

MINUTES OF THE REGULAR MEETING OF NOVEMBER 20, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 20, 2014 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Marty Ross with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence B. Lank – Director.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0. Mr. Johnson was not present during the vote.

PUBLIC HEARINGS

Conditional Use #2002 – Beach Bum Distilling, c/o 13A

Application of **BEACH BUM DISTILLING, C/O 13A** to consider the Conditional Use of land in a C-1 General Commercial District for a distillery with tours/tasting/retail to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,523 square feet, more or less, land lying at the southeast corner of Nassau Road (Route 14) and New Road (Road 266) (911 Address: 32191 Nassau Road, Lewes, De) (Tax Map I.D. #3-34-5.00-74.01).

The Commission found that the applicant had submitted a survey and site plan for consideration with the application.

The Commission found that DelDOT had provided comments in the form of a Support Facilities Report, dated July 16, 2014, which reference that a Traffic Impact Study was not recommended, and that the current Level of Service “B” of New Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division had provided comments, dated November 19, 2014, which reference that the site is located in the West Rehoboth Expansion area; that wastewater capacity is available, based upon the assumption that the total equivalent dwelling unit (EDU) sewer assessment does not exceed 6.74 EDUs; noting that the actual EDU assessment is not known; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$5,500.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel’s frontage on Nassau Road, and that the Applicant’s Engineer/Architect shall determine whether sufficient capacity is provided or the installation of an 8-inch lateral shall be required; that installation of a larger lateral shall be performed at the Applicant’s expense; that conformity to the North Coastal Planning Study shall be required; that a concept plan is not required; that Best Management Practices or Industrial Permit is required; that in order to determine whether Best Management Practices or Industrial Permit is required, the applicant shall complete an Industrial Waste Program Survey and Questionnaire and submit to the Director of Utility Permits; that the Applicant shall submit said

Survey and Questionnaire prior to requesting a building permit; that the Applicant will be advised of the appropriate application fee due after permit type is determined; and that the Applicant shall anticipate providing a sampling port and flow meter as part of the distillery process plumbing.

Mr. Lank advised the Commission that three emails were received by the Department in support of the application.

The Commission found that Dominick Schiavoni was present on behalf of Beach Bum Distilling (BBD), as an Associate of 13A Engineering Consultants, and stated in his presentation and in response to questions raised by the Commission that BBD will operate as a Delaware craft distillery, manufacturing a hand crafted product on premises; that the manufacturing process includes fermentation, distillation, barrel aging, and bottling; that fermentation and distillation will be done in small 50 gallon batches; that the distilled product will be hand bottled in batches of 30 gallons or smaller; that the distillery's products will be offered for sale exclusively in the retail space where tastings and limited tours will be available to the public; that their flagship product will be a family of rum spirits inspired by the area's maritime history and beaches; that the planned receiving hours are 8:00 a.m. to 4:00 p.m.; that small package deliveries are expected to increase by 2 or 3 per week from providers such as UPS and FedEx in their standard residential delivery vehicles; that pallet sized deliveries are expected to increase by 2 per month by common carrier with lift gate service; that their planned operating hours for the retail space are Monday through Thursday from Noon to 6:00 p.m., Friday from Noon to 7:00 p.m., Saturday from 11:00 a.m. to 7:00 p.m., and Sunday from 1:00 p.m. to 6:00 p.m.; that that operating hours could be reduced seasonally; that there are no plans to extend hours; that there are 15 regular parking spaces, one handicap parking space, and four short term parking (15 minute) spaces; that they anticipate that the number of visitors to the distillery will be from 10 to 15 per day on Monday through Friday and 20 to 40 per day on Saturday and Sunday; that due to the size of the retail area, they anticipate that a maximum of 25 persons could be reasonably accommodated during any private function or event; that their three year business model projects the generation of approximately \$31,000 in State excise tax revenue, and \$71,000 in Federal excise revenue; that the distillery is expected to create two full-time manufacturing jobs and two part-time retail jobs; that they received a Federal Distilled Spirits Plant permit on October 7, 2014; that they are in the process of creating a fire protection plan to submit for approval by the State Fire Marshal which will dictate how the operations are laid out and isolated within their space; that once conditional use for the distillery is approved then they can proceed to apply for a Delaware Craft Distillery license from the Delaware Alcoholic Beverage Control Commission; that they have secured a three-year lease for the facility; that access to the facility is in the front of the building; that they will only be selling their products as made and processed on premise; that they are only utilizing the first floor of the building; and that they have a similar distillery in the Town of Smyrna.

The Commission found that Anthony Zeccola was present in support and stated that the use fits in with the community; and that there should not be any impact on New Road or Nassau Road.

The Commission found that David J. Lee, the property owner, was present in support and stated that he supports the application; that an engineering company rents the second floor unit of the building, that a bakery rents the adjacent unit on the first floor; and that he has not heard of any objections to the proposed distillery.

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

Conditional Use #2003 – Thomas E. Lowe

Application of **THOMAS E. LOWE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail store to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 32,829 square feet, more or less, land lying north of Route 54 (Omar Road) 1,300 feet northeast of Road 382 (Armory Road) (911 Address: 31854 James Lowe Road, Frankford, DE) (Tax Map I.D. # 1-34-14.00-6.00 (part of)).

The Commission found that the applicant provided a survey/site plan with this application for consideration.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated May 15, 2014, which reference that a Traffic Impact Study was not recommended, and that the current Level of Service “C” will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated November 14, 2014, which references that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Thomas Lowe was present and stated in his presentation and in response to questions raised by the Commission that he would like to establish a small home and garden store as expansion to his small greenhouse business; that he also sells nursery and plant stock; that his business hours are seasonally from 9:00 a.m. to 5:00 p.m. Monday through Saturday, and from 12:00 Noon to 4:00 p.m. on Sundays; that his business season will be from April to December; that he would like to add pottery, Amish cakes and pies; garden furniture, silk flowers, gifts, wreaths, and similar items; that there are other business and commercial uses in the area, i.e. peach orchard and blueberry farm, small country store, produce sales, and lawn mower repairs; that he would like to erect a small unlighted two sided sign; and that security lighting will be downward illuminated.

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 would move that the Commission recommend approval of Conditional Use No. 2003 for Thomas E. Lowe for a conditional use for a retail store based upon the record made during the public hearing and for the following reasons:

1. Although the conditional use is identified as a retail store, the basic use is intended to be a store selling home and garden related products, with baked goods, pottery, and other products related to home and garden.
2. The underlying zoning for the property is AR-1, which is the County's Agricultural Zone. The proposed use for the sale of home and garden related products is consistent with the underlying zoning.
3. The use is consistent with other similar small scale commercial activities within one mile of the site, including Bennett's Orchard, Parson's Produce, other produce stands, a country store, and a lawnmower repair shop.
4. There are currently agricultural uses on the property, including green houses and other similar uses. The proposed conditional use will be a reasonable extension of the existing use, and it is consistent with the existing uses on the property.
5. The proposed use promotes local agriculture and local business and is consistent with the Comprehensive Development Plan in this regard.
6. The proposed use will not adversely affect area roadways, adjacent properties or the community.
7. No parties appeared in opposition to the application.
8. This recommendation for approval is subject to the following conditions:
 - A. Although the conditional use is for retail sales in general, a majority of the products sold on the premises must be related to home and garden and baked goods, as proposed by the applicant.
 - B. One lighted sign, not to exceed 32 square feet per side, shall be permitted on the premises.
 - C. There shall be adequate parking on the site and the parking shall comply with the Sussex County Zoning Code parking requirements.
 - D. Any and all dumpsters shall be screened from view of neighboring properties and roadways.
 - E. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - F. The applicant shall comply with all DelDOT requirements regarding entrances to the property.
 - G. The hours of operation shall be from 9:00 a.m. until 5:00 p.m. Monday through Saturday, and Noon until 4:00 p.m. on Sundays.
 - H. The use shall be seasonal, open between April 1 and December 31 of each year.

- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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 and with the conditions stated. Motion carried 5 – 0.

Change of Zone #1762 – Hale Trailer Brake and Wheel

Application of **HALE TRAILER BRAKE AND WHEEL** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 23.37 acres, more or less, land lying at the northeast corner of U.S. Route 13 (Sussex Highway) and Road 452 (East Snake Road)) (911 Address: None Available) (Tax Map I.D. 5-32-13.00-78.00).

Mr. Wheatley stated that he would be recusing himself from participating in this public hearing and left the Chambers.

The Commission found that the Applicant provided a survey of the property with the application.

The Commission found that the Applicant provided an Exhibit Booklet for consideration on November 7, 2014, and that the Exhibit Booklet contains a listing of the project team; a copy of the Application with the owner's consent; a copy of the deed to the property; a reduced copy of the survey of the property; a copy of a June 25, 2014 letter from DelDOT and a Support Facilities Report, dated June 20, 2014; an area Zoning Map; a copy of a 2010 Aerial Overlay; and suggested proposed Findings of Fact.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated November 7, 2014, which reference that the site is located in the Western Sussex Planning Area #4; that use of an existing on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer service at this time; and that a concept plan is not required.

Mr. Lank advised the Commission that two (2) letter of support for this application was received by the Department.

The Commission found that Jeff Finney, Manager for Hale Trailer Brake and Wheel, was present with Dennis Schrader, Esquire with Morris James Wilson Halbrook & Bayard, LLP, and Ken Christenbury, Professional Engineer with Axiom Engineering, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the site is adjacent to U.S. Route 13 (Sussex Highway) and the already developed site of Hale Trailer Brake and Wheel; that the intent of this application is to allow for expansion of the adjacent facility; that the site is located in a Level 4 Area according to the State Strategies; that no structures are currently planned for this property, only display of trailers, containers and related equipment for the expansion of the adjacent facility; that if the rezoning is approved, they will be submitting site

plans for the display area and related features of the property; that the southerly third of the property contains wetlands; that DeIDOT is only going to allow entrance to the site from the adjacent facility; that the area for the displays will be graveled; that they are working with the Sussex Conservation District on the stormwater management plans; that part of the property has been cleared for the expansion of the adjacent facility to allow for electrical services; that there is a need for the expansion of the existing use; that the new building on the adjacent facility is almost completed creating a need for the additional display area; that two letters of support have been received; that there is ample area on this site to create a crossing over the ditch to provide the necessary access for the interconnection of the two parcels; and that the Exhibit Booklet contains some suggested Findings of Fact for consideration.

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. Ross stated that he would move that the Commission recommend approval of Change of Zone No. 1762 for Hale Trailer Brake and Wheel for a change of zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

1. The site is located along U.S. Route 13 (Sussex Highway) north of Delmar in an area that has developed to include commercial and light industrial zoning. This location, with approximately 1,721 feet of frontage along U.S. Route 13, is appropriate for CR-1 zoning.
2. The site is next to the applicant's current operation and will allow for the applicant's expansion of its business.
3. The proposed use will not adversely affect neighboring or adjacent properties or roadways.
4. The applicant will be required to meet or exceed all DeIDOT requirements.
5. CR-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the rezoning along U.S. Route 13 falls within the stated purposes of the CR-1 District.
6. The site is partially within the Highway Commercial Area according to the Sussex County Comprehensive Plan. CR-1 Zoning is consistent with this Highway Commercial designation. Although the remainder of the property is identified as being within a Low Density Area according to the Plan, it is appropriate to rezone the entire parcel to CR-1 consistent with the Highway Commercial, so that the entire parcel falls under one single zoning classification.
7. No parties appeared in opposition to this rezoning.

Motion by Mr. Ross, seconded by Smith, and carried with four (4) votes 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. Mr. Wheatley had recused himself from participating in this public hearing.

OTHER BUSINESS

Coastal Club MR/RPC Revised Site Plan Phase 1 – Beaver Dam Road

Mr. Lank advised the Commission that this is a revised preliminary plan for Phase 1 which contains 153 total units; that the Commission originally approved Phase 1 as a final on December 19, 2013; that 83 single family lots and 70 townhouse units are proposed; that on the revised plan, the developers are requesting 20 foot front yard setbacks, 8 foot side yard setbacks, and 10 foot rear yard setbacks; that the previously approved plan was approved for 20 foot front yard setbacks and 10 foot side and rear yard setbacks; that the proposed setbacks for the townhouse units are 20 foot front yard, 10 foot side yards on end units and 20 foot rear yards with a 40 foot separation between buildings and a maximum building length of 165 feet; that the townhouse units are the same as the previously approved plan; that the other revision is that a portion of the right of way for Coastal Club Drive has been widened to 98 feet; that all agency approvals have been received; and that the Commission was previously provided a copy of the revised site plan.

The Commission discussed the revised site plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the revised preliminary plan for Phase 1 of the Coastal Club Residential Planned Community. Motion carried 5 – 0.

Bay Forest Club MR/RPC Preliminary Site Plan – Phase 5.2 Marina

Mr. Lank advised the Commission that this is a preliminary site plan for the marina amenity area for this residential planned community; that one of the conditions of the original approval for this project states “No piers, docks, boat ramps, or other water related recreational facilities shall be permitted except for the existing marina with a kayak/canoe facility which shall be operated by the developer or a homeowners or condominium association. Motorized boats shall not exceed four (4) pontoon type boats.”; that this plan is for 4 future residential dwellings, restrooms, kayak and canoe storage area, a 10-foot by 130-foot boardwalk, a 10-foot by 60-foot floating dock for kayak/canoe launching, boat lifts for 4 boats, a 10-foot by 405-foot boardwalk, and a 19.5-foot by 150-foot concrete boat ramp; that a 6-foot multi-modal path is also proposed; that the proposed setbacks for the single family detached condominiums is 20-foot front and rear yard setback, and a 30-foot side yard setback; that the Commission was previously provided a copy of the preliminary site plan and a copy of a portion of the plan that was submitted during the public hearing process depicting the small marina location; that the Commission needs to determine if the proposed plan is in keeping with the intent of the condition of approval that was placed on this application; and that if preliminary approval is granted, final approval shall be subject to the

review and approval of the Commission upon receipt of all agency approvals since this project is a residential planned community.

The Commission found that Ken Usab, Professional Engineer with Morris & Ritchie Associates, Inc. was present with Tom Natelli of Natelli Communities, Inc. on behalf of the developers and stated that the plans are intended to show the improvements proposed to convert the existing marina lagoon with dilapidated piers into a more usable marina facility for the benefit of the residents of the community; that the four (4) residential units were previously approved on a revised preliminary plan several months ago; that they have obtained the approvals of both the Army Corps. of Engineers and DNREC for the proposal as depicted on the site plan; that the four (4) boat lifts are for the pontoon boats permitted by the conditions of approval for the project; that the stormwater management plans are being reviewed by the Sussex Conservation District; that the landscaping for the area will be improved; that handicapped facilities will be provided; that the restrooms will be phased in as the project expands; that public water and sewer are proposed; that there will not be any private boat slips; that the slips are for community use only; and that the primary purpose of the boat ramp is for use by the local fire department for emergency use only.

The Commission discussed the site plan for the marina area.

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

Mt. Calvary Pentecostal Church of Slaughter Neck, Inc.
Preliminary Site Plan – Slaughter Neck Road

Mr. Lank advised the Commission that this is a preliminary site plan for a 4,900 square foot pole building to be used as a church; that the site contains 1.71 acres and is zoned GR, General Residential; that the setbacks meet the minimum requirements of the zoning code; that 40 parking spaces are proposed; that the parking area is proposed to be gravel; that the site will be served by on-site septic and well; that the site is not located in a flood zone and there are not any wetlands on the site; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the preliminary site plan.

The Commission discussed the site plan.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of the site plan. Final approval of the site plan shall be subject to the staff receiving all appropriate agency approvals. Motion carried 5 – 0.

Dan Sander
3 Lots & 50' Right of Way – Road 280B

Mr. Lank advised the Commission that this is a request to subdivide a 5.73 acre parcel into 3 lots with access from a 50-foot right of way; that 2 of the lots will be a minimum of 1.0 acre and the

other lot will be 3.0 acres; that the owner is proposing to extend an existing 50-foot right of way to serve as access to the proposed lots; that if the request is approved, this would make 4 lots having access from the right of way, that typically the Commission allows a maximum of 3 lots without going through the major subdivision process; that if the Commission is favorable towards this request, you could approve 2 lots only since there is already a lot with access from the right of way; and that the Commission was previously provided a sketch drawing of the request.

The Commission discussed this proposed subdivision.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to deny this application as submitted. If the owner proposes to proceed, an application for a major subdivision shall be required. Motion carried 5 – 0.

Stephen Wimbrow
Lot on 50' Easement – DE/MD State Line

Mr. Lank advised the Commission that this is a request to create a lot with access from an existing 50-foot easement; that if the request is approved, this would be the third lot having access from the easement; 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.

The Commission discussed this proposed subdivision.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant approval of this minor subdivision request with the stipulation that any further subdivision of the property shall require a major subdivision application. Motion carried 5 – 0.

The meeting adjourned at 7:32 p.m.