



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 19, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 19, 2009, in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:05 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton, and Mr. Michael Johnson with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of November 5, 2009 as amended. Motion carried 4 – 0.

OLD BUSINESS

C/U #1801 – application of **CHASE T. BROCKSTEDT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for office buildings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.337 acres, more or less, lying at the northeast corner of Savannah Road and Ritter Road west of Lewes.

The Commission discussed this application which has been deferred since November 5, 2009.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1801 for Chase T. Brockstedt for office buildings based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property along Savannah Road.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties, community or traffic.
- 3) The project is consistent with the County Comprehensive Plan Update and is in the Environmentally Sensitive Developing District which permits the proposed use.
- 4) The property has frontage on two State owned and maintained roadways. Ritter Road adjacent to the property is State owned and maintained.

- 5) The use as offices benefits the health, safety and welfare of Sussex County residents, and will provide professional and medical offices in a convenient location along Savannah Road near the City of Lewes and Beebe Hospital.
- 6) This recommendation for approval is subject to the following conditions and stipulations:
 - a. There will only be one (1) lighted sign on the premises that shall not exceed 32 square feet on each side.
 - b. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.
 - c. As proposed by the Applicant, the hours of operation shall be limited to between 7:00 a.m. and 7:00 p.m., Monday through Saturday.
 - d. A solid vinyl fence shall be installed along the rear boundary of the property. The type and height of the fence shall be depicted on the Final Site Plan.
 - e. There shall be no more than two (2) 7,500 square foot office buildings permitted on the site.
 - f. The Applicant must comply with all DelDOT requirements concerning the entrance and roadway improvements.
 - g. The use shall be limited to business and professional uses, including but not limited to medical offices, dental offices, lawyers, accountants, insurance offices, etc. There shall not be any contractor's offices or uses that primarily involve retail sales.
 - h. The Final Site Plan shall include a landscape plan for the property.
 - i. The 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 and stipulations stated. Motion carried 4 – 0.

C/Z #1660 – application of **BAYWOOD, LLC** 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 600 feet north of Route 23 (Long Neck Road) and 2,000 feet west of Greens Way (entrance into Baywood Community), to be located on 16.475 acres, more or less.

The Commission discussed this application which has been deferred since November 5, 2009.

Mr. Johnson asked to clarify if the record indicates any business use in the area proposed for rezoning to B-1.

Mr. Wheatley asked Dennis Schrader, Attorney for the Applicant, if he would come forward to clarify and respond to Mr. Johnson's question.

Mr. Schrader responded that the area of the B-1 rezoning application is intended for multi-family use only, no business activities.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1660 for Baywood, LLC for a change in zoning from AR-1 Agricultural Residential to B-1

Neighborhood Business based upon the record made at the public hearing and for the following reasons:

- 1) This application is to consider a Change in Zone from AR-1 to B-1. It has been filed simultaneously with an application for Conditional Use for multi-family structures on the same parcel.
- 2) The subject property is located in the Long Neck area, which is an area that has seen residential and commercial growth in accordance with the Comprehensive Plan Update.
- 3) The area of the project is identified as part of the Environmentally Sensitive Developing District Overlay Zone. B-1 zoning is a permitted use within this area.
- 4) The proposed project is consistent with the trend of development and is in character with the nature of the area that includes other C-1 and B-1 zoning. It is a part of the larger Long Neck community.
- 5) The proposed project meets the purpose of the Zoning Ordinance because it promotes the orderly growth, convenience, prosperity and welfare of Sussex County.

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 approved for the reasons stated. Motion carried 4 – 0.

C/U #1797 – application of **BAYWOOD, LLC** to consider the Conditional Use of land in a B-1 Neighborhood Business District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 19.794 acres, more or less, lying north of Long Neck Road (Route 23) and west of Greens Way (entrance into Baywood Community).

The Commission discussed this application which has been deferred since November 5, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1797 for Baywood, LLC for multi-family dwellings in a B-1 District based upon the record made at the public hearing and for the following reasons:

- 1) The property is in an area where commercial development and other residential development have occurred, including townhouse and single family developments. The project is consistent with those developments, and will provide a transition between the B-1 and commercial uses along Long Neck Road and the existing Baywoods community.
- 2) The project will be served or benefitted by amenities that are on-site as well as the existing Baywoods amenities. These amenities include a swimming pool, clubhouse and recreational facilities.
- 3) The project is in a Development District according to the Sussex County Comprehensive Plan Update.
- 4) With the conditions and stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 5) The project will be served by central water and sewer.
- 6) This development will be part of an overall site plan that includes a C-1 site plan that received conceptual approval in 2003. There are 211 units proposed in the existing C-1 and that is not a part of this application, but will be part of this overall project.
- 7) This recommendation for approval is subject to the following conditions and stipulations:

- a. The maximum number of residential units in this Conditional Use property shall not exceed 143 units.
- b. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
- c. The Community Center, Clubhouse, and swimming pool shall be constructed and open to use by residents prior to the issuance of the 100th building permit for the project. The multi-modal recreational facilities shall be open to use prior to the 200th building permit.
- d. The development shall be served by a publicly regulated central wastewater system built in accordance with all applicable regulations.
- e. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
- g. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks or multi-modal paths shall be installed along at least one side of all streets, and streetlights shall be installed.
- h. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- i. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
- j. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- k. The Applicant shall coordinate with the local school district's transportation manager to establish a school bus stop area.
- l. The Final Site Plan for the development shall be subject to the review and approval of the Planning and Zoning Commission.
- m. The Applicant, as the developer, shall provide for the perpetual maintenance of streets, sidewalks, multi-modal paths, stormwater management facilities, recreational facilities, and other common areas.

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 approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0.

PUBLIC HEARINGS

Subdivision #2008-9 – application of **UNDERHILL PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 93.09 acres into 134 lots, located on both sides of Road 279 and across from Road 279A.

Mr. Robertson excused himself from participating in this public hearing.

The Commission found that on November 9, 2009 the Applicant submitted Revised Preliminary Plans and an Exhibit Booklet containing references to the project team; a project overview with a photographic review of the site; PLUS comments and responses; a report on School Enrollment by Dane A. Brandenberger, Ed. D. ; Technical Advisory Committee comments; a copy of the Application form; a Development Report; Subdivision Considerations in reference to Subdivision Ordinance 99-9C; references to compliance with the Zoning Ordinance; a series of maps, i.e. Future Land Use Map from the Comprehensive Plan Update, State Strategies for Policies and Spending Map, Zoning Map of the area, an aerial photograph, a Tax Map of the area, a Flood Map of the area, a Recharge Areas map of the area, a portion of the USGS Quad Map, a Soils Map, and a State Resources Area Map; a letter from DNREC Natural Heritage & Endangered Species Section; a rendering of the site plan, a site data listing sheet, a rendering of the open space, a rendering of the distances to 404 Wetlands from lot lines, a rendering of the site amenities, a copy of the survey of the property, a wetlands delineation Map; a report on the Stormwater Management approach and preliminary stormwater concept rendering; a letter and E-mail from DelDOT; a street cross-section; a pedestrian circulation rendering; a letter from Sussex County Addressing in reference to street naming; Ready and Willing to Serve letters from Tidewater Utilities, Inc., County Engineering, Delaware Electric Cooperative, Inc., Verizon, and Mediacom; a copy of the draft Declaration of Covenants, Conditions and Restrictions for the project; an Open Space Management Plan; and suggested Findings of Fact and Conditions of Approval for consideration.

Mr. Lank advised the Commission that the Technical Advisory Committee provided comments until May 18, 2008 and that the Technical Advisory Committee Report is a part of the record.

The Commission found that Michael Daniels of Underhill Properties, L.L.C. was present with Dennis Schrader, Attorney with Wilson, Halbrook and Bayard, P.A., and Thomas Ford, Land Planner with Land Design, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the Exhibit Booklet should contain enough information to establish an opinion on this application; that a cluster lot subdivision is proposed on both sides of Road 279; that the subdivision proposes 134 lots on approximately 93 acres; that the lots take up approximately 32 acres and the streets take up approximately 6 acres; that 90% of the woodlands will be preserved; that the site is capable of being developed as a standard subdivision with 189 lots at a density of 2.1 units per acre; that the cluster subdivision yields a density of 1.45 units per acre with lots averaging 10,500 square feet; that the majority of the site is located in an Investment Level 3 area, with a small area within Investment Level 4 along Cherry Walk Creek, according to the State Strategies; that the streets will be private and built to County specification; that a Homeowners Association will be established for maintenance of all common areas; that the project will be served with County sewer; that 9 acres of wetlands exist and will not be disturbed; that the site is located in the Environmentally Sensitive Developing District Overlay Zone; that the design complies as a Superior Design; that the area is developing; that the layout of the project conforms to the natural lay and features of the site; that the site is just past the Marsh Island Golf Course which was recently approved for 152 lots; that the site is close to the Beacon School on Route 24, the Beebe Medical facility on Route 24, and the Rehoboth Beach/Lewes Fire Station on Route 24; that the site contains 3 parcels which will be developed; that the site has historically been farmed; that the State has no objections to the

development of this site, provided the developer works with DelDOT to address traffic impacts to Camp Arrowhead Road and with DNREC to address environmental impacts to the site; that DelDOT will probably require dedications of right-of-ways and a multi-modal path; that Best Management Practices are intended; that they revised the preliminary plan due to agency comments; that wetlands buffers average 227 feet from 404 wetlands; that the wetlands were delineated by Envirotech; that no disturbance of wetlands is intended; that the stormwater management pond close to Camp Arrowhead Road is setback 60-feet and the location conforms to the natural lay of the land; that the project is being developed in 3 areas; that Parcel A contains 101 lots, Parcel B contains 15 lots and Parcel C contains 15 lots; that the project should be walk able, bike able and livable; that stormwater management is designed for quality by the use of Best Management Practices; that there are no records of any rare or endangered species on this site; that no lots will be created within the 100 year flood area; that their Environmental Assessment and Public Facilities Evaluation Report references drainage, water, wastewater, traffic, rare, threatened and endangered species, tidal and non-tidal wetlands, open space, public and private infrastructure, economic, recreational and other benefits, historic and cultural resources, an affirmation statement, actions consistent with the Comprehensive Plan Update, and cluster benefits; that they have addressed the Subdivision Ordinance – Section 99-9C in the Exhibit Booklet; that the proposed lots have been pulled back from Camp Arrowhead Road to provide a scenic view; that agricultural buffers are proposed; that they have addressed the Zoning Ordinance in the Exhibit Booklet; that 90% of the site has excellent soils for development; that the stormwater management facilities are located in the area of the best soils; that the closest property line to 404 Wetlands is Lot 13 which is 13 feet from the 404 wetlands line and 67 feet from the State Wetlands line; that these area will not be disturbed; that they are proposing that the clubhouse, swimming pool, tot lot and parking be completed before the 50th building permit; that the stormwater areas provide for one permanent wet pond feature, with other shallow/detention/recharge features; that the entrance to the site will be a boulevard entrance with no driveways along that portion of the street system; that the street length proposed equals approximately 9,000 feet; that the sidewalks proposed equal approximately 15,000 feet; that the Office of State Planning Coordination and DelDOT voice no objections; that the lot lines from 404 Wetlands are designed to create non-disturbance of woodlands; that relocating Lot 13 would alter the layout of the project; that phasing has not yet been determined; that open spaces will be grasses and meadows; that the homes will have living areas of 1,600 square feet to upper 2,000 square feet in a cottage style to fit in with the area; that street lighting is proposed; that the location of a school bus stop has not yet been determined; that stormwater features should have no negative impact on the area; that the shallow/detention/recharge areas will be designed like rain gardens for recharge and outfall; that the majority of the outfall will be to Cherry Walk Creek; and that there are no known tax ditches in the area.

The Commission found that Samuel Marsh, an adjoining property owner, was present in support of the project and stated that the plans will improve the community.

The Commission found that Edward Crawford, President of the Bay Ridge Woods Homeowners Association, was present in opposition to the project and expressed concerns that the project differs from Bay Ridge Woods, a 49 lot subdivision of 0.5 acre lots with homes containing approximately 2,400 square feet; that Bay Ridge Woods adjoins the project; that they are concerned about traffic flow and safety issues; that a traffic impact study should have been

required with this project and other projects in the area which contain more than 400 homes; that sewer lines create development; that Camp Arrowhead Road does have some water issues; that according to DelDOT there are no studies proposed currently to improve the Road; that DelDOT has not funds to make improvements; that a school bus stop should not be placed near the curve of Camp Arrowhead Road; that the Homeowners Association would support similar sized homes to those in Bay Ridge Woods; that there could be an impact on the School District; that the development could impact the wildlife along Cherry Walk Creek; that the project should be required to conform to the DNREC recommended 100-foot buffer from wetlands; that dwellings are proposed too close to the wetlands; that Cherry Walk Creek floods during storm events; and that the buffers need to be maintained.

Mr. Schrader and Mr. Ford responded to questions from the Commission and stated that they would not object to the placement of Carsonite markers along the wetlands boundary; that they have no objection to the placement of site fencing along the perimeter of the area of disturbance; that there are 3 outfalls to Cherry Walk Creek; and that the plans are designed for an ecological advantage of the site, rather than the 100 foot buffer suggested by DNREC.

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 4 – 0.

Subdivision #2008-10 – application of **JACK STANTON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 72.46 acres into 43 lots, located north of Road 473 (Joseph's Road) approximately 650 feet east of Route 20.

Mr. Lank advised the Commission that the Applicant provided revised Preliminary Plans on November 9, 2009 which reduces the number of lots from 43 to 40.

Mr. Lank advised the Commission that the Technical Advisory Committee provided comments until June 20, 2008 and that the Technical Advisory Committee Report is a part of the record.

Mr. Lank added that a Letter of No Objection was received from DelDOT for the entrance on July 1, 2009.

The Commission found that Jack Stanton was present with Jessica Nichols, Professional Engineer with Artesian Consulting Engineers, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they are now proposing to develop the 72 acre site with 40 lots; that all lots will contain at least 0.75 acre; that the density is estimated at 0.57 units per acre; that on-site septic and on-site wells are proposed; that DNREC is now reviewing their application for site feasibility; that a 50-foot wide buffer is proposed from the 4.25 acres of wetlands on the site; that ½ of the site was farmed and ½ of the site is wooded; that 17 acres of woodlands will remain in open space; that there will be restrictive clearing of lots for home sites; that a 30-foot wide buffer shall surround the perimeter of the site; that DelDOT has voiced no objection to the entrance location; that they have addressed all items in Subdivision

Ordinance Section 99-9C; that there are several 0.75 acre lots in the area; that no wetlands will be included in any lots; that there are no historic features on the site; that Best Management Practices and green technologies will be implemented for stormwater management features; that streets will be private; that there should be no negative impact on the area; that no bus stop is proposed; that they are in compliance with the Comprehensive Plan Update; that the restrictive limit of clearing of lots shall be shown on the site plan; that they are not proposing to install any sidewalks or street lighting; that no bus stop is proposed since there is a bus stop within 300 feet of the site; that DelDOT will be requiring a dedication for additional right-of-way; that an area is being reserved for a future multi-modal path; that the dwellings will be starter homes in excess of 1,500 square feet of living area; and that there is a tax ditch on the site and that no tax ditch easements will be included within any lot lines.

Mr. Robertson advised the Commission that he has reviewed the Declaration of Restrictions.

The Commission found that Sue Bramhall, Realtor for the sellers, spoke in support of the application and referenced that the site are designed for first home buyers; that there is a need in the Seaford area for starter homes; that this site is ideal for buyers working in Seaford, Georgetown, and Millsboro; that Road 473 is a dead-end road with little traffic; that the present owners have no desire to continue farming the site; that some of the land is being set aside for a home for the present owners; and that Mr. Stanton is going to build the present owners a new home on the site.

The Commission found that Brian Koyanagi, Realtor for the Applicant, stated that there is a need for affordable homes in this area.

The Commission found that Eunice Salisbury, daughter to the sellers, stated that affordable housing is needed in the area.

The Commission found that Joseph Ball, the seller, stated that he supports the developer's plans.

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 for septic feasibility. Motion carried 4 – 0.

Subdivision #2008-11 – MARVEL INVESTMENTS, LLC

Mr. Lank advised the Commission that the Applicant withdrew this application on October 19, 2009.

Meeting adjourned at 7:52 p.m.