

MINUTES OF THE REGULAR MEETING OF NOVEMBER 14, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 14, 2013, 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. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that Conditional Use #1973, the application of Sandhill Homes, LLC, was withdrawn on November 13, 2013, and that both of the items listed under Other Business have been withdrawn.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of October 24, 2013 as amended. Motion carried 5 – 0.

OLD BUSINESS

Mr. Wheatley advised the Commission that he has listened to the audio recording and reviewed the record for the public hearings on October 24, 2013 and feels that he can vote on the application.

**Change of Zone #1737 – Robert & Julie Norwood**

Application of **ROBERT & JULIE NORWOOD** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,205 square feet, more or less, lying at the northwest corner of Route 24 and Retz Lane (a private street) 280 feet southwest of Road 284 (Mulberry Knoll Road)(Tax Map I.D. 3-34-12.00-25.00 & 26.00).

The Commission discussed this application which has been deferred since October 24, 2013.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1737 for Robert and Julie Norwood seeking a change of zone from AR-1 to CR-1 based on the record made during the public hearing and for the following reasons:

- 1) He does not believe that the application is consistent with the character of the surrounding property. All of the adjacent properties on the same side of Route 24 are zoned AR-1. The only uses are active farmland and single family homes.
- 2) While there is some B-1 zoned land across Route 24 from this site that is not a basis for rezoning this property to CR-1, which permits more intensive uses than B-1.
- 3) The applicant has stated that his deed and/or restrictive covenants permit the property to be used for commercial purposes. However, that does not dictate the County to change the zoning for the property to accommodate commercial enterprises.
- 4) Rezoning this small parcel of land to CR-1 in an otherwise residential and agricultural area where no other CR-1 zoning exists would be an improper example of “spot zoning”.
- 5) The rezoning to CR-1, with all of the potential permitted uses in that zoning district could have an adverse impact on the residential properties to the rear of the site along Retz Lane.
- 6) He does not believe that the applicant has made an adequate record in support of the rezoning request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

**Change of Zone #1738 – Atlantic Community Thrift Shop, Inc.**

Application of **ATLANTIC COMMUNITY THRIFT SHOP, INC.** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.46 acres, more or less, lying at the south of Route 26 (Atlantic Avenue) 100 feet southeast of Road 348 (Irons Lane)(Tax Map I.D. 1-34-11.00-184.05 & 185.00).

The Commission discussed this application which has been deferred since October 24, 2013.

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1738 for Atlantic Community Thrift Shop, Inc. from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record and for the following reasons:

- 1) The site is appropriate for a change of zone to B-1 Neighborhood Business. It is located on the south side of Route 26. It is a reasonable expansion of the Applicant’s use on its adjacent property that is already zoned B-1.

- 2) The B-1 zoning is consistent with the orderly growth of the County. There are a number of business and commercial uses located in the immediate vicinity. Several properties are also zoned C-1 General Commercial and B-1 in close proximity to the site.
- 3) B-1 zoning has more limited uses than CR-1 zoning, which will limit the intensity of any development on the property.
- 4) The change of zone will not adversely affect neighboring or adjacent properties or nearby communities.
- 5) The site will have sewer service as part of a Sussex County sewer district.
- 6) The Delaware Department of Transportation has no objection to the rezoning, and has also reviewed the reconfigured and improved entrances to the Applicant's existing operations that will occur as a result of this rezoning.
- 7) The change of zone is in accordance with the Comprehensive Plan Update.
- 8) Site Plan approval for any use of the property will be subject to review and approval by the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

**Subdivision #2013-9 – Louis J. & Antoinette Perri**

Application of **LOUIS J. & ANTOINETTE PERRI** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 5.00 acres into 4 lots, and a waiver from the street design and forested buffer requirements, located north of Road 64 and across from Road 454C (Tax Map I.D. 5-32-7.00-27.14).

The Commission discussed this application which has been deferred since October 24, 2013.

Mr. Ross stated that he would move that the Commission grant preliminary approval of Subdivision #2013 – 9 for Louis J. and Antoinette Perri, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Code in that it protects the orderly growth of the County.

2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 4 lots on 5 acres of land is significantly less than the allowable density.
3. The proposed subdivision will not adversely affect nearby uses or property values.
4. The Applicants have favorably addressed the items set forth in Section 99-9C of the Sussex County Subdivision Code.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. The Applicants have sought a waiver from the Buffer Requirements which would eliminate the required buffer along the easterly side of the subdivision. The request as presented is not granted.
8. The Applicant has also requested a waiver from the Road specifications. However, no substantial reason was given for this request, and there are circumstances on the site which support adhering to the County Standards, including the fact that the road must cross a tax ditch. As a result, the waiver from the road specifications is not granted.
9. This preliminary approval is subject to the following conditions:
  - A. There shall be no more than 4 lots within the subdivision.
  - B. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District.
  - C. The roadway must be constructed to County specifications.
  - D. The 50 foot right of way must be exclusive of all lots. It may not take the form of an easement as shown on the Preliminary Site Plan.
  - E. All entrances shall comply with all of DelDOT's requirements.
  - F. Prior to Final Site Plan approval, the Applicant must submit proposed Restrictive Covenants providing for the maintenance of the roadway, stormwater management areas, drainage systems and buffer areas. The Final Site Plan must also identify how these items shall be maintained and who is responsible for the costs of maintenance.

- G. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Preliminary Site Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, 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.

### PUBLIC HEARINGS

#### **Conditional Use #1973 – Sandhill Homes, LLC**

Application of **SANDHILL HOMES, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 8,277 square feet, more or less, lying at the southwest of Silver Lake Drive 650 feet south of Robinson’s Drive 780 feet southwest of Pine Lane (Tax Map I.D. #3-34-20.09-120.00).

This application was withdrawn on November 13, 2013.

#### **Subdivision #2013-10 – David Green**

Application of **DAVID GREEN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 32.06 acres into 5 lots, located east of Coolspring Road (Road 290) 4,000 feet north of Stockley Road (Road 280)(Tax Map I.D. 22-34-5.00-38.00).

Mr. Abbott advised the Commission that this application is for 4 strip lots plus residual land for a total of 5 lots; that the applicant has maximized the “by-right” number of lots permitted; that DelDOT has issued a Letter of No Object; that based on DelDOT’s letter, the residual lands will have a single entrance; that Lots 1 and 2 will have a combined entrance and Lots 3 and 4 will have a combined entrance; and that a letter from Atlantic Resource Management indicates that the site is suitable for Low Pressure Pipe on-site wastewater treatment disposal systems.

The Commission found based on comments received from the Sussex County Engineering Department Utility Planning Division that the site is not located in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that on-site septic systems are proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the proposed project is not in an area where Sussex County currently plans to provide sewer service; and that a concept plan is not required.

David Green was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the residual 22.0 acre parcel will be retained by him; that all 4 of

the lots are approximately 2.50 acres in size; that this subdivision is similar to one that he created across the road; that 4 out of the 6 lots on the subdivision across the road have homes located on them; that no restrictive covenants were submitted with this application; that no further subdivision of the proposed lots will be permitted; that DeIDOT has approved combined entrances for Lots 1 and 2 and Lots 3 and 4; and that no unusual grading is required.

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. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2013 – 10 for David Green, 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.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 5 lots on 32.06 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.
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. This preliminary approval is subject to the following conditions.
  - A. There shall be no more than 5 lots within the subdivision. No further subdivision of Lots 1 through 4 shall be permitted.
  - B. The stormwater management system shall meet or exceed the requirements of the State and County.
  - C. All entrances shall comply with all of DeIDOT's requirements.
  - D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

### **Subdivision #2013-11 – Joseph J. & JoAnn Tittermary**

Application of **JOSEPH J. & JOANN TITTERMARY** to consider the Subdivision of land in a GR General Residential District in Broadkill Hundred, Sussex County, by dividing 29,629 square feet into 2

lots, located south of Bayshore Drive (Road 16A) and being Lot 2 of Subdivision of Lands of Jennie H.J. Layton, et al (Tax Map I.D. 2-35-10.00-1.06).

Mr. Abbott advised the Commission that this request was previously reviewed by the Commission under Other Business on July 11, 2013 and the request was denied as submitted and required to go through the major subdivision process; and that if the application is approved, the applicants will need to file an application for variances for the square footage of the lots, and possibly lot width and depths for both lots.

The Commission found based on comments received from the Sussex County Engineering Department Utility Planning Division that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the site is located in the North Coastal Planning Area; that on-site septic systems are proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the proposed project is not in an area where Sussex County currently plans to provide sewer service; and that a concept plan is not required.

Joe and JoAnn Tittermary were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they purchased the property in 2007; that they do not use the area that is proposed to be created; that both lots have 150 feet of frontage along the water; that the proposed lots are larger than the existing lots in the area; that their property goes from the road to the low water line; that a wetlands delineation has not been performed; that a title search was completed when the property was purchased in 2007; that a septic feasibility statement has not been issued; that the existing septic that is on the site now is located to the south of the existing dwelling; and that the site is served by central water from the Wilkerson Water Company.

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

Sam Burke was present in opposition to this application and advised the Commission that he is the one who designed the existing 4 lot subdivision; that the proposed lots are not large enough for on-site septic systems according to DNREC regulations; that DNREC will not issue septic approval due to the lot sizes; that the applicants have not provided proof that at least 51% of the property owners are aware and agree with the resubdivision; and there are concerns about the quitclaim identified on the preliminary plan.

Mr. Robertson advised the Commission that action should be deferred pending receipt of a septic feasibility statement from DNREC.

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

**AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SUBSECTION 115-179b OF THE CODE OF SUSSEX COUNTY, ENTITLED “HEIGHT REGULATIONS” IN REGARD TO THE HEIGHT OF CERTAIN BUILDINGS.**

Mr. Lank advised the Commission that this Ordinance modifies Section 115-179B of the Sussex County Code to only allow governmental buildings, hospitals, institutions and schools to be built to a maximum height of 60 feet when those structures are permitted in the underlying zoning

district. Churches and Temples are unaffected by this amendment. It applies to any new buildings not currently approved with a valid Sussex County building permit.

Mr. Lank advised the Commission that a memorandum was received from Michael Izzo, County Engineer, referencing that in commercial zoning, where the greater height limit will come into play, the Engineering Department has planned for 12 EDUs per acre; that as long as any land-use plan does not exceed this density, a negative impact on our sewer planning will not be realized; that the most current example of this type of development, the Colonial Oaks Motel did not exceed the 12-units per acre designation, and a statement of “no objection” was submitted by their Department; and that they will continue to review each application on a case by case basis.

Mr. Lank advised the Commission that a memorandum was received on October 14, 2013 from Diane Hanson, Mayor of Dewey Beach, in opposition to the false interpretation that public or semi-public buildings can now be built to 60’ in the County and requesting that the option of a moratorium on any building currently planning to build to 60’ and a clarifying ordinance to clarify the past history of the height limit and its original intent be investigated; that knowing that the Town of Dewey Beach held a referendum vote on the height of 35’ in 2008 and that 86% of those who voted supported this height limit be maintained, she is certain that the vast majority of people in Dewey Beach would also support that position; that the history of Sussex County has been that the height limit was 42’ and all developers had abided by that rule until recently; that it is unconscionable that this change was allowed to happen without any public knowledge or input; that, as mayor, she had no knowledge of this change until she read it in an editorial; that such a major change in building height, especially along Route One, will bring total grid lock to our area; that traffic is not only an inconvenience, it is a major safety issue as the traffic can slow down ambulances, fire trucks, police and other emergency vehicles from attending to emergencies promptly; that as individual towns we can control the height of buildings within our borders, but are not able to control such a major impact on our quality of life without the support of our County Council and government.

Mr. Lank advised the Commission that a letter was received on October 15, 2013 from Fernmoor Homes, aka Fernmoor Holdings at Vineyards DE Limited Liability Company, the ground tenant since October 2011 of the Vineyards at Nassau Valley; that Fernmoor respectfully requests that either: (a) the ordinance being considered for action be revised to permit those projects which receipted concept or preliminary approvals, and constructed buildings relying on the current ordinance, be allowed to continue development under the existing ordinance, or (b) the introduction of the ordinance be delayed so that interested parties, such as Fernmoor, which will bear the brunt of such a change, be permitted to have adequate time to present information regarding the negative impact of such a change; that when considering the acquisition of its leasehold interest in the Vineyards, Fernmoor took into account many factors, including most importantly, the projects approval status and what the approvals permit to be built; that a key



factor in analyzing the financial viability of this project was the continued ability to construct mixed-use buildings with a maximum height of 60', which is the regulation utilized to construct the buildings that were in place in 2011; that those existing buildings were based on the approvals that dated back to 2002 and continue to exist today; that based on this understanding, Fernmoor made a significant investment at the Vineyards; and that they oppose any moratorium.

Mr. Robertson advised the Commission that during the County Council discussion on the height questions, there was some thought to create a moratorium, but one was not imposed; that there has not been any changes in the Code about height and that the 60 foot limit is based on the Code; that the Code refers to a 42 foot height limit throughout the districts, but separately the Supplementary Conditions of the Code establish a 60 foot height limit; that Subsection 115-179B of the Code states that "Except within an area defined as an airport approach zone by the Federal Aviation Administration, public and semipublic or public service buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet and churches and temples may be erected to a height not exceeding 75 feet when the required side and rear yards are each increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located."; that the wording goes back to the original Comprehensive Zoning Ordinance; that the definition of "public" in the Code is referenced as "open to common use, whether or not public ownership is involved." And that has a broad meaning and can include a variety of uses where the public is invited, including hotels, restaurants, shopping areas, etc.; that public/semipublic uses are referenced elsewhere in the Code including the standards for granting Conditional Uses; that many commercial and business type enterprises have been approved based upon their classification as "public or semi-public uses" by the County; that examples even include Conditional Uses for borrow pits since they provide services and materials to the public or for public projects; that the County Council has proposed to change the Code to read "Except within an area defined as an airport approach zone by the Federal Aviation Administration, buildings owned by a political subdivision of the State of Delaware, the Federal Government or any agency thereof, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceed 60 feet and churches and temples may be erected to a height not exceed 75 feet when the required side and rear yards are each increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located."; that if the Code is amended as proposed, an applicant will still be able to make application for a variance in the height for review by the Board of Adjustment; that the RPC Residential Planned Community regulations in the Code still allow for adjustments to the height of buildings in RPC project when creating a superior living environment by using design ingenuity; and that the use applied for has to be a permitted use in the particular zoning district.

The Commission discussed the proposed ordinance amendment and some of the comments from the Commission members included: that buildings 60 feet tall have more recently become attractive for construction consideration by developers; that there is a mechanism for consideration of increased height through the Board of Adjustment; that there is not a loop-hole in the Code to allow buildings to be built to 60 feet; that the referenced section of the Code just has not been utilized; questioning how the height of a building will impact public sewer; questioning uses v. measurements in reference to Equivalent Dwelling Units; questioning why a 60 foot motel creates such controversy; that there may be a better solution, but has not yet been determined; that further study may be necessary; that the most floors in a 60 foot tall building will be a tight six (6) floors; that there are a lot of cost issues for increased height; that a 60 foot height might help reduce sprawl; that the County should take a more comprehensive look at the issue, including appropriate locations for taller buildings, separation from roadways and waterways and other factors; and that more time might be necessary prior to making a recommendation on this ordinance amendment.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings the Commission discussed this ordinance amendment.

Mr. Wheatley questioned if a workshop of the Commission and the County Council would be appropriate.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration.

**AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN ORDER TO EXTEND THE TIMEFRAME IN WHICH LANDOWNERS MAY PERFORM SITE WORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY.**

Mr. Lank advised the Commission that this ordinance modifies Section 99-32 of the Sussex County Code in order to extend the time period to January 1, 2015 in which landowners may perform site work and construct certain improvements without posting a bond or other guaranty, subject to the conditions contained in the amendment.

Mr. Robertson advised that Commission that this proposed ordinance amendment is fairly straight forward; that the County allows site work without bonding; that in a No-Bond project no building permits are issued and no lots can be sold until the work is completed or a bonding method is in place; that the process has been in place and had a dead-end date of December

2013; that it is the intent of the amendment to allow the process to continue for one additional year; and that the process has worked fairly well.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings, the Commission discussed this ordinance amendment.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to recommend approval of this ordinance amendment with a further recommendation that the time frame be extended to January 1, 2016, in order to match the current time extension ordinance (which relates to Subdivisions, Residential Planned Communities, and Conditional Uses). Motion carried 5 – 0.

**AN ORDINANCE TO AMEND CHAPTER 90 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SEDIMENT CONTROL AND STORMWATER MANAGEMENT” AND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN REGARD TO THE BONDING AND GUARANTIES REQUIRED FOR SURFACE DRAINAGE FACILITIES UNDER THE JURISDICTION OF THE SUSSEX CONSERVATION DISTRICT.**

Mr. Lank advised the Commission that this ordinance modifies Section 90-8 and 99-32 of the Sussex County Code in order to remove the provision that Sussex County will require bonding and guaranties for surface drainage facilities and erosion and sedimentation control facilities required by the Sussex Conservation District.

Mr. Robertson advised the Commission that the County has been holding bonds for the Sussex Conservation District (District) for years; that the District is now setting up to do their own bonds for work that they inspect and have jurisdiction over; that questions have been raised for some time as to why the County is holding bonds for the District; that legally, the County should not be holding bonds for other agencies’ work; and that under the current process, it is likely that a bonding company may not honor the bond held by the County for another agencies’ work.

During the Commissions discussion, there were some concerns expressed about the percentage of the bonding amount that may be imposed by the District; that the County requires 125%; and that it is rumored that the District may require 150%.

Mr. Robertson responded by stating regardless of cost, the County should not legally be holding a bond for the work required, regulated, inspected, and approved by another agency separate from the County.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings, the Commission discussed this ordinance amendment.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this ordinance amendment as circulated. Motion carried 5 – 0.

#### OTHER BUSINESS

Nassau Feed & Grain, Inc.  
Preliminary Commercial Site Plan – Nassau Road

This item was removed from the Agenda on November 12, 2013 at the request of the applicant's engineer.

Atlantic Coast Inn  
Preliminary Commercial Site Plan – Route 54

This item was removed from the Agenda on November 5, 2013 at the request of the applicant.

Meeting adjourned at 7:50 p.m.