



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF OCTOBER 28, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 28, 2010, 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. 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. Smith, seconded by Mr. Ross, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minutes of October 14, 2010 as amended. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Consent Agenda as amended by moving Item 8 to other business for discussion. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the remaining Items on the Consent Agenda as submitted. Motion carried 4 - 0.

CONSENT AGENDA

The Consent Agenda included:

CU #1739 – Eric Sugrue, Big Trips, LLC
Time Extension

This is a request for a one-year time extension. This Conditional Use for 6 multi-family dwelling units was approved on December 2, 2008. The Commission granted a one-year time extension on December 16, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, approval will be valid until December 2, 2011. The Commission was previously provided a copy of the request.

CU #1741 – David G. Horsey & Sons, Inc.
Time Extension

This is a request for a one-year time extension. This Conditional Use for a borrow pit was approved on December 16, 2008. The Commission granted a one-year time extension on

December 16, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, approval will be valid until December 16, 2011. The Commission was previously provided a copy of the request.

CU #1792 – Tidewater Environmental Services, Inc.
Time Extension

This is a request for a one-year time extension. This Conditional Use for a regional wastewater collection, treatment and disposal facility was approved on December 9, 2008. The Commission granted a one-year time extension on November 12, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, approval will be valid until December 9, 2011. The Commission was previously provided a copy of the request.

CU #1807 – Tidewater Environmental Services, Inc.
Time Extension

This is a request for a one-year time extension. This Conditional Use for Public Utilities (water and wastewater) was approved on December 2, 2008. The Commission granted a one-year time extension on November 12, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, approval will be valid until December 2, 2011. The Commission was previously provided a copy of the request.

Subdivision #2007 – 5 – David Edwards
Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval for 26 lots on September 28, 2008. The Commission granted a one-year time extension on October 14, 2009. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until September 28, 2011. The Commission was previously provided a copy of the request.

Subdivision #2007 – 9 – Thompson Schell, LLC
Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval for 256 lots on October 9, 2008. The Commission granted a one-year time extension on November 12, 2009. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until October 9, 2011. The Commission was previously provided a copy of the request.

Subdivision #2007 – 14 – Bob Brooks
Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval for 8 lots on November 13, 2008. The Commission granted a one-year time extension on November 12, 2009. This is the second request for an extension. If an extension is granted,

preliminary approval will be valid until November 13, 2011. The Commission was previously provided a copy of the request.

OLD BUSINESS

C/U #1864 – application of **DAWN’S COUNTRY MARKET** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a country market with BBQ, ice cream, Amish meats/cheese/baked goods and the sale of produce, nursery stock, flowers, and items associated with gardening to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 3.32 acres, more or less of a 14.92 acre tract, lying at the northwest corner of Cave Neck Road (Route 88) and Route One.

The Commission discussed this application which has been deferred since October 14, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1864 for Dawn’s Country Market to operate a country market with barbeque, ice cream, Amish meats, cheese, baked goods and the sale of produce, nursery stock, flowers and items associated with gardening based upon the record made at the public hearing and for the following reasons:

- 1) The use is a farm and produce market that promotes local agriculture and is desirable for the general convenience and welfare of the area.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or community.
- 3) No parties appeared in opposition to the application during the public hearing.
- 4) The proposed use is consistent with the underlying AR-1 Agricultural Residential zoning.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 1. Sales shall only occur during daylight hours.
 2. The use shall be limited to a country market with barbeque, ice cream, Amish meats/cheese/baked goods, produce, nursery stock, flowers and other items generally associated with farm markets, produce sales and gardening.
 3. The use shall not become a general retail store or convenience store and it shall maintain its agricultural appearance and theme at all times.
 4. Unless required by DelDOT, there shall not be any entrance to the property from Route One.
 5. The Applicant’s shall comply with all DelDOT requirements, including Entrance Permits.
 6. The Final Site Plan shall show all parking required by the Sussex County Zoning Code.
 7. The project shall comply with all County Engineering, DNREC, State Board of Health and other applicable requirements regarding bathroom and sewer facilities.
 8. The Final Site Plan shall show the location of all proposed uses on the property.
 9. There shall not be any structures, parking, produce, products or displays of any kind within the front or side yard setbacks.
 10. Any dumpsters shall be screened from view of neighboring properties and roadways.
 11. Any security lighting shall be screened from view so that it does not shine on neighboring properties or roadways.
 12. One lighted sign, not to exceed 32 square feet per side shall be permitted.

13. This Conditional Use shall become null and void unless substantially underway within three (3) years of the date of approval by County Council.
14. Final Site Plan approval shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, 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 and stipulations stated. Motion carried 4 – 0.

PUBLIC HEARINGS

Subdivision #2010-5 – application of **KATHLEEN DAVIS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 2.05 acres into 2 lots, located southwest of Murphy Circle within Fenwick Island Estates, 725 feet north of Route 54.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the proposed lots are located within an existing subdivision; that the applicants have submitted documentation that 14 out of 25 (56%) property owners are aware of and consent to this application; and that a previous 2 lot subdivision was approved in this subdivision on May 28, 2009.

Greg Hook, Surveyor, with Simpler Surveying and Associate, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this is a request to subdivide a 2.11-acre lot into 2, 1.0-acre lots; that access to both lots will be from Murphy Circle; that the proposed subdivision will not have any adverse impacts on traffic; that there will not be any negative impacts to adjoining properties; that the lots in the subdivision range in size from 1.0-acre to 2.0-acres; and that the lots closer to Route 54 are smaller in size.

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

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

Mr. Smith stated that he would move that the Commission grant preliminary and final record plan approval for Subdivision #2010 – 5 for Kathleen Davis, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. It is part of an existing subdivision known as Fenwick Island Estates.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 2 lots on 2.0516-acres of land is significantly less than the allowable density.

3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values. It will result in 2 lots of similar size as what currently exists in Fenwick Island Estates.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. The Office of Planning and Zoning has confirmed that 56% of the property owners of Fenwick Island Estates have consented to the subdivision.
7. This recommendation for preliminary and final record plan approval is subject to the following condition:

A. There shall be no more than 2 lots within the subdivision.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve this application as a preliminary and as a final, for the reasons, and with the condition stated. Motion carried 4 – 0.

C/U #1867 – application of **LAWSON’S PRODUCE, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mulch facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.20 acres, lying east of Route 5, south of Railroad and 1,700 feet south of Route 9.

The Commission found that on February 5, 2010 DelDOT provided comments that reference that a Traffic Impact Study is not recommended; that the Level of Service “E” of Seashore Highway will not change as a result of this application; and that the Level of Service “C” of Indian Mission Road will not change as a result of this application.

The Commission found that on October 26, 2010 the County Engineering Department Utility Planning Division provided comments that reference that the site is located in the North Coastal Planning Area; that the use of an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project 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 on October 26, 2010 the Sussex Conservation District provided comments that reference that the site contains two soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that the proposed project will not necessitate any off-site drainage improvements; and that it is not likely that the proposed project will necessitate any on-site drainage improvements.

Mr. Lank advised the Commission that prior to the submittal of this application he had received a letter from Ed Kee, Secretary of the Department of Agriculture, referencing that it was his opinion that the mulching facility was an agricultural use; that he had copied Mr. Robertson for an opinion; and that they agreed that a Conditional Use should be required.

The Commission found that Clifford W. Lawson II and Robert L. Lawson were present on behalf of Lawson's Produce, LLC and stated in their presentation and in response to questions raised by the Commission that Lawson's Produce has been in operation since 1999 and has grown to its current size; that the business operates on an annual lease with the current land owners and is under the direction of Clifford W. Lawson II (owner) and Robert L. Lawson (Supervisor); that the operation currently employs 3 – 4 workers; that the current mulch operation receives chipped, processed (pre-chipped) tree materials from several local tree service companies; that these materials are collected free-of-charge and provide a natural alternative to dumping them in local landfills; that tree chips are stockpiled until they are needed for the mulch processing; that during the mulch processing, tree chips are run through a mulch grinder and re-ground into landscape quality mulch; that the mulch materials are produced in four colors; that Material Safety Data Sheets are available on the dyes used for color; that tree chips are constantly (daily) being processed and as a result the chip stockpile never accumulates or becomes oversized; that they consider themselves as a "wood chip recycling facility" whereby they receive tree chips from companies who in the past would have dumped these natural materials in the landfills or paid to have dumping fees at various locations; that they do not compost materials on the property and do not accept stumps; that the facilities are adjacent to the family farm which has been in operation for more than 68 years; that ingress and egress to the facility will not have to be altered; that the entrance is 90-feet wide and was installed by DeIDOT; that the entrance serves as the current entrance to the farm operation which utilizes several types of farm equipment; that the farm facility provides plenty of off street parking; that they estimate 15 to 20 vehicles per day; that water is provided by an agricultural well and septic is not required; that as an agricultural related industry they believe that this mulch operation complies with the County's Conditional Use definition; that this operation is within the County's agricultural zoning regulations and the spirit of the rule which is "to provide for a full range of agricultural activities and to protect agricultural lands, as one of the County's most valuable natural resources"; that Ed Kee, Secretary of the Department of Agriculture, has stated in a letter that the State of Delaware considers forests and forest products an agricultural use; that this mulch operation has its genesis from a family farm and roadside produce stand and provides the family opportunity in an already difficult profession; that the operation contributes to the local economy and gives back to the community through volunteer work and donations; that the grinder also provides the color for the mulch; that they applied immediately after being advised that they needed a Conditional Use; that the produce market is in operation from 9:00 a.m. to 6:00 p.m. during the summer season and from 9:00 a.m. to 4:00 p.m. the remainder of the year; that they are not in operation after dark; that they may grind mulch, when needed for four days; that the grinder has not run for two weeks; that they retail to individuals and wholesale to landscapers and contractors; that the mulch is not bagged, it is only sold as loose bulk; that they may load 15 to 20 pickups or landscaping trailers daily during spring time; that the equipment is normally 150-feet minimum from residential properties; that the grinder is mobile and that they move it to different areas of the site; that the grinder regrinds chips and is not used for grinding branches and stumps; that the piles are turned so that the mulch does not compost; that they are five miles from the nearest fire company; and that they do not accept yard waste.

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

The Commission found that David Chicosky, an adjoining residential property owner, was present in opposition to this application and expressed concerns that the Applicants have been running this mulching operation for over two (2) years without permits and with a bit a disregard for the residents living in the immediate vicinity of the operation; that he has concerns about the continued use of this land for mulch and soil storage and sales and would like to suggest some restrictions if the use is approved; that as a consideration for the residents living in the immediate vicinity and the stench that emanates from the piles of wood chips and mushroom soil, that the permissible area for these operations take place not exceed the land sitting directly behind the Lawson property, i.e. from the rear-north property marker of the Chicosky property heading eastward be established as so that anything south of that marker be forbidden from such uses as mulch and soil storage; that the citizens of this community could then open their windows and not have their quality of life impacted by the business when the wind is blowing from the east; that they are concerned about spontaneous combustion; that due to their concerns about spontaneous combustion, they ask that the size of the operation be reduced by 2/3s and that the volume of wood chip storage be permit-limited to that volume; that they would prefer that the current practice of allowing this area to be a free dumping ground for any and all of the local tree trimmers and make it access controlled via a gate installed on the Lawson property where it accesses the land where the mulching operation is currently operating; that no additional wood chip should be permitted to be dumped until the size of the current wood pile is reduced by 2/3s; that as consideration for the excessive noise that is emitted from the equipment used during the wood chip dying process, the operations should be permit-restricted to 50-feet away from the previously referenced property marker; that the Applicants should be required to have professionally installed and pay for all associated costs, a 6-foot high, white or clay colored, PVC privacy fence across the rear of the Chicosky property and across the rear of the Mary Surprise property, and the fence should become the responsibility to be maintained by the Chicosky and Surprise property owners if installed on their properties; that the wood chip and dying operation be permit-restricted to the hours of 9:00 a.m. to 5:00 p.m. on weekends and holidays; that there are puddles of chemical dyes lying on the ground on the site; that he would like insurance from the EPA that the dyes will not impact drinking water wells; that the odors on the site are from wood decaying and the mushroom soils; and that he does not believe that the dyes create any odors.

The Commission found that Mr. Chicosky submitted a Tax Map high-lighting the location of the mulch and soil piles, a Tax Map high-lighting the suggested permit-restricted boundary; and three photographs of the mulching operation.

In response to questions raised by the Commission the Applicants stated that the dyes are environmentally friendly; that the dyes are not a paint pigment; that there is no environmental risk associated with the dyes; that the material piles have been moved further away from the property lines; that the mushroom soils have been moved onto farmland; that the mushroom soils were for farm use and were not associated with the mulching operation; that the mulch piles have already been reduced by at least 1/3; that the grinder cannot process wood products of 12 inches; and that a 2-inch water line is available on site for fire protection.

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 4 – 0.

C/Z #1695 – application of **THOMAS HOPKINS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Seaford Hundred, Sussex County, land lying east of U.S. Route 13, 1,250 feet north of Road 532 (Camp Road), to be located on 21,795 square feet, more or less.

The Commission found that on April 3, 2009 and April 15, 2009 DelDOT provided comments that reference that a Traffic Impact Study was not recommended and that the current Level of Service “C” of U.S. Route 13 will not change as a result of this application; that the site is subject to the Corridor Capacity Preservation Program; that the main goal of the Program is to maintain capacity on the existing highway; that the State Strategies reference that this site is located in a Level 1 Investment Area, where State policy will encourage development and growth; and that the Department will permit the property owner to retain a single rights-in/rights-out entrance along U.S. Route 13.

The Commission found that on October 26, 2010 the County Engineering Department Utility Planning Division provided comments that reference that the proposed project will utilize an on-site septic system; that the site is not in an area where the County plans to provide sewer service; that the site is in a future annexation area for the City of Seaford and that the City may provide sewer service in the future; and that a concept plan is not required.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments that reference that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that the proposed project will not necessitate any off-site drainage improvements; and that it is not likely that the proposed project will necessitate any on-site drainage improvements.

The Commission found that Thomas Hopkins was present and stated in his presentation and in response to questions raised by the Commission that this site contains approximately 0.5 acre and is immediately adjacent to his automotive dealership; that it is his intent to expand his dealership display area; that to the north of the site is his dealership and other commercial uses; that to the south is zoned commercial; that the parcel is the only parcel, not zoned commercial, between two commercial districts; that a residential home exists on the site currently; and that the entrance and exit are subject to the approval of DelDOT.

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

The Commission found that John Martin, an adjoining property owner, was present in opposition and stated that the site has been used for automotive display since May of 2008 without approval; that the use is a violation of the County Code; and that two sheds were built on the adjacent property, the dealership site, without permits.

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

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1695 for Thomas Hopkins based upon the record made at the public hearing and for the following reasons:

- 1) The property is appropriate for commercial zoning since it is located along Route 13, a major north-south thoroughfare in Sussex County.
- 2) The property is within a Town Center District according to the County's Comprehensive Plan Update and is appropriate for CR-1 zoning.
- 3) This rezoning to commercial is an infill and will be consistent with the commercial zoning on adjacent properties.
- 4) The rezoning will allow the Applicant to expand his automotive dealership on the adjacent property.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1696 – application of **TIMOTHY J. STUBBS AND COLEEN M. HUNTER** to amend the Comprehensive Zoning Map from a C-1 General Commercial District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the northwest corner of Road 384 (Bayard Road) and Janus Court, and 400 feet north of Road 370 (Daisey Road), to be located on 22,172 square feet, more or less.

Mr. Lank advised the Commission that DeIDOT comments were not requested since this application is to downzone the property from C-1 General Commercial to AR-1 Agricultural Residential.

The Commission found that on October 26, 2010 the County Engineering Department Utility Planning Division provided comments that reference that the site is located in the Bayard Planning Area; that the proposed single family dwelling will use an on-site septic system; that the County is currently working on the Bayard Extension of the Miller Creek Sanitary Sewer District, which proposes to include this parcel; that when and if the County provides sewer service, a connection to the system will be required; and that a concept plan is not required.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments that reference that the site contains two soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; and that it will not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that the Applicant has noted on the application form that the property is currently improved with a single family home and uses as a residence; that the property location makes potential future commercial use impractical; and that the current

commercial zoning is interfering with the ability to obtain conventional residential mortgage financing.

The Commission found that Timothy Stubbs was present and stated in his presentation and in response to questions raised by the Commission that he is trying to refinance his home and cannot get a residential loan since the property is zoned C-1 General Commercial; that banks will only offer a commercial loan with higher interest rates; that he has no intent to utilize the property for commercial use; that there will be no adverse affect on area traffic; that there will be no adverse impact on the neighborhood or community; that his home is environmentally friendly; and that there will be no negative impact on the commercial uses in the area.

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. Smith stated that he has prepared a motion and asked that Mr. Robertson read the motion for him since he is losing his voice.

Mr. Robertson read that Mr. Smith moves that the Commission recommend approval of C/Z #1696 for a down-zoning from C-1 General Commercial to AR-1 Agricultural Residential for Timothy J. Stubbs and Coleen M. Hunter based upon the record made during the public hearing and for the following reasons:

- 1) The Applicant is seeking the down-zoning to AR-1 Agricultural Residential because the use as commercial is impractical.
- 2) The use is currently residential, and will continue to be use that way. This use is consistent with the permitted uses in the AR-1 Agricultural Residential District.
- 3) The down-zoning will not adversely affect neighboring properties or roadways.
- 4) The down-zoning is consistent with the County's Comprehensive Plan Update.
- 5) The Applicant has stated that the rezoning is necessary to obtain residential mortgage financing for his home.

Motion by Mr. Smith, 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 stated. Motion carried 4 – 0.

C/Z #1698 – application of **FRANK J. EMMI, JR.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying northwest of Route 24 (John J. Williams Highway), 850 feet west of Love Creek, to be located on 0.51 acre, more or less.

The Commission found that on September 30, 2010 the Applicant provided an Exhibit Packet which contains a site survey, a Tax Map of the general area, a Zoning Map of the general area, a copy of the Minutes of the Planning and Zoning Commission meeting for August 12, 2010, a

copy of an Environmentally Sensitive Developing Area Report for this application, and a copy of a conceptual site plan for Pelican Landing, an adjoining B-1 Neighborhood Business District.

The Commission found that on August 11, 2009 DelDOT provided comments that reference that a Traffic Impact Study was not recommended and that the current Level of Service "E" of John J. Williams Highway will not change as a result of this application.

The Commission found that on October 26, 2010 the County Engineering Department Utility Planning Division provided comments that reference that the project site is located in the Angola Neck Planning Area; that the proposed use will utilize an on-site septic system; that when the County provides sewer service to the area, a connection to the system will be mandatory; that the County does not have a firm schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments that reference that the site contains one soil type; that the Applicant shall be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; and that it is not likely that any on-site or off-site drainage improvements will be necessary.

The Commission found that Frank Emmi, Jr. was present with James Fuqua, Jr., Attorney with Fuqua, Yori & Willard, P.A., and that they stated in their presentations and in response to questions raised by the Commission that the parcel contains approximately 0.5 acre; that the Applicant had applied for rezoning to CR-1 Commercial Residential In August of 2010; that it was recommended by the Commission that the Applicant withdraw that application and reapply for B-1 Neighborhood Business; that the Applicant has owned the property since 1998; that the Applicant has seen the area change and grow into commercial activities; that B-1 Neighborhood Business zoning will enhance the value of the property and will conform to the adjacent and area zoning; that this application is not speculation, but a realization of the activity in the area; that a motel exists to the east; that Marine zoning, small manufactured home parks, and a convenience store with gasoline sales exists across Route 24; that offices and the Peddlers Village shopping center exists to the west; that the adjacent site to the west was approved for B-1 zoning for the Pelican Landing shopping center project and has not yet been developed; that the Pelican Landing project is adjacent along two property lines with this site; that the site is surrounded by business and commercial uses and zonings; that they realize that the entrance will be subject to DelDOT; that a well and septic exists on the site; that there will be no negative environmental impacts; that the site is located in the Environmentally Sensitive Developing District Overlay Zone; that they did prepare an environmental summary for the site; and that the rezoning will bring the site into conformity with the business and commercial activities in the community.

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. Johnson stated that he would move that the Commission recommend approval of C/Z #1698 for Frank J. Emmi, Jr. based on the record made at the public hearing and for the following reasons:

- 1) The site is appropriate for the change in zone to B-1 Neighborhood Business, given its location on Route 24 in the vicinity of other business and commercial uses.
- 2) The site is located in a growth area according to the Comprehensive Plan Update and the permitted B-1 uses are appropriate and will benefit the nearby residents.
- 3) The change of zone will not adversely affect road conditions in the area.
- 4) The project will be served by an on-site well and on-site septic and will be served by County sewer once that service becomes available to this parcel.
- 5) The change of zone will not adversely affect neighboring or adjacent properties. The site is surrounded by existing or proposed business uses including the Pelican Landing Shopping Center, zoned B-1, which borders the site on the west and north, and a motel to the east.
- 6) The Final Site Plan for any proposed use of the property will 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 stated. Motion carried 4 – 0.

OTHER BUSINESS

Wandendale Regional Wastewater Treatment and Disposal Facility CU #1792 Site Plan – Route 24

Mr. Abbott advised the Commission that this is a site plan for a wastewater treatment and disposal facility; that the Commission earlier tonight granted a one-year time extension on the Consent Agenda; that the site plan complies with the conditions of approval, however, the conditions of approval need to be depicted on the site plan; that sheet 1 of the site plan depicts 2 spray areas along with 16 proposed Leyland Cypress trees to serve as a buffer along the eastern boundary of the site; that a 4-foot by 8-foot sign is proposed along Route 24; that 100-foot buffers are proposed from the wetlands; that sheet 2 of the site plan depicts the rapid infiltration basins, an irrigation lagoon, 4 spray areas and the control and treatment buildings; that the final site plan needs to show the 50-foot forested buffer that is required around the lands of Midway Baptist Church; that a 4-foot by 8-foot sign is proposed along Jolyns Way and Road 289; that sheet 3 depicts 2 spray areas; that sheet 4 depicts an irrigation lagoon and 3 spray areas; that the site plan is suitable for preliminary approval; that the final site plan should be subject to the review and approval of the Commission upon receipt of all agency approvals and the 14 conditions of approval being referenced on the site plan; and that the Commission was previously provided a copy of the site plan.

Bruce Patrick of Tidewater Environmental Services, Inc. was present and advised the Commission that the rapid infiltration basins are in the same location as what was presented during the public hearing; that this area contains approximately 16 acres; that one rapid

infiltration basin has been relocated; and DNREC has approved the soils work and the ground water assessment report; and that the Coastal Zone Permit has been approved.

Mr. Ross and Mr. Johnson advised the applicant that they should look at using another type of planting instead of Leyland Cypress for the proposed buffer areas.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals and the 14 conditions of approval being referenced on the final site plan. Motion carried 4 – 0.

Griffin Family Practice, P.A.
CU #1811 Site Plan – Route 54

Mr. Abbott advised the Commission that this is a site plan for a 1,550 square foot medical office; that the Conditional Use was approved on January 12, 2010 with 9 conditions; that the existing dwelling is being converted to a medical office; that the site plan indicates that there will be one doctor and four employees; that 6 parking spaces are required and that 8 are proposed; that 6 spaces and a portion of another are located within the front yard setback and are subject to site plan review; that the parking spaces need to be revised to 10-foot by 20-feet; that the site is not located in a flood zone and there are no wetlands on the site; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and the conditions of approval being referenced on the site plan and the parking spaces being revised to a minimum of 10-foot by 20-feet; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as a preliminary with the conditions that final approval shall be subject to the staff receiving all agency approvals, the conditions of approval being depicted on the site plan, and the minimum parking spaces being revised to 10-foot by 20-feet. Motion carried 4 – 0.

Freedom Rides
Revised Buffer Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a request to revise the plantings in the 20-foot highway corridor buffer along U.S. Route 13; that the Commission originally granted preliminary site plan approval on May 19, 2010; that the revised request is due to a change in the storm water management design, that the engineers feel that the proposed revision is necessary; that the engineers are requesting to plant more shrubbery and fewer trees; that 173 total plantings are required and the applicants are proposing 238 plantings; and that the Commission was previously provided a copy of the revised buffer plan and a letter from the engineering firm.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised buffer plan as submitted. Motion carried 4 – 0.

Freedom Worship Center

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-phase project; that phase 1 is for a 216-seat church with 4 classrooms as an accessory use; that the site is zoned AR-1 and contains 2.0-acres; that the setbacks meet the minimum requirements of the zoning code; that 54 parking spaces are required and that 62 spaces are proposed; that on-site septic and well are proposed; that the site is not located in a flood zone and there are no wetlands on the site; that Phase 2 is for a 388-seat church and conversion of the 216-seat church into a 10-classroom school; that phase 2 is the subject site of a future conditional use application and that no action can be taken on phase 2; that if preliminary approval is granted for phase 1 only, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve phase 1 only as a preliminary, with the stipulation that final approval for phase 1 shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Susan VanVorst
2 Lots and 50' Right of Way – Route 9

Mr. Abbott advised the Commission that this is a request to subdivide a 5.4-acre parcel into 2 lots with access from a 50-foot right of way/easement; that one lot will contain 1.40-acres and the remaining lands will contain approximately 4.0-acres; that the owner is proposing to create the right of way/easement over an existing driveway to serve as access to the 2 lots; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request, a copy of an aerial photograph, and a copy of a letter from the surveyor explaining the request.

Mr. Johnson questioned if the proposed subdivision is located within an airport approach zone.

Mr. Lank advised the Commission that that would have to be verified by Jim Hickin, Director of the Airport.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that verification be obtained from the County Engineering Department that the site is not located in an airport approach zone. Motion carried 4 – 0.

Joseph McQuaide
Lot on 50' Right of Way – Road 285

Mr. Abbott advised the Commission that this is a request to create a lot with access from an existing 50-foot right of way; that the minimum lot size is required to be 0.75-acre; that the request can be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would be the third lot having access from the right of way; that if the request is approved as submitted, it should be stipulated that any further

subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Mr. Lank advised the Commission that the proposed lot would be approximately 2.0-acres.

Motion by Mr. Johnson, 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 property will require an application for a major subdivision. Motion carried 4 – 0.

Deborah L. Whaley
Lot on 50' Easement – Road 493

Mr. Abbott advised the Commission that this is a request to create a 0.88-acre lot with access from an existing 50-foot easement; that the Commission approved the 50-foot easement and Lot 2 in 2009; that the request can be approved as submitted, or an application for a major subdivision can be required; that if approved as submitted, this would be the second lot having access from the easement; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0.

Dennis W. Pierce
2 Lots and 50' Easement – Road 353

Mr. Abbott advised the Commission that this is a request to subdivide a 5.0-acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that the minimum lot size will be 0.75-acre; that the request can be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0.

Subdivision #2005 – 57 – Blackwater Creek, Inc.
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 400 lots on October 26, 2006, and granted one-year time extensions on November 14, 2007, September 17, 2008 and November 12, 2009; that this is the fourth request for an extension; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval would be valid until October 26, 2011; and that the Commission was previously provided a copy of the request.

Dennis Schrader, Attorney, and Jeff Clark of Land Tech Land Planning were present and advised the Commission that the County Engineer has not signed off on the final record plan due to concerns about where the on-site septic will come from; that the County Engineering Department is the only agency approval that is lacking; and that at this time, the economy is not very bright.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to defer action pending written comments from the County Engineering Department in regards to this application.

Motion carried 4 – 0.

Subdivision #2005 – 64 – Palisades Land, LLC

The Estuary Phase 1 – Final

Mr. Abbott advised the Commission that this is the final record plan for Phase 1 of The Estuary Subdivision; that preliminary approval was granted on September 28, 2006 and time extensions were granted on October 17, 2007, August 30, 2008 and April 22, 2009; that Phase 1 contains 22 single-family lots utilizing the environmentally sensitive developing overlay zone; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Mr. Smith questioned when the remaining phases have to be submitted and questioned if the remaining phases can be revised as some of the residential planned communities have.

Mr. Lank advised the Commission that the remaining phases may be submitted at a later date; and that if there are major changes to the remaining phases from what was approved, the Commission could determine that a new public hearing could be required.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve Phase 1 as a final. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that the next regular meeting of the Planning and Zoning Commission is scheduled for Wednesday, November 10, 2010 at 3:00 p.m.

Meeting adjourned at 8:05 p.m.