



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF AUGUST 11, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 11, 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, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. 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 July 28, 2011 as amended. Motion carried 5 - 0.

OLD BUSINESS

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. Robertson advised the Commission that since the Commission had deferred action for information from the County Engineering Department on July 14, 2011, and that since Mr. Lank had summarized the requested information from the County Engineering Department on July 28, 2011, when the record was closed, and that the Commission has 45 days from the July 28, 2011 meeting to provide a recommendation to the Sussex County Council.

Mr. Ross stated that this is a worthy project in an area that needs affordable housing; that there may be a downside and questioned if the project conforms to the Ordinances; and questioned if it is worth the risk to go forward with a recommendation at this time without further consideration.

Mr. Johnson expressed some concern about the establishment of a precedent, and agreed that there is an opportunity to provide for affordable housing in the area of West Rehoboth; and that the Commission needs to address the application based on the Ordinances.

Mr. Wheatley stated that the motion should be precise and that the Commissions charge is to conform to the Ordinances, and suggested deferral so that the Commissioners can give further consideration to the project.

Mr. Johnson stated that the Board of Adjustment should be involved in the process.

Mr. Smith agreed and stated that one of the Conditions of Approval should refer to the Board of Adjustment.

Mr. Burton stated that he agreed but was still concerned about permitting a multi-family use in a single-family development.

Mr. Johnson stated that even though only two units are proposed, the Commission still needs to be careful in their motion.

Mr. Smith stated that the Commission had reviewed a similar application in the same development and found that a motion could be supported; and that the County Engineering Department has now found that capacity is available for the proposed project.

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

Subdivision #2006-73 – application of **ANTHONY SPOSATO** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 261.99 acres into 400 lots, (Cluster Subdivision), located south of Road 252 (Huff Road), 2,500 feet east of Road 319 (Sandhill Road).

The Commission discussed this application titled the Estate of Sand Hill Valley.

The Commission found that this is a Final Record Plan for a 393 Lot Cluster Subdivision application; that the Commission granted preliminary approval for 324 lots on August 20, 2008 and granted one-year time extensions on July 15, 2009 and August 18, 2010; that the Applicant appealed the Commission's decision to the County Council and that the County Council approved the plan for 393 lots; that the Final Record Plan is the same plan as what was submitted for the public hearing; that the Final Record Plan complies with the Conditions of Approval and the Subdivision and Zoning Codes; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant final approval of Subdivision #2006-73 for Anthony Sposato. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1906 – application of **CLINTON HOFFER** to consider the Conditional Use of land in GR General Residential District for school bus parking and maintenance repair shop to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 42,370 square feet, more or less, lying northeast corner of Indian Branch Road and Tramway Road 500 feet west of Route 82.

Mr. Burton stated that he would not be participating in the public hearing or the decision on this application.

The Commission found that the Applicant submitted a survey/site plan of the property.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated May 31, 2011, which references that a traffic impact study is not recommended, and that the current Level of Service “A” of Hickory Hill Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated August 3, 2011, which references that the site is located in the Western Sussex Planning Area #5; 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 currently has a schedule to provide sewer service; and that a Concept Plan is not required.

The Commission found that Gary Brittingham, Assistant Superintendent of the Indian River School District, submitted a letter in support of this application for both the bus transportation service and the mechanical repair work performed by Mr. Hoffer.

The Commission found that, prior to the meeting, the Department received forty (40) letters in support of this application, two (2) letters in opposition to this application, and two (2) unsigned letters (one in support and one in opposition) relating to this application.

The Commission found that Clinton Hoffer was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he has lived on this site for 28 years; that he operates two businesses on the site, one being the bus service and the other being a small repair shop; that he has operated the bus service for approximately 20 years from this site with no known complaints; that he has operated the repair shop for 28 years; that his neighbor has had a bus service across the street for almost 30 years; that the bus service and repair shop are his only source of income; that the buses are parked on the site when not in use/service; that during the school year, buses leave the site around 6:45 a.m. and return at approximately 8:05 a.m. and leave again at 2:45 p.m. and return at approximately 4:00 p.m.; that he performs minor repairs in the repair shop for 4 to 8 hours per day, mostly on weekdays; that he may start work around 8:30 a.m. and end at 5:00 p.m. when he is not driving a bus; that he does not work on Sundays, unless there may be an emergency; that he has done repair work on the buses and vans owned by his neighbor in the past; that he may plow snow or cut grass for his neighbors when they need assistance; that it would be difficult for his family if he did not obtain the Conditional Use; that he has no objections to his neighbors request for the storage of transportation school vans; that the maximum number of buses is seven, of which two are State

buses; that he is not requesting any signage; that he does repair some automobiles, but mostly his buses and buses operated by other bus contractors; that the repair shop will not be open any later than 5:00 p.m. Monday through Saturday; that he has six employees for driving the buses; that the employees do not work on the site; that the shop is large enough to do bus repairs inside of the shop; that waste oils and fluids are picked-up by waste handlers and hauled away; that he already has security lighting on a pole on site; that when he started the business most of the homes in the subdivision already existed; that there are now four to five new neighbors; that Zoning Inspector Malloy was a great help in explaining the process for the application; that the buses are 43 feet long and are backed into the yard and are stopped by bumper stops in the yard; and that the shed to the rear of the site was on the site when he purchased the property.

The Commission found that Stephen McCabe, Jim Griffin, Sandra Wells, Robin Hoffer, Jamie Hoffer, Don Grebe, and Lynn Hoffer were present and spoke in support of this application and stated that the Applicant does a lot for the community and support youth activities; that the Applicant helps his neighbors when in need; that they have no problem with the buses or the shop; that the Applicant is a hard worker; that four of the children in the neighborhood access the buses at the site for their ride to and from school; that they are not aware of any major complaints from the neighborhood residents; that the garage has no signage; that no oil spills or noises have been a concern; that the community has always been full of buses; that Mrs. Hoffer has driven buses for 25 years; that she originally drove for the Green Bus Service across the street; that the Applicant has fewer buses than the number of buses operated by the Green Bus Service in the past; and that the bus service and the maintenance repair shop are the Applicant's only means of income.

The Commission found that Rachael Jensen Beach, Rick Beach, Jerry Green, Allan Stephens, Mary Ann Carter, Clarence Adams, and C. Lewis Green were present and spoke in opposition to this application and expressed concerns that the site appears to be a salvage yard with a lot of clutter; that the Applicant has been asked for years to clean up the property; that oils have been visualized on the street; that the buses have only been parked further away from the street in the last week; that they did have concerns about untagged vehicles in the past; that the use may depreciate property values; that the site may look clean from the Applicant's home, but not from the Beach's home; that the subdivision is a small development and should not be subject to such large vehicles; that the parcel only contains 0.9 acre and is not adequate in size for the combined business uses; that the Applicant works on any kind of vehicle; that the vehicles are sometimes parked where they block the view from the homes of others; that if the vehicles were parked 50-feet from the street, no one would object; that during the school year the buses are parked closer to the street; that buses create a visual obstruction if parked close to an intersection; that the buses have been parked close to or on the street right-of-way in the past; and that their biggest concern is the parking of the buses along the street close to the intersection and causing visual obstructions.

The Commission found that Rachael Jensen Beach and C. Lewis Green submitted pictures for the record.

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

Motion by Mr. Ross, seconded by Mr. Smith, and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0, with Mr. Burton not participating in the vote.

C/U #1907 – application of **JACOB KABINO/5-J'S SANITATION** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a porta-toilet storage and service to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 7.0 acres, more or less, lying west of Road 296-A (Simpler Branch Road) 1,850 feet north of Route 47 (Johnson Road).

Mr. Wheatley stated that he would not be participating in the public hearing or the decision on this application.

Mr. Johnson, Vice Chairman, opened the public hearing.

The Commission found that the Applicant submitted a survey/site plan of the property.

The Commission found that DelDOT submitted comments in the form of a Support Facilities Report, dated April 18, 2011, which references that a traffic impact study is not recommended, and that the current Level of Service "A" of Short Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division submitted comments in the form of a memorandum, dated August 3, 2011, which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed storage and service facility 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 Jacob Kabino was present on behalf of his application, submitted a packet of information and some photographs of the property, the storage yard, and access, and stated in his presentation and in response to questions raised by the Commission that he has been in business since 1984 and has operated his business from this site since 1986; that he has a storage yard for portable toilets that he hauls to and from construction sites, marinas, parks and special events; that he also has service vehicles that go to sites to service the portable toilets when needed; that normal working hours are from 7:00 a.m. to 5:00 p.m. Monday through Friday; that he may start work around 6:00 a.m. during summer months; that he occasionally has emergency service calls after hours and on weekends; that his wife answers the phone for ordering and service calls and that his two sons assist in the business; that he feels that he performs all operations respectfully and courteously to his neighbors and the environment; that he has obtained signatures from most of his neighbors voicing no objections to his operation; that his packet of information includes a summary of his operation, a map depicting the site and area lots hi-lighted to show neighbors that have voiced support, and a questionnaire signed by the neighbors with comments; that he has four service vehicles; that the flat bed truck is used to haul portable toilets to and from sites; that he has two larger service pump trucks and a smaller truck for cleaning out the portable toilets; that the site is primarily wooded; that you cannot see the storage building to the rear of the property from the public road; that he would have no objection to fencing in the area for the storage yard, but questioned the need since the site is wooded; that

the only other trucks using the driveway are for pick-up and deliveries; that he does some minor repairs, as needed, on site and if a portable toilet is beyond repair, it is hauled off to the landfill; that he has no need for signage for the business; that some pump-outs are performed on site to pump the waste from the smaller service truck to the larger service truck; and that all waste is dumped at the City of Seaford treatment facility.

The Commission found that Robert N. Lewis, an immediate neighbor, was present in support of this application and stated that the Applicant is a good neighbor; that the existing wooded screening is adequate; that he cannot see into the site from his residence; that the use has never been a problem; that the driveway is paved, so noise is limited; that the Applicant maintains a clean operation; and that he has no opposition to 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.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0, with Mr. Wheatley not participating in the motion.

C/U #1908 – application of **GREEN'S BUS SERVICE** to consider the Conditional Use of land in GR General Residential District for storage of transportation school vans to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 3.44 acres, more or less, lying northwesterly corner of Indian Branch Road and Tramway Road 750 feet west of Route 82 and being Lot 10 in John C. Hudson subdivision.

Mr. Wheatley came back in as Chairman and opened this public hearing.

Mr. Burton stated that he would not be participating in the public hearing or the decision on this application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated May 31, 2011, which references that a traffic impact study is not recommended, and that the current Level of Service "A" of Hickory Hill Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated August 3, 2011, which references that the site is located in the Western Sussex Planning Area #5; 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 currently has a schedule to provide sewer service; and that a Concept Plan is not required.

The Commission found that, prior to the meeting, the Department received four (4) letters in support of this application, and one (1) unsigned letter relating to this application.

The Commission found that C. Lewis Green was present on behalf of Green's Bus Service and stated in his presentation and in response to questions raised by the Commission that he operates a school van service to haul children for the Indian River School District; that the vans are stored in buildings on the site; that signage is not needed; that his operational hours are from 6:00 a.m. to around 8:00 a.m. and 2:45 p.m. to 5:00 p.m.; that he has 11 vans, but typically only uses 8 vans; that he has 10 drivers, including his wife, on call for driving; that no service or repair work is performed on the site; that he would prefer to see the subdivision go back to residential; that he started the business 28 years ago with one bus; and that he started the van service approximately 4 years ago.

The Commission found that Clinton Hoffer, Rachel Jensen Beach, Mary Ann Carter, Allen Stevens, Jerry Green, Jamie Hoffer, Rich Beach, Lynne Hoffer, Clarence Adams, and Don Grebe were present in support of this application and stated that there are no objections and no problems with this application; that the vans are kept undercover in large carports; that two of the employees live in the community and walk to the buses; that Ms. Carter drives her business van to and from her home, rather than the site, which helps reduce traffic; that adequate space exist on the site for the business; that the site is well maintained; that there are no large vehicles, only vans; that everyone knows where "Greenie" lives; that the Applicant is a good neighbor and a good employer; that the use is an asset to the community; that the Applicant started the bus service business in the community; and that a meeting room has been established on the site for the drivers, so that they do not congregate outside.

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.

Motion by Mr. Ross, seconded by Mr. Smith, and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0, with Mr. Burton not participating in the vote.

OTHER BUSINESS

Workman's Store Commercial Site Plan – Route 20 and Road 431

Mr. Abbott advised the Commission that this is a commercial site plan for a store and storage located on 0.57 acre; that the site is zoned B-1 Neighborhood Business; that the building is an existing structure and no new structures are proposed; that 12 parking spaces are proposed; that 6 parking spaces are within the setbacks and are subject to site plan review; that on-site septic and well are proposed; that all agency approvals have been received; and that he had forwarded a copy of the site plan previously.

The Commission discussed this commercial site plan.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve this commercial site plan as a final. Motion carried 5 – 0.

Ellen Sanders and Tom Wallo

C/U #1894 Site Plan – Road 353 (Burbage Road)

Mr. Abbott advised the Commission that this is a site plan for a 1,050 square foot yoga studio located on 1.13 acres; that the Conditional Use was approved on June 7, 2011 with seven (7) Conditions of Approval; that the Conditions of Approval are either noted or depicted on the Site Plan; that eight (8) parking spaces are proposed; that on-site septic and well are proposed; that all agency approvals have been received; and the he had forwarded a copy of the site plan previously.

The Commission discussed this Conditional Use site plan.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this Conditional Use site plan as submitted. Motion carried 5 – 0.

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

Mr. Abbott advised the Commission that this Item was deferred at the July 28, 2011 meeting; that this is a request to delete the requirements that sidewalks be installed on at least one side of all streets; that the County Engineering Department and the Sussex Conservation District have issued letters stating that they have no objections to the sidewalks being deleted; that the Applicants proffered the sidewalks during the public hearing on May 24, 2007; and that he previously forwarded a portion of the Minutes from the May 24, 2007 meeting and a copy of the street cross-section of the approved record plan.

The Commission discussed this request to delete the requirement for sidewalks.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to approve the request to delete the requirement that sidewalks be installed on at least one side of all streets within this subdivision. Motion carried 5 – 0.

Subdivision #2007-9 – Thompson Schell, LLC
Woodfield Preserve Subdivision – Amended Condition

Mr. Abbott advised the Commission that this application received preliminary approval on October 9, 2008 with 16 Conditions of Approval and that the Commission granted one –year time extensions on November 12, 2009 and October 28, 2010; that this is a request to amend Condition of Approval “O” that states, “within 2 years of the issuance of the first residential building permit, the developer shall construct all recreational amenities.”; that the developers are requesting that this be amended to the amenities not being required until prior to the issuance of the 128th residential building permit, which is 50% of the approved homes in the community; that final approval has not been obtained yet and therefore no lots have been sold or transferred; that the developers are also requesting that the proposed sport court on the preliminary site plan be deleted; and that he previously forwarded a copy of the developer’s request.

The Commission discussed this request to amend Condition of Approval "O" as referenced above.

The Commission found that Ben Gordy, Project Manager, was present on behalf of Thompson Schell, LLC, and stated that they are requesting the deletion of two (2) sports courts; that they are concerned that the requirement that all recreational amenities be built within two (2) years of issuance of the first residential building permit, in this economy, cannot be met; and that their goal is to have all amenities completed prior to the issuance of the 128th residential building permit.

Motion by Mr. Burton, seconded by Mr. Ross, and carried with 4 votes to approve the request with that stipulation that all amenities are to be completed prior to the issuance of the 128th residential building permit, and that the request for removal of the two (2) sports courts be approved. Motion carried 4 – 1, with Mr. Johnson opposing the motion.

Subdivision #2006-20 – Stella J. Mitchell, Trustee
Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval on July 26, 2007 and granted one-year time extensions on August 20, 2008, July 15, 2009, and August 18, 2010; that this is the fourth request for a time extension; and that he had previously forwarded a copy of the request indicating what has been completed to date.

Mr. Lank advised the Commission that on August 9, 2011 the Sussex County Council adopted and approved the Ordinance on time extensions for subdivisions, RPCs and Conditional Uses, and that this Subdivision, by the adoption and approval of the Ordinance, has preliminary approval until January 1, 2013.

There was a consensus of the Commission that action on this application is moot since the County Council approved the Ordinance on time extensions. No action was necessary.

ADDITIONAL BUSINESS

Mr. Robertson advised the Commission that he and Mr. Lank were going to make a presentation to the County Council on August 16, 2011 in reference to the Updates and Corrections in the Subdivision Ordinance and Zoning Ordinance discussed by the Commission on June 15, 2011.

Meeting adjourned at 8:05 p.m.