Rehoboth Hundred, Sussex County, containing 6,986.70 square feet, more or less, lying northeast of Dunbar Street, 100 feet northwest of Norwood Street within West Rehoboth Subdivision.

The Commission discussed this application which has been deferred since July 14, 2011.

Mr. Lank advised the Commission that the County Engineering Department Utility Planning Division responded to his Memorandum of July 18, 2011 by advising that through further review it appears that at the time of construction of the sewer collection system in this area there were two (2) manufactured homes on this parcel; that the County supplied two (2) laterals to the parcel, one to serve each manufactured home; that as a result of this finding the Engineering Department believes that capacity is available for the proposed duplex units and does not object to the Conditional Use being approved for this parcel.

Mr. Johnson stated that he foresees an invasion of duplexes and multi-family uses in the West Rehoboth area; that some of the opponents are operating business uses in the same area; and that some of the residential uses in the general area are actually located on commercially zoned properties.

Mr. Smith stated that during the public hearing he heard a lot of social issues addressed by both those in support and those in opposition, including property values. But, he is reminded that this is ultimately a land use decision.

Mr. Burton complimented the Land Trust, but questioned whether the lot should be improved by a single family home or a duplex, and noted that the area is improved by both residential uses and commercial/business uses; and that parking is a concern.

Mr. Wheatley reminded the Commission that they need to address those issues in the Ordinance when rendering a decision.

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

OLD BUSINESS

Ronald Simmons
C/U #1843 Site Plan – Road 266

Mr. Lank advised the Commission that this is a site plan for an awning and sunroom retail business located on 1.14 acres; that the site is zoned AR-1 Agricultural Residential and that the Conditional Use was approved on August 10, 2010 with eight (8) conditions; that the eight (8) conditions are noted on the site plan; that the site plan complies with the Conditions of Approval; that a 24' by 18' sunroom is proposed to be connected to an existing 36' by 24' garage with a 24' by 16' addition connecting the garage to a 40' by 60' storage building; that four (4) parking spaces are provided; that all agency approvals have been received; and that the site plan is suitable for final approval.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to approve this site plan for Ronald Simmons as a final. Motion carried 4 – 0.

Robert A. Marshall
C/U #1889 – Road 274

Mr. Lank advised the Commission that this is a site plan for a landscaping business located on 7.57 acres; that the site is zoned AR-1 Agricultural Residential and that the Conditional Use was approved on May 17, 2011 with seven (7) conditions; that the seven (7) conditions are noted on the site plan; that no new improvements are proposed; that there is an existing 80' by 60' building and a 75' by 60' building on the site; that there are six (6) employee parking spaces; that all agency approvals have been received; and that the site plan is suitable for final approval. Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this site plan for Robert A. Marshall as a final. Motion carried 4 - 0

Perdue AgriRecycle
C/U #1314 Revised Site Plan – Route 13A

Mr. Lank advised the Commission that this is a revised site plan for a 40' by 100' addition to the rear of the existing pellet plant; that the addition meets the setback requirements of the Zoning Code; that the addition is similar in design to the existing building with the same exterior walls and roof; that the additional will house equipment to produce BB sized pellets; that the Conditional Use was approved on December 21, 1999 with 18 conditions; that the conditions of approval do not limit any additional structures; and that if the Revised Site Plan is approved, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this revised site plan. Final Site Plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Subdivision #2006-14 – Gray Properties, LLC
Heritage Point Subdivision – Amended Condition

Mr. Lank advised the Commission that the developer is requesting that sidewalks be deleted from this subdivision; that the subdivision is a 38-lot standard subdivision with lots containing at least 0.75 acre each; that the conditions of approval required sidewalks on at least one side of all streets and the Final Record Plan depicted this requirement; that this request is made due to the fact that the sidewalks are going to affect the drainage from each lot since the sidewalks are located on a swale; that the Sussex Conservation District has advised the Department that the removal of the sidewalks and its impervious area will not affect the storm water management facilities and has no objections to the sidewalks being eliminated; and that the Sussex County Engineering Department has also indicated that they have no objections to the elimination of the sidewalks in this project.

The Commission discussed this request. It was noted that the lots contain 0.75 acre minimum and that the design of the project was a part of the approval of the subdivision.

The Commission found that Jerry Gray was present on behalf of Gray Properties, LLC and stated that the sidewalks looked good on paper, but not when laid out on the site; that houses will be setback 35-feet; that the first house has been sold; that the first house has a sidewalk in place from the front door to the driveway on the side; that the buyer does not desire to have another sidewalk along his lot frontage; that the drainage swale impacts the sidewalk and the sidewalk will be impacting the drainage swale; that the front yard grass area will be reduced by the sidewalk; that they can't move the house back any further since the rear of the lot contains the septic system and space area for septic; and since a 4-inch well is proposed in the front yard.

There was a consensus of the Commission that they could defer action for further consideration since they questioned if the sidewalks were proffered by the developer, and that they would like to review the record of the Minutes, the plots on file, and the Record Plot.

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

Irene Gray
Three (3) Lots and 50' Easement – Road 432

Mr. Lank advised the Commission that this is a request to subdivide a 12.125 acre parcel into three (3) lots with access from a 50' easement; that Lots 1 and 2 will each contain 2.00 acres and that the residual lands will contain 8.125 acres; that the owner is proposing to create the 50' easement over an existing roadway; that the request can 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 requested subdivision with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 4 – 0.

Meeting adjourned at 7:20 p.m.