



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF OCTOBER 25, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 25, 2007 in the County Council Chambers, County Administrative Office Building, 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. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. C. 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.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of October 11, 2007 as circulated. Motion carried 5 – 0.

### PUBLIC HEARINGS

**C/U #1703** – application of **RWR9, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for general offices and mini-storage to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.91 acres, more or less, lying south of Route 9, approximately 908 feet southwest of the intersection of Route 9 and Road 282.

The Commission found that prior to the meeting the Applicants had provided a site plan and an Exhibit Booklet and that the Exhibit Booklet contained an illustrative plan, a listing of the project team, qualifications for Mark H. Davidson, a copy of the application form, a site plan, a survey, suggested Findings of Fact and Conditions, a copy of deeds, a conceptual entrance plan, a report on Green Technology Best Management Practices, soil evaluations, septic site evaluations, and a series of aerials and maps.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “E” of Route 9 will not change as a result of this application; that access to the site shall be from the existing entrance along Route 9 via the existing 50-foot wide ingress/egress easement; that the existing entrance shall be improved to include but would not be limited to a protective left turn lane and a deceleration lane; that entrance plans shall be developed in accordance with DelDOT rules and regulations prior to entrance approval; that Certificates of Occupancy should not be issued for this site until all entrance and roadway improvements have been

completely constructed and finally inspected and approved by the South District Permit Supervisor; and that the Department will require a copy of the Record Plan.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated or maintained sanitary sewer or water district; that the site is located in the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Area Study will be required; that the proposed general offices and mini-storage is not in an area where the County has immediate plans to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Downer loamy sand and Hammonton loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary that the Applicant follow State Sediment and Stormwater requirements.

The Commission found that Richard Reed and Mark Woodruff of RWR9, LLC were present with Dennis Schrader, Attorney, and Mark Davidson and J.C. Owens of DC Group and that they stated in their presentations and in response to questions raised by the Commission that according to the Comprehensive Plan Update the site is located in a Low Density Area; that according to the State Strategies the site is located in a Level 3 Investment Area; that the site is surrounded by commercial and conditional uses, i.e. antique stores, commercial kennels, a fencing company, a gun shop, model home and office, a Moose Lodge, and residential uses; that they are proposing 2 buildings for office buildings that will maintain a residential appearance; that they are also proposing 3 buildings for warehousing with small office spaces; that the existing dwelling on the site will be converted into an office; that an antique store is immediately to the east of the site and the commercial kennels are adjacent to the west of the site; that entrance plans have been submitted to the DelDOT for consideration; that they will be required by DelDOT to utilize the existing 50-foot wide access that is jointly used by the antique store to the east and some residential lots to the south for access to the site; that the entrance will require a protective left turn lane and a deceleration lane built to DelDOT standards; that buildings are proposed to be set back 60-feet from the dedicated right-of-way of Route 9; that no parking is proposed in the front yard setback; that parking is planned to the rear of the buildings; that the Code requires 179 parking spaces and that they have planned for 182 parking spaces; that DelDOT rejected a proposed new entrance to the site and required use of the existing access; that the existing improvements are only 12-feet in width and will be expanded to 24-feet; that on-site septic and on-site water will be provided; that a stormwater management facility is proposed to the front of the site due to the natural topography of the site; that they are proposing to install a dry basin bio-filtration pond with landscaping; that they are also proposing a rain garden, walkways and benches in the center of the parking area to aid in drainage; that they are proposing to screen the entire site with landscaping; that a 30-foot wide landscaped buffer is proposed along the

rear between the site and the lots to the rear; that the tenants will be responsible to assist in the cost of maintenance of the site; that the general office space is intended for use by contractors and others; that there will be no outside storage of materials; that the offices may have showrooms; that this area is developing as a crossroads community with a mix of commercial/retail uses taking place along with the residential uses; that no mini-storage is now intended as part of the application; that the elevation view of the buildings from Route 9 will appear to the a front, not a rear of a building; that the units may be leased of set up in a condominium regime; that maintenance provisions will be included in the lease or the condominium documents; that parking lot lighting will be downward illuminated and attached to the buildings; that company vehicles may be parked on the site; that DelDOT will also require a multi-modal path along the front; that an area 35-feet wide will be landscaped in the front setback; that it has been estimated that the cost of the entrance improvements may cost upward of \$200,000.00; that dumpsters will be located out of site by the use of screening and landscaping; and that the site is approximately 700-feet from the hill west of the site on Route 9.

The Commission found that there were no parties present in support of this application.

The Commission found that James Hauer, Robert Atallion, Dean Martin, and Virginia Stamper were present in opposition to this application and expressed concerns that the proposed septic system is less than 60-feet from an existing well on the Stamper property; that the majority of the improvements along the south side of Route 9 are residential; traffic; the closeness to the crest of the hill on Route 9 to the west of the entrance; speeding traffic; that a residential use would be preferred; that this type of use was not anticipated on their shared access; that the access road was located to serve the property owners; that they are concerned about the number of access points along the access road; that the existing line of pine trees and the pillars with statues at the entrance will be destroyed by the improvements to the access road; that the developer has not participated in the maintenance of the access road to date; that residential property values will be negatively impacted; that the kennels referenced as adjacent to the site are actually more to the rear of the site; that trash is a major concern; that the parking lot lighting will change the character of the area; that general traffic, traffic from the Moose Lodge is already a problem; that the proposal will create a large commercial use in the middle of private residential housing and small farms; that most of the businesses across Route 9 appear to the residential dwellings; and that the property was sold without the seller knowing the intended use and that it was assumed by the seller that the intent was residential.

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

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

**C/U #1704** – application of **PMP ASSOCIATES** to consider the Conditional Use of land in a GR General Residential District for health care and medical offices to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing

33.045 acres, more or less, lying on the southerly side of Zion Church Road (Road 382) and 0.25 mile west of Bayard Road (Road 384).

The Commission found, based on DelDOT comments, that a traffic impact study was performed for this project which referenced that if the County should choose to approve the proposed development, the following items should be incorporated into the site design and reflected on the record plan and that all applicable agreements should be executed prior to entrance plan approval; that the developer should enter into a traffic signal agreements with DelDOT for the intersection of Route 20 and the site access, and Route 20 and Johnson Road/Bayard Road; that the agreements should include pedestrian signals, crosswalks, and interconnections at DelDOT's discretion; and that bicycle and pedestrian improvements should be included.

The Commission found, based on comments received from the Sussex Conservation District, that there are eight (8) soil types on the site; that the Applicant shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the site contains hydric soils; that the Applicant will be required to follow all State and Federal requirements relating to wetlands; that a storm flood hazard area could be affected; that the Applicant will be required to follow State Sediment and Stormwater requirements; and that a tax ditch may be affected.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Johnson's Corner Sanitary Sewer District; that wastewater capacity is available; that Ordinance 38 construction will be required; that the preliminary estimate of the System Connection Charge Rate is \$3,600.00 per EDU; that there is no sewer service available to the parcels at this time; that conformity to the Preliminary Engineering Report for Johnson's Corner and the South Coastal Area Planning Study Update will be required; that a referendum was held on July 21, 2007 to determine if the District would be established; that area residents were in favor of the District and approved the referendum; that preliminary schedule indicates sewer service could become available to the area as early as the summer of 2010; that developers could install off-site infrastructure to an approved connection point to expedite service; that connection to the sewer system is mandatory; that sewer capacity has been allocated on the basis of 4.0 EDU per acre; that a project that exceeds 132.18 EDUs will not be approved; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; that the developer will be required to complete or participate in off-site sewer construction and upgrades at the developer's expense; and that a sewer concept plan must be submitted for review and approval.

The Commission found that letters in support of this application were received from Joel M. Farr on behalf of Bay Twenty, LLC, Thomas C. Halverstadt on behalf of Carl M. Freeman Companies, and Stephanie Hansen, Counsel for Twin Cedars, LLC.

The Commission found that prior to the meeting the Applicants had provided a site plan, an Exhibit Booklet and a Supplemental Booklet for the record, that the Exhibit Booklet contained a project summary, a site plan and building rendering, an area zoning map, a letters from County Engineering in reference to the Johnson's Corner Sanitary Sewer District and a Memorandum of Understanding between Twin Cedars, LLC, Bay Twenty, LLC and PMP Associates, LLC for the benefit of Sussex County, a copy of DelDOT comments, a copy of Landmark Engineering's response to the PLUS comments, suggested proposed Conditions and suggested proposed Findings of Fact, and that the Supplemental Booklet contained a rare species survey and habitat assessment report, a forest stand delineation report, a traffic impact study and DelDOT traffic impact study review letter, revised wetland delineation report by JCM Environmental, a copy of the deeds to the property, and a series of maps and aerials.

The Commission found that Dr. Paul Brown and Dr. Mark Brown of PMP Associates were present with James Fuqua, Attorney, Bill Corrello, an Advisor, and Ted Williams of Landmark Engineering and that they stated in their presentations and in response to questions raised by the Commission that they are proposing a health care and medical complex with 102,000 square feet within 6 buildings on a 33 acre tract; that some wetlands do exists on the site; that some woodlands will be removed to allow development of the site; that the site is zoned GR General Residential which permits up to 4 dwelling units per acre; that nearby commercial uses include auto sales, apartments, and a grocery; that the use is of a semi-public character and is essential and desirable for the residents of the area; that the site is less than 2 miles from the intersection of Route 54 and Route 20; that Route 54 is extensively developed with residential projects including Bayside Americana, Ashley Manor, Swann Cove and others; that Brandywine Assisted Living project is under construction at the northwest corner of the Route 54/Route 20 intersection; that development is moving northward from the intersection; that the adjacent site to the east is proposed for a subdivision; that the adjacent site to the west is proposed for redevelopment; that area residents, by a vote of 3 –1 approved the Johnson's Corner Sanitary Sewer District; that the County Engineering Department has recognized the growth in the area; that the area should be referenced in the Future Land Use Plan Map as a Developing Area; that there is a strong need for Health Care Facilities in this area; that a lot of residents moving into the area are of the older population; that older residents need medical services; that the use could reduce travel time for local residents to get to care facilities; that physicians offices are proposed along with out-patient services, a imaging center, therapy, pain management, out-patient surgery, and a medical aid center; that water will be provided by Artesian Water Company; that all buildings will have sprinkler systems; that wetlands have been delineated; that drainage ditches may be relocated on site; that a 50-foot wide buffer is proposed from upland wetlands and will be left undisturbed; that the site is not within a floodplain; that extensive landscaping is proposed with street trees (native species), street lighting, and sidewalks interconnecting buildings; that no parking is proposed in the front set back; that buildings will have varying pitches to the roof lines; that one entrance is proposed; that the buildings will contain from 15,000 to 20,000 square foot each; that 450 parking spaces are required by Code and that 515 spaces are proposed; that parking lot lighting will be downward illuminated; that space for a bus shelter is available; that they propose a campus like

setting with walks and benches; stormwater management is proposed with bio-filtration swales and basins; that a location is available for a helicopter pad; that the project will be phased with one building per phase; that the units within the buildings may be leased or a condominium regime will be created; that typical office hours will be from 8:00 a.m. to 5:00 p.m. and some 7:00 a.m. to 8:00 p.m.; that the medical aid center may be open 24 hours per day; that the use could generate over 200 medical related jobs; that they are voluntarily creating buffers from wetlands; that approximately 3% of the woodlands will be removed to allow for the construction of Buildings 5 and 6; that they will centralize dumpsters; that they will comply with all of DelDOT recommendations; that the buildings will have security alarm systems through a security service company; that there are mandatory procedures for the storage of medical drugs; that they are proposing to pipe the entire tax ditch system through the site with a closed conduit system; that they have met representatives of the U.S. Army Corps. of Engineers on site and will mitigate the site by adding additional wetlands; and that if necessary they will provide space for other professional offices.

Mr. Lank advised the Commission that the creation of a helicopter pad will require another Conditional Use.

The Commission found that Lawrence Long and Dennis Smith, area residents, were present in support of this application referencing that developments are coming to the area; that central water is available, that public sewer is coming; and that they support the use due to the need for the services, and for the preservation of the woodlands to the rear of the site.

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. Johnson and carried unanimously to defer action for further consideration and to leave the record open until the close of business on November 8, 2007 for receipt of the PLUS response.

**C/U #1706** – application of **JACK STRADER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automotive upholstery business to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.176 acres, more or less, lying south of Route 36, 900 feet east of Road 224.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the Level of Service “C” of Shawnee Road and the Level of Service “A” of Blacksmith Shop Road will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed automotive upholstery business is not in an area where the County has immediate plans to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam, Mullica mucky sandy loam and Woodstown sandy loam; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that the Applicant will be required to follow State Sediment and Stormwater requirements.

The Commission found that Jack Strader was present and stated in his presentation and in response to questions raised by the Commission that he proposes a home based upholstery business; that he has been in the upholstery business for many years in the City of Milford; that the use is a low profile business; that he restores and creates interiors for antique vehicles and custom vehicles; that the vehicles that are being worked on will be kept in the pole building shop; that he only has one employee; that business hours are from 8:00 a.m. to 5:00 p.m. Monday through Thursday and 8:00 a.m. to 4:00 p.m. on Fridays; that he occasionally works on a Saturday; that he is building a dwelling home in front of the shop; that he may have three (3) deliveries by FedEx or UPS per week; and that there is adequate space for parking on the site.

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 #1706 for Jack Strader for an automotive upholstery business based on the record and for the following reasons:

1. The proposed Conditional Use will have no significant impact on traffic.
2. The proposed use, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. This recommendation is subject to the following conditions:
  1. There shall not be any outside storage of cars, equipment or materials used in relation to this business, except on a short term basis.
  2. No vehicles for sale or display shall be located on the premises.
  3. The shop shall only be operated between 8:00 a.m. and 5:00 p.m. Monday through Friday, with only limited hours on Saturday.
  4. There shall only be one employee in addition to the Applicant working on the premises at any one time.

5. Any security lighting shall be screened so that it does not shine on neighboring properties.
6. One unlighted sign, not to exceed 32 square feet in size, shall be permitted on the site.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, 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 5 – 0.

**Subdivision #2006-39** – application of **HENRY JAMES JOHNSON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 42.11 acres into 38 lots, (Cluster Development), located on both sides of Road 296, 950 feet north of Road 305.

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of February 21, 2007 will be made a part of the record; that the applicant's attorney submitted restrictive covenants on September 11, 2007 and revised covenants on October 5, 2007; and that an Exhibit Booklet and revised preliminary plan were submitted on October 22, 2007 and that they will also be made a part of the record.

The Commission found that Henry James Johnson, applicant, along with Jamie Sharp, Attorney, and Ken Christenbury, P.E. with Axiom Engineering were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 38 lots are proposed on 42.11 acres; that the site is located on both sides of Road 296 north of Road 305; that there are other developments in the area that have been approved; that most of the developments in the area have a density of 1.4 lots per acre; that the density of this project is 0.9 lots per acre; that the project complies with the Cluster Ordinance; that single-family homes are proposed; that the development would have an identifying sign on each side of Road 296; that all of the items referenced in Section 99-9C of the Subdivision Code have been addressed in the Exhibit Booklet; that DNREC has issued a non-binding septic feasibility statement and that the report is attached as Exhibit L in the Exhibit Booklet; that a real estate agent has determined that the project will be an asset to the area; that the design fits in with the character of the area; that the cluster design creates more open space and the forested areas on the site will remain; that this design is more superior than a standard design in that more open space is created; that as many trees as possible will be retained; that there are limited amenities on the west side of the project that will include sidewalks and bike trails; that sidewalks are proposed on at least one side of all streets; that a bike lane will be installed along the frontage of the entire parcel; that the storm water management areas will be located at the lowest points on the site; that the storm water management pond on the west side is approximately 50 feet from the paved road; that the storm water management ponds are proposed to be wet ponds; that lots A through D are a part of a minor subdivision and are not a part of this application; that the developer has not contacted



other developers in the area about connecting to central sewer and water; that the project will be built in 3 phases; that phase 1 will contain 15 lots and a storm water management pond; that phase 2 will be 12 lots and a storm water management pond and that phase 3 will be the lots on the west side; that the dwellings will be stick-built or modular homes; that doublewide manufactured homes will not be permitted and are deed restricted; that the developer has not contacted DNREC about visiting the site for an endangered species study; that there is a tax ditch on the site; that the proposed foot bridge over the ditch will be constructed to whatever the tax ditch manager will permit; that street lights could be added; that the proposed walkway in the buffer will tie into the bike way required by DelDOT; and that proposed findings of fact and conditions of approval are referenced in the Exhibit Book.

The Commission found that no parties appeared in support of this application.

The Commission found that John Davidson, an adjoining property owner, was present in opposition to this application and advised the Commission that he owns a borrow pit on the adjoining property; that concrete and stumps are recycled in the pit; that he has concerns about trespassing problems; and that the trees on the adjoining boundary line are located on his property.

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

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

**Subdivision #22006-40** – application of **REINERT, TIRINO, THORP, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 25.27 acres into 11 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 458, 1,400 feet north of Road 464.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 21, 2007 will be made a part of the record for this application and that DNREC Delaware Division of Parks and Recreation sent a letter raising concerns about a portion of Lot 10 containing a State designated Natural Area.

The Commission found that Robert Reinert along with Kevin Smith of Kercher Engineering were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 11,  $\frac{3}{4}$  acre lots are proposed; that the 7.5-acre lot will be retained by the applicant for his own dwelling; that the proposed density is less than the permitted density; that there is approximately 4-acres of storm water management area; that a  $\frac{1}{2}$  acre parcel will serve as passive open space and a bus stop; that on-site septic and wells are proposed; that sidewalks are not proposed due to the size of the lots; that street lights will be provided; that DNREC has not issued a septic feasibility statement yet; that the soils work has been performed; that the storm water management ponds will be dry ponds; that landscaping will be installed around the

ponds; that lot 10 contains forested area and will be deed restricted for no disturbance; that the proposed dwellings will be the same as others in the area; that a bus stop could be placed north of the entrance; that there are no wetlands on any of the individual lots; that an Exhibit Booklet was submitted to the office on October 19, 2007; and that the Applicant read and submitted comments addressing the requirements of Section 99-9C of the Subdivision Code.

The Commission found that no parties appeared in support of this application.

The Commission found that Carol and Eric Johansen were present in opposition to this application and advised the Commission that they are adjoining property owners; questioned the type of deed restrictions that are proposed; raised concerns about the location and distances of the proposed septic systems from existing wells; that too many lots are proposed; that the water table in the area is low; that central water is not available in the area; that natural habitat will be impacted; and questioned any type of screening or buffers for the project.

Mr. Reienert advised the Commission that a buffer could be installed along the adjoining boundary line.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC, to allow Mr. Robertson time to review and deed restrictions, and for further consideration. Motion carried 5 – 0.

#### ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Wednesday, December 12, 2007 for the purpose of reviewing Old and Other Business items.

Meeting adjourned at 10:05 p.m.