

MINUTES OF THE REGULAR MEETING OF NOVEMBER 19, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 19, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Vice Chairman Smith presiding. The following members of the Commission were present: Mr. Rodney Smith, Mr. Michael Johnson, Mr. I.G. Burton, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Ms. Janelle Cornwell – Planning and Zoning Manager. Mr. Robert Wheatley, Chairman, came in a few minutes late. Mr. Smith handed the gavel over to Mr. Wheatley, who then presided over the remainder of the meeting.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Agenda as amended, announcing that the application for Ocean Way Estates has been removed from the agenda and re-advertised for January 28, 2015. Motion carried 4 – 0. Mr. Wheatley was absent during this discussion.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of November 12, 2015 as amended. Motion carried 4 – 0. Mr. Wheatley was absent during this discussion.

PUBLIC HEARINGS

C/Z #1787 – BDRP, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County containing 19.52 acres, more or less. The property is located south of Beaver Dam Road (Road 285) 2,500 feet west of Plantations Road (Road 275). (911 Address: None Available) Tax Map I.D. 334-5.00-222.01.

C/U #2033 – BDRP, LLC

An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19.52 acres, more or less. The property is located south of Beaver Dam Road (Road 285) 2,500 feet west of Plantations Road (Road 275). (911 Address: None Available) Tax Map I.D. 334-5.00-222.01.

After asking Dennis L. Schrader, Esquire of Morris James Wilson Halbbrook & Bayard, LLP, present on behalf of the applicants, it was decided that the public hearings for C/Z #1787 and C/U #2033 would be combined and heard as one public hearing to establish the record and that individual decisions would be rendered on each application after the public hearing.

The Commission found that the applicants filed surveys/site plans with their application submitted on August 13, 2015, and an Exhibit Booklet on November 9, 2015. The Exhibit Booklet contains references to the Project Team; color renderings, maps, aerials, a site location map, and a zoning map of the area; references to the Environmentally Sensitive Developing District Overlay Zone, the Comprehensive Land Use Plan (Plan), the Future Land Use Map from the Plan, and the 2010 Strategies for State Policies and Spending Map; copies of the cover form with the applications, copies of the application forms for the rezoning and the conditional use, a copy of the deed, a copy of the Land Title Survey, site plans, and landscape plans; copies of the proposed condominium declaration documents, by-laws, and deed of easement; references and responses to the Subdivision Ordinance - Section 99-9C and the Zoning Ordinance – Section 115-194.3, the Environmentally Sensitive Developing District Overlay Zone; an Environmental Assessment and Public Facilities Report section including reports, maps, and aerials; copies of DelDOT Service Level Evaluation Request, Pre-Submittal Meeting Minutes, and Support Facilities Report; copies of comments from the County Engineering Department on ECU capacity and a sanitary sewer district map; a Willing and Able to Serve letter from Tidewater “Utilities, Inc.; Building Plans; and suggested proposed Findings of Fact and Conditions of Approval for consideration.

The Commission found that the County Engineering Department Utility Planning Division provided comments on November 17, 2015 referencing that the System Design Assumption allows for a maximum of 100 total units; that capacity is available for up to 100 units; that Ordinance 38 construction will be required; that the West Rehoboth Expansion area system is extended to provide sewer service to the parcel; that the current System Connection Charge Rate is \$5,775.00 per EDU; that there is no sewer service to the parcel at this time; that the County does not have a schedule to extend sewer service at this time; that the project is capable of being annexed into the sewer district, the West Rehoboth Expansion Area; that conformity to the North Coastal Planning Study will be required; that the project proposes to connect to a County operated central sewer system; that the County supports the project connecting to a County operated sewer system; that the project is in the Environmentally Sensitive Developing Zoning and adjoins the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that sewer service is not available to the parcel at this time; that if and when it is determined that the County can provide sewer service, and following approval of a concept plan, a request for annexation into the West Rehoboth Expansion will be considered; that the County previously signed a Memorandum of Understanding (MOU) with the Delaware State Housing Authority to provide sewer service to the parcel, for up to 100 units so long as at least 80 units were moderately priced housing units and other requirements and aspects of the MOU are met; that any deviation or modification of the MOU may require approval by the County Council and the Delaware State Housing Authority; that it can be anticipated that an extension of gravity sewer to the parcel and other improvements and modifications will need to be completed by the developer, at the developer’s expense, in order to receive sewer service; that system modifications are to include completion of bypass and abandonment of Pump Station 801 by the developer at the developer’s expense; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a sewer concept plan must be submitted to the County Engineering Department for review and approval prior to design of the sewer system; and that conformity to the North Coastal Area

Planning Study, Technical Memorandum for the Graves Property and an approved concept plan will be required.

Mr. Lank advised the Commission that several letters have been received in opposition to this application expressing concerns that multi-family dwelling structures are inconsistent with the character of the development taking place in the area; that several years ago, the developer of Henlopen Landing proposed multi-family dwelling structures in Phase IV of the project and were denied by the County in favor of the original intent to develop single family lots, being consistent with the development trend of Henlopen Landing; that the Sea Wood and Gosling Creek subdivisions, as well as the new development being built adjacent to this parcel are all single-family dwellings; that open space views will be compromised by the proposed buildings blocking sunsets and green space; that the buildings could be built too close to property lines, thereby opposing the rezoning; questioning the barrier between the proposed development and the adjoining subdivisions; that, if approved, there should be adequate planting/trees between the developments; that the density is a concern; that traffic is already a concern; that the area along Beaver Dam Road is already over planned and being over developed;

The Commission found that Tom Buescher was present on behalf of BDRP, LLC with Dennis Schrader, Esquire of Morris James Wilson Halbrook & Bayard, LLP and Mark Davidson, Senior Planner with Pennoni Associates. Inc. and that they stated in their presentation and in response to questions raised by the Commission that the parcel contains 19.52 acres and that they are proposing 80 duplex units; that the site had previously been reviewed for multi-family use (C/U #1072 for the Delaware State Housing Authority and C/Z #1766 for Stonemark Ventures, proposing 100 units); that the site is located in a Low Density Area according to the Comprehensive Land Use Plan and a Level I Area according to the Strategies for State Policies and Spending; that interconnection to the Lewes Crossing Subdivision is proposed; that a condominium association will be formed; that central water for drinking water and fire protection will be provided by Tidewater Utilities; that no wetlands exist on the site; that the site is west of Henlopen Landing Subdivision, north of Gosling Creek and Sea Woods Subdivisions, and east of Lewes Crossing Subdivision – Phase 7, and across Beaver Dam Road from Lewes Crossing Subdivision – Phases 1 to 6; that street access will be interconnected with Lewes Crossing Subdivision – Phase 7; that a clubhouse, pool, and other recreational amenities will be located within the proposed traffic circle; that it is proposed that residents of all of this project and Lewes Crossing Subdivision will share the use of all of the amenities with both projects; that the developers of this project are the same as the developers of the Lewes Crossing Subdivision; that the project will have an open space calculation of approximately 58%; that there are 3 open park areas proposed; that the proposed units will be 2 story single family attached duplex units with similar designs as the homes being built in Lewes Crossing Subdivision; that the project will conform to all of the standards of Subdivision Ordinance Section 99-9C; that the units have been pulled away from property lines and will be setback at least 50 feet from any dwellings in the adjacent subdivisions; that approximately 600 trees will be planted within the proposed 20 foot wide buffer along the perimeter of the project; that an Environmental Assessment Report has been provided in the Exhibit Booklet; that the project is outside of the 500 year FEMA flood area; that nothing has been reported as a historic significance on the site; that they are planning on retaining all of the soils on the site and to retain all existing vegetation on the site, as possible; that the site has been purchased from the Delaware State Housing Authority; that 100 Equivalent

Dwelling Units (EDUs) are available for County Sewer, but they are only proposing 80 units; that all stormwater management features will be compliant with the current Stormwater Management Regulations; that they will be taking on and managing the existing stormwater discharge from part of the Henlopen Landing Subdivision; that sidewalks are proposed on both sides of the streets; that DelDOT will only authorize one right-out from the project onto Beaver Dam Road; that they will be connect and provided extensions to the shared use path along Beaver Dam Road; that the application should not impact property values; that they will be coordinating with the local school district for a bus shelter/stop location, if needed; that DelDOT will be requiring roadway improvements on Beaver Dam Road; that DelDOT has advised that a Traffic Impact Study was not warranted and that the developers will be adding funding into the Area Wide Study; that no endangered or threatened species have been found on the site; that a Preliminary Land Use Service (PLUS) was not required since a previous project application was reviewed that contained a larger number of units; that the project will conform to the Comprehensive Land Use Plan; that the project is located in the Environmentally Sensitive Developing Area, a Growth Area, and that the Plan suggest that there should be a mix of housing types in the Area; that the Conditional Use process was chosen to allow for a duplex style unit development in an MR Medium Density Residential Zoning District; that the units will be approximately 42 feet wide with two car garages; that the units will be setback 30 feet from the street paving; that the requested MR Medium Density Residential zoning is the same as the Henlopen Landing Subdivision zoning; that the proposal has been reduced by 20 units from the recent Stonemark Ventures application; that the condominium association will be responsible for maintenance of the property, the roads, the stormwater management features, and recreational amenities; that they have provided suggested proposed Findings of Fact and Conditions of Approval for consideration; that DelDOT has advised them that a fee of \$5,310.00 shall be provided for the Area Wide Study; that they agree that the 5-Points intersection needs improvement; that the Lewes Crossing H.O.A. documents make reference to adding units and land; that the Lewes Crossing H.O.A. will be the Master H.O.A. over all of Lewes Crossing and this project; that this project will have a condominium association that will be a part of the Master H.O.A.; that the density of Lewes Crossing is 2.178 units per acre; that the density of Henlopen Landing is 2.65 units per acre; that the density of that project is 4.1 units per acre; that according to DelDOT that project will add an additional 60 vehicle trips per day; and that the clubhouse and pool are rendering for illustration only, the final design has not yet been completed.

The Commission found that Gregory Pinto, Peter Swartout, Gary Brenner, John Zawislak, Robbin Murray, and Rosanne Pinto were present and spoke in opposition to the application expressing concerns about the Lewes Crossing project was approved as a subdivision with seven phases; that they are concerned about traffic, speeding traffic, traffic congestion, and traffic safety; the narrowness of Beaver Dam Road; the lack of disclosure by the developers that the multi-family proposal was proposed; that the Lewes Crossing project was disclosed to be a 192 single family detached dwelling project, and that no reference was disclosed that the subdivision would be expanded, and that the amenities would be shared with another project; that the connector with Beaver Dam Road and Plantations Road is very dangerous; that the County needs to look at the number of homes proposed in the area of Beaver Dam Road before adding additional homes; that they are opposed to any increase in the density near Beaver Dam Road; that the addition of another project with the residents sharing all of the amenities will increase

the cost on the Lewes Crossing H.O.A. for maintenance and then impact all of the residents in Lewes Crossing; and questioning if the units can be rented.

Mr. Buscher responded to questions raised by the Commission by adding that they purchased the property in 2014; that the project could be developed as a separate project if DelDOT would grant an entrance permit for the project; and that DelDOT suggested the design of the right-out only and the interconnection with Phase 7 of Lewes Crossing Subdivision.

By a show of hands in opposition the Commission found that there were 14 parties present in opposition.

At the conclusion of the public hearings, the Commission discussed these applications.

In reference to Change of Zone No. 1787 there was a motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

In reference to Conditional Use No. 2033 there was a motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Ocean Way Estates

The installation of gates on W. Rita Dr. and Ogre Dr. within the development. The development is located north of Muddy Neck Rd. and south of Garfield Pkwy. (911 Address: None Available). The Property is zoned MR (Medium Density Residential District) Tax Map I.D. 134-13.00-49.01.

This application has been removed from the agenda and rescheduled for January 28, 2015 due to errors in the advertisements.

OTHER BUSINESS

Marsh Farm Estates – Subdivision #2008-9

Final Subdivision

Ms. Cornwell advised the Commission that this final subdivision plan for Marsh Farm Estates. The Planning Commission granted preliminary subdivision approval on December 10, 2009. The subdivision contains 134 lots with open space. There are no significant changes from the preliminary plan and complies with the requirements of approval. The Planning Commission approved a request regarding a partial deletion of sidewalks at their November 12, 2015 meeting. An amenities plan shall come before the Planning Commission as a separate site plan. The subdivision shall be recorded on or before December 31, 2015 or the subdivision shall expire. Staff is in receipt of all other agency approvals.

Motion by Mr. Johnson and seconded by Mr. Burton to approve the Final Subdivision Plan. Motion carried 5-0.

Forest Landing – Phase 4 – MR-RPC

Preliminary Site Plan & Revision

Ms. Cornwell advised the Commission that this is a preliminary site plan for phase 4 of Forest Landing. The Planning Commission held a public hearing on the MR-RPC on February 27, 2003. The total number of dwelling units within the development is not to exceed 353. Phase 4 contains 48 single family lots along with open space. There have been minor changes to the layout of the lots regarding frontage and size since the public hearing. The applicant is requesting a reduction in the front yard setback from 30 feet to 20 feet. The property is zoned MR and is a RPC. Staff is awaiting approvals from the reviewing agencies. The Final Site Plan will come back before the Planning Commission as it is a RPC.

There was discussion regarding the reduction of the front yard setback and that the reduction would be similar to the other housing types within the development.

Motion by Mr. Smith and seconded by Mr. Johnson and carried unanimously to approve the reduction in front yard setback from 30 ft. to 20 ft. for the single family lots within Phase 4 and to approve the preliminary site plan for phase 4 and to have the final site plan for phase 4 be reviewed by the Planning Commission. Motion carried 5-0

Swann Cove – Phase 8 – MR-RPC Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for Phase 8 of Swann Cove. The Planning Commission held a public hearing on the MR-RPC on June 13, 2002. The total number of lots within the subdivision is not to exceed 372. The number of lots within phase 8 is 30. There are no significant changes from the original plan. Sidewalks are required on one side of the roads. The property is zoned MR and is a RPC. The tax map number is 533-12.00-80.00. Staff is awaiting approvals from Sussex County 911 Addressing and Mapping and is in receipt of all other agency approvals. The Planning Commission could consider this as both a preliminary and final site plan for Phase 8 as staff is in receipt of most of the agency approvals.

Motion by Mr. Smith and seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with the final site plan subject to staff upon receipt of agency approvals. Motion carried 5-0.

Home of the Brave II – C/U #2022 Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of a building of up to 8 rooms to be used as a boarding house for female veterans. The Planning Commission recommended approval of the Conditional Use at their meeting on July 30, 2015. Sussex County Council approved the Conditional Use at their meeting on September 15, 2015. Staff notes that there have been minor changes made to the site plan from the conceptual plan as part of the Conditional Use. They changes relate to the location of the parking spaces now located across the driveway and the location of the building now being set further back on the property. The preliminary site plan complies with the conditions of approval. The property is

zoned AR-1. The tax map number is 330-12.00-11.01. Staff is awaiting approval from the Sussex Conservation District and is in receipt of all other agency approvals.

Motion by Mr. Burton and seconded by Mr. Johnson and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 5-0.0

Josh Grapski – C/U #2009
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a final site plan for the establishment of a food truck per Conditional Use 2009. The Planning Commission held a public hearing on February 12, 2015. Sussex County Council approved the Conditional Use at a meeting on March 31, 2015. The Planning Commission removed Condition D regarding the location of the food truck at their meeting on September 10, 2015. The plan complies with the condition of approval. The property is zoned C-1 (General Commercial District). The tax map number is 334-13.00-325.02. Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Johnson and seconded by Mr. Burton and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 5-0.

Peninsula Lakes – MR-RPC
Revisions to Master Plan

Ms. Cornwell advised the Commission that this is a proposed revision to the Master Plan for a reduction in the side yard setbacks. The Planning Commission held a public hearing on July 30, 2002 regarding the MR-RPC. The Planning Commission reviewed the site plan at their meeting on October 16, 2008. The development has been recorded. The proposed request is to reduce the side yard setback for primarily the lots along the water from 10 feet to 8 feet with an aggregate of 16 feet.

There was discussion regarding the proposed reduction in the setbacks and how they were for only a portion of the development and the issued that could arise with other items that could be located encroach into the side yard setbacks reducing the distances between houses.

Motion by Mr. Johnson and seconded by Mr. Ross and carried unanimously to deny the request to reduce the side yard setbacks for the waterfront lots within the Peninsula Lakes development. Motion carried 5-0.

Meeting adjourned at 8:35 p.m.