



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF AUGUST 15, 2007

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, August 15, 2007 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Ben Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson and Mr. Rodney Smith, with Mr. Richard Berl – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Richard Kautz – Land Use Planner and Mr. Shane Abbott – Assistant Director.

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

OLD BUSINESS

Subdivision #2004 – 17 - - application of **NATELLI COMMUNITIES, LTD. PARTNERSHIP** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 250.13 acres into 544 lots, located north of Route 9, 0.25 miles east of Road 261.

Mr. Abbott advised the Commission that this is the final record plan for Phase 2 consisting of 177 lots; that Phase 1 received final record plan approval on July 26, 2007; that the Commission granted preliminary approval on June 10, 2004 and granted one-year time extensions on May 25, 2005, April 13, 2006 and July 18, 2007; that the record plan meets the requirements of the subdivision and zoning codes and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2004 – 29 - - application of **HARLEY W. TULL AND JERRY C. DUKES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 98.03 acres into 88 lots, located north of Road 46, 750 feet northwest of Road 517-A.

Mr. Abbott advised the Commission that this is the final record plan for an 86-lot standard subdivision application; that the Commission granted preliminary approval for 86 lots on August 11, 2005 and granted a one-year time extension on July 6, 2006; that the final record plan complies with the requirements of the subdivision and zoning codes

and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2004 – 49 - - application of **OAK CREST FARMS, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 51.42 acres into 21 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 306, 1,425 feet west of Road 303.

Mr. Abbott advised the Commission that this is the final record plan for a 21-lot standard subdivision application; that the Commission granted preliminary approval for 21 lots on October 13, 2005 and granted a one-year time extension on December 14, 2006; that the final record plan complies with the requirements of the subdivision and zoning codes and the conditions of the preliminary approval; that the storm water management area has been relocated away from Road 306; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2005 – 34 - - application of **POT-NETS LAKESIDE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 38.00 acres into 82 lots, (Environmentally Sensitive Development District Overlay Zone), located northeast of Road 299 (Bay Farm Road), 125 feet northwest of Road 299-A.

Mr. Abbott advised the Commission that this is the final record plan for a 76-lot environmentally sensitive developing district overlay zone subdivision application; that the Commission granted preliminary approval for 76 lots on May 31, 2006; that a time extension is needed prior to granting final approval; that the extension should be retroactive to the anniversary date of the preliminary approval; that the final record plan complies with the subdivision and zoning codes and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of the preliminary approval. Preliminary approval is valid until May 31, 2008. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2005 – 37 - - application of **DURWOOD BENNETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 9.85 acres into 10 lots, located north of Road 84, 250 feet northwest of Road 363.

Mr. Abbott advised the Commission that this is the final record plan for a 10-lot standard subdivision application; that the Commission granted preliminary approval for 10 lots on June 8, 2006 and granted a one-year time extension on April 19, 2007; that the final record plan complies with the requirements of the subdivision and zoning codes and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2006 – 18 - - application of **BRIGGS 4, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County by dividing 9.39 acres into 7 lots, located south of Road 336, 100 feet east of Road 335.

Mr. Abbott advised the Commission that this 7-lot subdivision application has been deferred since July 12, 2007; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 18 for Briggs 4, L.L.C., based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision, with the conditions placed upon it, is integrated into the existing terrain and surroundings.
4. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.

5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems.
7. This approval is subject to the following conditions:
 - A. There shall be no more than 7 lots within the subdivision.
 - B. The Applicant shall prepare and record restrictive covenants governing the development and form a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County.
 - D. All entrances shall comply with all of DelDOT's requirements.
 - E. The Restrictive Covenants shall include the Agricultural Use Protection Notice.
 - F. No lots shall contain any wetlands. The Final Site Plan shall reflect this revision from what is shown on the Preliminary Site Plan.
 - G. The Applicant shall consult with County Engineering concerning the feasibility and schedule for connection to a County-operated sewer system.
 - H. There shall be no "scenic easement" as depicted on the Preliminary Site Plan with limitations on vegetation or vegetative height limits. All wetlands areas shall be undisturbed.
 - I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - J. As stated by the Applicant, trees shall be preserved to the fullest extent possible on the site, except as needed for rights of way and home construction.
 - K. 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. Gordy and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2005 – 100 - - application of **D.K. PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 86.53 acres into 103 lots, located at the end of

Dove Knoll Drive and Turtle Dove Drive within Dove Knoll Subdivision on the north side of Route One.

Mr. Abbott advised the Commission that this 103-lot standard subdivision application was deferred on May 10, 2007 to allow Mr. Berl and staff to verify whether the applicants received the required 51% approval of the property owners for an alteration to an existing subdivision; and that a copy of Mr. Berl's letter has been sent to each Commission member for their review.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action and to leave the record open for 15 days for written comments in reference to Mr. Berl's letter. The record for written comments will close at the end of business on August 30, 2007. Motion carried 5 – 0.

Subdivision #2006 – 22 - - application of **BETHANY WOODS, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 12.20 acres into 19 lots (Environmentally Sensitive Developing District Overlay Zone), located south of Road 360, approximately ½ mile west of Route One.

Mr. Abbott advised the Commission that this 19-lot subdivision application was deferred on July 26, 2007 for further consideration; and that Sussex County will provide central sewer to the development.

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

Subdivision #2006 – 23 - - application of **GORDON WINEGAR** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 6.62 acres into 4 lots, located at the end of a 50' right of way, 1,600 feet south of Road 78A and north of Broad Creek.

Mr. Abbott advised the Commission that this 4-lot subdivision was deferred on July 26, 2007 for further consideration; that during the public hearing, the applicant stated that lots 1 and 2 may be combined due to wetlands; that if these lots are combined, only 3 lots are proposed; that the applicant indicated that he could obtain septic approval for 3 lots; and that he has concerns about the cost of improving the proposed road.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 23 for Gordon Winegar, based upon the record and for the following reasons:

1. The Applicant is seeking to divide a parcel consisting of 8.09 acres into 3 lots.
2. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
3. The land is zoned AR-1 which permits low-density single-family residential development of this type.
4. The proposed subdivision will not adversely affect neighboring properties, traffic or community facilities.
5. This approval is subject to the following conditions:
 - A. There shall be no more than 3 lots.
 - B. A wetlands delineation shall be performed and no lots shall contain any wetlands.
 - C. The road providing access to these lots shall be constructed to Sussex County specifications.
 - D. Road naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - E. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

OTHER BUSINESS

Sussex County Association of Realtors
CU #1710 – Site Plan – Route 9 and Road 321

Mr. Abbott advised the Commission that this is a site plan for a 4,700 square foot addition for a real estate education center and associated parking located on 2.66 acres; that the conditional use was approved on March 27, 2007 with 2 conditions; that the setbacks meet the requirements of the zoning code; that 61 parking spaces are required and 67 are provided; that 7 spaces are located within the front yard setback and are subject to site plan review; that there are 14 spaces in the existing parking lot that are located within the front yard setback; that landscape screening has been provided along the southern and western boundary lines; that on-site septic and well are proposed; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not participating, to approve the site plan as a preliminary with the condition that

final approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0 – 1.

Millsboro Medical Office
CU #1663 – Time Extension and Site Plan – Route 24

Mr. Abbott advised the Commission that this is a request for a one-year time extension and preliminary site plan approval; that the conditional use was approved on August 8, 2006; that this is the first request for a time extension; that if an extension is granted, it should be retroactive to the anniversary date of the approval; that the site plan is for a 2-story, 19,873 square foot medical office; that the setbacks meet the requirements of the Zoning code; that on-site septic and well are proposed; that 110 parking spaces are provided; that approximately 9-feet of 9 parking spaces are located within the front yard setback and are subject to site plan review; that access to this parcel is from a cross access easement from the adjacent Royal Farm site; that the 8 conditions of the approval are referenced on the site plan; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Mr. Johnson questioned how many doctors and employees will be required.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of approval. Approval is now valid until August 8, 2008. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action on the site plan pending a revised plan indicating the parking required. Motion carried 5 – 0.

Edward L. Howell, Jr.
Waiver from Topography Requirements – Road 575A

Mr. Abbott advised the Commission that this is a request to waive the requirements of topography being required on a preliminary record plan; that the applicant is making this request since the proposed subdivision only consists of 2 lots; and that he will also be requesting a waiver from the street design requirements once the preliminary record plan is filed.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to waive the topography requirement for this application. Motion carried 5 – 0.

Joyce Greenlee
Lot and 50' Right of Way – Road 42

Mr. Abbott advised the Commission that this is a request to create a lot and a 50-foot right of way; that the proposed lot will have the required minimum 150-feet of road frontage and contain a minimum of 32,670 square feet; that the residual land will be accessed by the proposed 50-foot right of way; that the owner proposes to create the right of way over an existing stone driveway; and that the request may be approved as submitted or require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Catherine Reynolds
Lot and 50' Easement – Road 561

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from a 50-foot easement; that the proposed easement will serve as access to the proposed lot and the residual 3.30-acre parcel; that the owner proposes to create the easement over an existing driveway; and that the request may be approved as submitted or require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Marion D'Armi
2 Lots and 50' Easement – Shore Drive

Mr. Abbott advised the Commission that this is a request to subdivide an 1.97-acre parcel into 2 lots and create a 50-foot easement; that Lot 1 will contain 1.22-acres and has an existing dwelling located on it; that Lot 2 will contain 0.75-acre and access will be from a 50-foot easement across Lot 1; that the owner proposes to create the easement at the end of Shore Drive within Lakeshores Subdivision; that DelDOT has issued a Letter of No Objection; and that the request may be approved as submitted or require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

William and Vivian Yost
Lot on 50' Right of Way – Road 388

Mr. Abbott advised the Commission that this is a request to create a 36,503 square foot lot with access from an existing 50-foot right of way; that this would be the third lot having access from the right of way; and that if the request is approved, it should be stipulated that any further subdivision of the property will require an application for a major subdivision.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Rodney J. Short
Lot on Right of Way – Assawoman Canal

Mr. Abbott advised the Commission that this is a request to create a 1.00-acre lot with access from an existing easement along the Assawoman Canal.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Amos F. and Linda T. Evans
2 Lots and 50' Right of Way – Road 347

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot right of way; that the owner proposes to widen an existing recorded 10-foot right of way to 50-feet to serve as access to the proposed lots; and that this request may be approved as submitted or require an application for a major subdivision.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Joseph and Patricia Sekcienski
3 Lots and 50' Right of Way – Road 298

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot right of way; that the owner proposes to widen an existing 20-foot right of way to 50-feet and create 3 lots; that the proposed lots will contain 1.012, 1.015 and 1.558-acres; that the 1.588-acre lot has a dwelling located on it; and that the request may be approved as submitted or require an application for a major subdivision, and that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Wayne Rust
2 Lots and 50' Right of Way – Road 47

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot right of way; that both of the proposed lots are 1.50-acres; that the owner proposes to create the 50-foot right of way over an existing driveway to the horse farm on the site; and that the request may be approved as submitted or require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as concept. Motion carried 5 – 0.

Ken Freidman
3 Lots and 50' Right of Way – Road 291

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot right of way; that the owner proposes to create the 50-foot right of way over an existing driveway; that a request for 4 lots and a 50-foot right of way was denied on July 18, 2007; and that the request may be approved as submitted or require an application for a major subdivision, and that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Thomas and Hilda E. Best
3 Lots – Best Lane

Mr. Abbott advised the Commission that this is a request to create 3 lots off of Best Lane; that no street extension or cul-de-sac is proposed; that Lot 1 will contain 31,221 square feet; that Lot 2 will contain 46,994 square feet; and that the residual land with a dwelling located on it will contain 28,056 square feet.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Steve Bailey

3 Lots on Existing 50' Right of Way – Road 70

Mr. Abbott advised the Commission that this is a request to create 3 lots off of an existing 50-foot right of way; that the request may be approved as submitted or require an application for a major subdivision; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Subdivision #2004 – 44 - - Fran Gonzon
Time Extension and Revised Plan

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval for 180 lots on October 13, 2005 and granted a one-year time extension on February 20, 2007; and that the preliminary approval is valid until October 13, 2007.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve a one-year time extension. Preliminary approval is valid until October 13, 2008. Motion carried 5 – 0.

Mr. Abbott advised the Commission that the revised plan is due to DelDOT and storm water management revisions; that the lot layout and storm water management areas have been slightly revised and that the street design is the same except that a cul-de-sac street has been added.

John Sergovic, Attorney, and Tom Bartosiewicz, P.E., with Meridian Architects and Engineers advised the Commission that the restrictive covenants have been modified; that there are more storm water management areas; that a cul-de-sac has been added; and that additional walking trails have been added.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the revised record plan as submitted with the condition that a school bus stop shall be provided. The applicant shall coordinate with the local school district's transportation manager the location of the school bus stop. Motion carried 5 – 0.

Subdivision #2005 – 49 - - Gulfstream Land, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval for 90 lots on November 20, 2006; and that this is the first request for an extension.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to grant a one-year time extension. Preliminary approval is valid until November 20, 2008. Motion carried 5 – 0.

Subdivision #2005 – 52 - - Uphill Properties, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval for 139 lots on July 27, 2006; that this is the first request for an extension; and that if an extension is granted, it should be retroactive to the anniversary date of the preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of the preliminary approval. Preliminary approval is valid until July 27, 2008. Motion carried 5 – 0.

Bethany Court, L.L.C.
CU #1639 – Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the conditional use was approved on July 25, 2006; that the Planning and Zoning Commission granted final site plan approval on May 16, 2007; that this is the first request for an extension; and that if an extension is granted, it should be retroactive to the anniversary date of approval.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to grant a one-year time extension retroactive to the anniversary date of approval. Approval is valid until July 25, 2008. Motion carried 5 – 0.

Mill Pond Commons
Easement Modification – Lot 44 – John Rowland Trail

Mr. Abbott advised the Commission that this item was deferred on July 18, 2007; that this is a request to reduce an utility easement on Lot 44 from 5 feet to 4 feet; that a foundation was poured on Lot 44 and encroaches 1 foot into the easement; that an

inspection of Lot 45 verified that no improvements have been built on it; that the 5 foot easement on Lot 45 should be revised to be a 6 foot easement; and that since the project is a residential planned community, the Commission may modify this requirement.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to allow a 4-foot easement on Lot 44 and to require a 6-foot easement on Lot 45. Motion carried 5 – 0.

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Wednesday, September 19, 2007 at 3:00 p.m. for the purpose of reviewing Old Business and Other Business items.

Meeting adjourned at 4:35 p.m.