



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 29, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 29, 2007 in the County Council Chambers, 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. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. C. Shane Abbott – Assistant Director, and Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to approve the Minutes of November 8, 2007 as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of November 14, 2007 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1708 – application of **LISA PHILLIPS, TRUSTEE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit/pond reclamation to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 19.248 acres, more or less, lying southeast of Road 495, 1,785 feet southwest of intersection with Road 497 and also 785.14 feet west of Road 497.

Mr. Gordy announced that he would not be participating in the discussion.

The Commission discussed this application which has been deferred since November 8, 2007.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1708 for Lisa Phillips, Trustee for excavation of a borrow pit and pond reclamation based upon the record made at the public hearing and for the following reasons:

1. A need exists in the area for sand and gravel.

2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community, particularly since a majority of the neighboring properties are owned by the Applicant's family.
3. The site will be reclaimed into a wildlife pond and wildlife tree planting and habitat area.
4. This recommendation for approval is subject to the following conditions and stipulations:
 1. No materials shall be brought from off the site for processing, mixing or similar purposes.
 2. The access driveway shall be stone or similar material to assist removing dirt from truck tires prior to leaving the site.
 3. Any entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 4. The hours of operation for the business on this site shall only occur between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. until 2:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
 5. No fuel shall be stored on-site for borrow pit operations.
 6. No stumps, branches, debris or similar items shall be buried on the site of the borrow pit.
 7. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 28 feet deep at any point.
 8. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
 9. The Applicants shall comply with all State and County erosion and sediment control regulations.
 10. Markers and signs shall be placed at appropriate locations to designate pit areas.
 11. The borrow pit shall be surrounded by a landscaped 50-foot wide unexcavated buffer strip and the pit shall be at least 100-feet from any street lines, 50-feet from all other property lines and 50-feet from all Federal wetlands. In addition, the borrow pit shall be at least 200-feet from any dwelling on property of other ownership.
 12. No dredging activities shall be permitted on the site.
 13. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
 14. The Applicant shall also comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.

Motion by Mr. Smith, seconded by Mr. Johnson and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated. Motion carried 4 – 0. Mr. Gordy did not participate in the discussion or the vote.

Subdivision #2006-41 – application of **CAPTAINS GRANT HOMEOWNERS' ASSOCIATION, INC.** to consider the Subdivision of land in a GR General Residential District in Indian River Hundred, Sussex County, by converting 31,047 square feet into 1 single family lot, (maintenance area), located north of Captain's Way, 250 feet east of Harford Court within Captain's Grant Subdivision.

The Commission discussed this application, which has been deferred since November 8, 2007.

Mr. Johnson stated that he would move that the Commission grant preliminary and final approval to Subdivision #2006 – 41 for the Captain's Grant Homeowners' Association, Inc. to convert 31,047 square feet of land into one single-family lot based upon the record and for the following reasons:

1. Captain's Grant is an existing subdivision that has been approved and developed with single-family residences. The property in question was set-aside as a maintenance area for the subdivision.
2. The applicant Homeowners' Association has stated that it no longer requires a maintenance area and desires to sell this parcel to raise money to upgrade the existing streets within the subdivision.
3. The applicant Homeowners' Association has represented that it has the authority to alter the approved site plan to allow this maintenance area to be converted to one single-family lot and represented that over 63% of the property owners have agreed to sell the lot as a building lot.
4. The creation of this lot will not adversely affect the neighboring or adjacent property owners and is consistent with development within the existing subdivision.
5. This preliminary and final approval is subject to the following conditions:
 1. The new lot shall be considered part of the Captain's Grant Subdivision and shall be governed by the restrictive covenants for all of the lots within the development.
 2. Addressing for the new lot shall be coordinated through the Sussex County Mapping and Addressing Department.

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

Subdivision #2006-42 – application of **GLEN R. JONES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex

County, by dividing 65.91 acres into 38 lots, located northwest of Road 488, 2,450 feet northeast of Road 487.

The Commission discussed this application, which has been deferred since November 8, 2007.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 42 for Glen R. Jones, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance and protects the orderly growth of the County.
2. The proposed subdivision density is significantly less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for septic.
6. The items in Section 99-9C of the Subdivision Code have been favorably addressed.
7. This recommendation is subject to the following conditions:
 - A. There shall be no more than 38 lots within the subdivision.
 - B. The Applicant shall prepare and record Restrictive Covenants governing the development and form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County.
 - D. All entrances shall comply with all of DelDOT's requirements.
 - E. The Restrictive Covenants shall include the Agricultural Use Protection Notice.
 - F. There shall be a 30 foot landscaped buffer retained or installed along the perimeter of the subdivision as shown on the Preliminary Site Plan.
 - G. A school bus stop shall be shown on the Final Site Plan. The location of the bus stop shall be coordinated with the local school district.
 - H. No lots shall contain any wetlands.
 - I. The applicant shall submit a landscape plan as part of the Final Site Plan.
 - J. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - K. No singlewide mobile homes shall be permitted in the subdivision. Only homes on permanent foundations shall be allowed.

- L. Street naming and addressing shall be subject to review and approval of the Sussex County Mapping and Addressing Department.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, 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.

C/U #1758 – application of **BRIDLE RIDGE PROPERTIES, LLC** to consider the 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 16.18 acres, more or less, lying west of Plantation Road (Road 275) across from Shady Road (Road 276).

Mr. Robertson announced that he would not be participating in the discussion.

The Commission discussed this application which has been deferred since October 11, 2007.

Mr. Johnson stated that he would move that the Commission recommend approval of 46 units only based upon the record and for the following reasons: This parcel was/is Phase IV of Henlopen Landing and was previously approved for 46 lots; While the Applicant has requested an increase in density for this previously approved parcel the record does not substantiate or justify the need for the requested increase in density; The Planning and Zoning Commission previously approved the Henlopen Landing project for a total of 277 lots; Homeowners in Henlopen Landing purchased their lots/homes with the understanding that 277 lots/homes were being developed; To change the density on this parcel at this stage of the development with Phases I – III practically built out would be fundamentally wrong; Phase IV was approved for 46 lots and the Planning and Zoning Commission has not been given sufficient justification to essentially overturn the Planning and Zoning Commission prior approval of the 46 lots in this Phase IV, let alone an almost doubling of the number of units per acre; The roadways surrounding this area are already problematic and a substantial increase in the density can only compound the problems; By permitting the building of 46 multi-family units on this parcel in lieu of 46 single-family homes, Section 99-13 of the Sussex County Subdivision Ordinance (as cited by the Applicant) is being complied with as this change from single-family to multi-family villas does not increase the density; In addition, this change with the provision of 46 multi-family units could result in the creation of substantially greater active open space in this parcel than previously approved as Phase IV of Henlopen Landing or as originally proposed by the Applicant in this current Conditional Use application.; Furthermore, the change from 46 single-family lots to 46 multi-family units on this parcel should also have minimal impact on the residents of Henlopen Landing; Salt Marsh Boulevard provides for a natural separation from Henlopen Landing and provides for a transition to the multi-family villas project being proposed as the Villas at The Cape; This recommendation for approval is subject to the following conditions:

1. This parcel is to be approved for a maximum of 46 multi-family housing units to be part of the combined project, now known as the Villas at The Cape.
2. Phase IV of Henlopen Landing will be withdrawn from the approved subdivision.
3. Salt Marsh Boulevard will be maintained by this project, Villas at The Cape, and not Henlopen Landing.
4. The Villas at The Cape will grant an easement for stormwater management as shown on the site plan in favor of Henlopen Landing Subdivision.
5. The Villas at The Cape will only have access from Salt Marsh Boulevard with no additional access points from Plantation Road or Beaver Dam Road, in addition to any DelDOT entrance requirements.
6. The Villas at The Cape will have its own amenity package which shall include a clubhouse, pool, walking trails, school bus shelter and park areas.
7. Residents at the Villas at The Cape will not have any privileges or obligations to pay for the utilization of the amenities of Henlopen Landing.
8. The Developer of the Villas at The Cape agrees to install four-way STOP signs at the two access points on Salt Marsh Boulevard and to install streetlights along Salt Marsh Boulevard, as well as install internal street lights within the Villas at The Cape.
9. The Developer of the Villas at The Cape agrees to construct the clubhouse and pool prior to the conveyance of the first villa unit.
10. The Developer of the Villas at The Cape agrees that the sanitary sewer collection system will be installed in accordance with Sussex County standards and shall comply with all of the requirements of the County Engineering Department with regards to any improvements to the system necessary to serve this project.
11. Sidewalks/multi-modal paved pathways will be built along both sides of Salt Marsh Boulevard for safe pedestrian travel for the residents of Henlopen Landing and the Villas at The Cape. These multi-modal pathways are to connect with the DelDOT required pathways along Beaver Dam Road and Plantation Road. Like the Salt Marsh Boulevard, the Villas at The Cape Homeowners Association will ultimately be responsible for the maintenance as well.
12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Gordy 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.

C/U #1759 – application of **BRIDLE RIDGE PROPERTIES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural 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 13.00 acres, more or less, lying at the southwest corner of the intersection of Plantation Road (Road 275) and Beaver Dam Road (Route 23).

Mr. Robertson announced that he would not be participating in the discussion.

The Commission discussed this application which has been deferred since October 11, 2007.

Mr. Johnson stated that in reference to C/U #1759, the application of Bridle Ridge Properties, LLC for multi-family dwelling structures in an AR-1 Agricultural Residential District that: This application represents a parcel of land consisting of 13 acres, more or less, and is adjacent to the parcel represented in C/U #1758; The combined parcels are being proposed as a project now known as the Villas at The Cape; Of this 13 acre, more or less, parcel according to the Applicant, approximately 3.8 acres are intended to be conveyed to DelDOT and should not be considered part of this application; Therefore, the net land area being considered for the proposed multi-family dwelling structures should be 9.2 acres; Based upon the requested density for this remaining 9.2 acre parcel of 5.44 units/acre, I move that we recommend approval of C/U #1759 for 50 multi-family villa units; This recommendation is based upon the record and for the following reasons: the recommended 50 units approximate the number of housing units proposed by the Applicant on this parcel and shown on the Conditional Use Site Plan submitted as part of the record; This parcel is not part of the Henlopen Landing Subdivision and is not bound by the same footprint of Henlopen Landing; According to the Applicants, prospective buyers of lots/homes in Henlopen Landing were informed that this parcel was not a part of Henlopen Landing; 5.44 multi-family housing units per acre is within the acceptable range of other previously approved townhouse projects in the surrounding area; The development of this parcel with 50 multi-family housing units should not have a detrimental impact on the surrounding area; To the contrary, this could be preferable to the possible alternative of commercial use; This parcel was not part of the Henlopen Landing Subdivision project and has not been subject of any prior Planning and Zoning proceedings; As residual lands, it need not be considered under the same density considerations as Henlopen Landing or C/U #1758; Although any increase in housing units in this area may acerbate the traffic problems of the immediate roadways, the requested density of this 9.2 acre parcel for 50 housing units is within reason and could prove to be considerably less than other potential uses for this parcel; This recommendation for approval is subject to the following conditions:

1. This parcel is approved for a maximum of 50 multi-family villas to be part of the combined project, now known as the Villas at The Cape, and bound by the relevant conditions put forth in C/U #1758 as follows.
2. Phase IV of Henlopen Landing will be withdrawn from the approved subdivision.
3. Salt Marsh Boulevard will be maintained by this project, Villas at The Cape, and not Henlopen Landing.
4. The Villas at The Cape will grant an easement for stormwater management as shown on the site plan in favor of Henlopen Landing Subdivision.
5. The Villas at The Cape will only have access from Salt Marsh Boulevard with no additional access points from Plantation Road or Beaver Dam Road, in addition to any DelDOT entrance requirements.
6. The Villas at The Cape will have its own amenity package which shall include a clubhouse, pool, walking trails, school bus shelter and park areas.
7. Residents at the Villas at The Cape will not have any privileges or obligations to pay for the utilization of the amenities of Henlopen Landing.

8. The Developer of the Villas at The Cape agrees to install four-way STOP signs at the two access points on Salt Marsh Boulevard and to install streetlights along Salt Marsh Boulevard, as well as install internal street lights within the Villas at The Cape.
9. The Developer of the Villas at The Cape has agreed to construct the clubhouse and pool prior to the conveyance of the first villa unit.
10. The Developer of the Villas at The Cape has also agreed that the sanitary sewer collection system will be installed in accordance with Sussex County standards and shall comply with all of the requirements of the County Engineering Department with regards to any improvements to the system necessary to serve this project.
11. Sidewalks/multi-modal paved pathways will be built along both sides of Salt Marsh Boulevard for safe pedestrian travel for the residents of Henlopen Landing and the Villas at The Cape. These multi-modal pathways are to connect with the DelDOT required pathways along Beaver Dam Road and Plantation Road. Like the Salt Marsh Boulevard, the Villas at The Cape Homeowners Association will ultimately be responsible for the maintenance as well.
12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1703 – application of **RWR9, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for general offices and mini-storage to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.91 acres, more or less, lying south of Route 9, approximately 908 feet southwest of the intersection of Route 9 and Road 282.

The Commission discussed this application which has been deferred since October 25, 2007.

Mr. Johnson stated that he would move that the Commission recommend a denial of C/U #1703 for RWR9, LLC for general offices with warehousing based on the record made at the public hearing and for the following reasons:

1. Mr. Johnson does not believe that the application is consistent with the character of the surrounding property.
2. The purpose of this application is to allow a Conditional Use for offices with warehousing. While there is some limited business or commercial zoning or uses nearby along Route 9, a majority of the area is residential and none of the other business uses that exist are of the same large scale as this one. This application is proposing over 50,000 square feet of general office space and warehousing and 182 parking spaces with 6 buildings on less than 6 acres.
3. Mr. Johnson believes that there are other locations that are currently zoned for business or commercial use that are available and better suited for the intended use.

4. A project of this nature and size would compound traffic in an area that according to DelDOT is already operating at unacceptable levels of service.
5. A similar Conditional Use application to operate small business offices with warehousing (but on a much smaller scale) located almost directly across Route 9 was recommended for denial by the Planning and Zoning Commission on January 26m 2006 for essentially the same reasons.
6. The application does not promote the health, safety, convenience and general welfare of the neighborhood or community.
7. The proposed uses are not consistent with the purposes of the AR-1 District as set forth in the County Zoning Code.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 3 votes to 2 votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 2. By roll call vote: Mr. Smith – nay, Mr. Gordy – yea, Mr. Johnson – yea, Mr. Burton – yea, and Mr. Wheatley – nay.

Subdivision #2006-39 – application of **HENRY JAMES JOHNSON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 42.11 acres into 38 lots, (Cluster Development), located on both sides of Road 296, 950 feet north of Road 305.

The Commission discussed this application, which has been deferred since October 25, 2007.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 39 for Henry James Johnson based upon the record and for the following reasons:

1. The Development is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is generally superior to a standard subdivision by creating more open space and preserving the wooded areas of the Project. All lots will exceed ½ acre in size and will be served by on-site septic systems and individual wells. Per the Applicant, should central water and/or sewer become available prior to the filing of the final record plan, then central water and/or sewer will be used.
2. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.
3. The applicant has proposed 38 lots within the project, which is significantly less than the allowable density for an AR-1 subdivision on this land.
4. The project will not have an adverse impact on the neighboring properties or community, and it is consistent with other residential uses in the area.
5. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance, and promotes the orderly growth of the County.
6. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 38 lots within the Subdivision.

- B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, storm water management facilities, and other common areas.
- C. The storm water management system shall meet or exceed the requirements of the State and County. In addition, the storm water management pond in Phase III shall be moved away from the entrance area.
- D. All entrances shall comply with all of DelDOT's requirements.
- E. Street lighting shall be provided, and the location of the streetlights shall be shown on the final site plan. Sidewalks will be provided on at least one side of the streets and will connect with DelDOT's multi-modal pathway and shall be shown on the final site plan.
- F. A walking path shall be installed throughout the Subdivision, as stated by the Applicant. The walking path shall not be located within any buffer areas.
- G. An area set aside for a future school bus stop shall be depicted on the Final Site Plan. The location of the bus stop shall be coordinated with local school district.
- H. The "Wetlands Disclosure" shall be included in the Restrictive Covenants governing the Community. In addition, no lots shall include any wetlands, and there shall be a 50-foot buffer from all wetland areas.
- I. A landscape plan shall be submitted with the Final Site Plan depicting all buffer areas and specifically showing the forested areas that will remain undisturbed.
- J. The Final Site Plan shall contain additional useable and accessible open space within Phase III.
- K. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- L. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- M. The Restrictive Covenants and Final Site Plan for the Project shall include the following statement:

THIS PROPERTY IS LOCATED IN THE VICINITY OF LAND USED AS AN ACTIVE BORROW PIT THAT MAY HAVE VIBRATION, TRUCK TRAFFIC AND DUST ASSOCIATED WITH IT. THE USE AND ENJOYMENT OF THIS LAND IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF ANY ANNOYANCE OR INCONVENIENCE, WHICH MAY RESULT FROM SUCH ACTIVITIES OR USES.
- N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- O. The Applicant shall construct a fence along the area of the borrow pit and said fence shall be shown on the Final Site Plan.

Motion by Mr. Johnson, 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.

Ordinance Amendment – AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV SECTION 115-191 RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM.

The Commission discussed this Ordinance Amendment which has been deferred since November 8, 2007.

Mr. Lank advised the Commission that one of the reasons for the consideration of these amendments is that Chapter 80 referenced enforcement by the Transfer Station Division, a division that no longer exists.

There was a consensus of the Commission that they have concerns about vehicles, junk and debris, with questions about enforcement of over-growth, and that the two issues may need to be considered separately.

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

PUBLIC HEARINGS

C/U #1709 – application of **M & M HEATING, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a heating and air conditioning office, shop and warehouse to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.664 acres, more or less, of a 2.519 acre tract, lying north of Route 24, 388 feet west of Road 497.

Mr. Lank advised the Commission that this application was withdrawn on November 19, 2007.

C/U #1712 – application of **DEBRA DEAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sign business, arts and crafts and an art studio to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 27,758 square feet, more or less, lying south of Road 365, 1,800 feet east of Route 17.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the Level of Service “A” of Powell Farm Road will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Beaver Dam Planning Area; that the property will utilize an on-site septic system; that if and when the County provides sanitary sewer service, a connection to the system will be required; and that the County does not have a schedule at this time to provide sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Klej loamy sand and Mullica-Berryland complex; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any off-site drainage improvements; and the applicant will be required to follow State sediment and stormwater program guidelines.

The Commission found that Debra Dean was present and stated in her testimony and in response to questions raised by the Commission that she proposes a small sign business; that signs will be hand lettered or vinyl pressed on; that she proposes the sign business to supplement her art work; that she wants to start an art gallery to show her artwork and the artwork of other artists; that she plans on adding an addition to her existing dwelling and then to utilize a portion of the existing dwelling for the art gallery/studio; that she would like to be open seven (7) days per week; that he hours would vary since she works full-time for the State as a bus driver; that business hours could be from 10:00 a.m. to 10:00 p.m.; that she will have one on-premise sign; that security lighting already exists; that she may need two employees in the future; that there is no noise associated with the business except for handtools; that she may need some outside displays; and that there is adequate space on the site for parking.

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 C/U #1712 for Debra Dean for a sign business, arts and crafts, and art studio based upon the record and for the following reasons:

- 1) The use will be conducted within the existing structures on the site.
- 2) The use will not adversely affect neighboring or adjacent properties.
- 3) This recommendation is subject to the following conditions:
 1. There shall be no more than 3 employees, including the applicant, within the business at any one time.
 2. The business may be open 7 days per week, with hours of operation from 10:00 a.m. to 10:00 p.m.
 3. No large commercial type dumpsters shall be permitted.
 4. Only one (1) lighted sign shall be permitted. Said sign shall not exceed 32 square feet per side or facing.

5. Outside displays of items shall be permitted, but only outside of/or behind applicable setbacks.
6. All parking and driveways shall be shown on the Final Site Plan.
7. Lighting shall be limited to the existing lighting on the property.
8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy 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.

Subdivision #2006-43 – application of **SUMMER HILL DEVELOPMENTS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 47.00 acres into 90 lots, (Environmentally Sensitive Developing District Overlay Zone), located west of Road 391, 950 feet north of Route 54.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 21, 2007 will be made a part of the record for this application; that the applicant's engineer sent a letter on October 31, 2007 addressing the Technical Advisory Committee comments; that the Restrictive Covenants have been sent to Mr. Robertson and have been approved; that 4 letters have been received in support of this application; and that the application was reviewed by PLUS on October 31, 2007 and the comments from this meeting have not been received yet.

The Commission found that Steven Smith, Developer, along with William Scott, Esquire, James H. Willey, P.E. and Lawton Myrick of George, Miles and Buhr, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located on the west side of New Road north of Route 54; that the site is located in an Environmentally Sensitive Developing Area; that 90 single-family detached lots are proposed on 47 acres; that the minimum lot size is 10,000 square feet; that the site is currently wooded; that all of the proposed lots back up to wooded open space or a storm water management area; that the amenities will include a clubhouse, bathhouse, swimming pool, tennis courts and walking trails; that Artesian Water Company will provide central water; that the site will be connected to the West Fenwick Island Sanitary Sewer District; that 5 letters in support of this application have been submitted into the record; that 94 lots could be permitted; that the project is located in a designated growth district; that the project is designed with an average lot size of 10,000 square feet to be compatible with nearby developments in the area; that significant wooded areas will be preserved and retained in order to blend with surrounding properties; that the site contains 0.92 acres of federal wetlands that are not proposed to be disturbed; that no forested wetlands on the project site are proposed to be disturbed; that wetland buffers have been incorporated into the design for the project; that significant wooded areas (16 acres or 34% of site) and natural topography will be retained to preserve natural features at the site, acting as naturally existing amenity; that there are no known historical features on the site; that no endangered/threatened species

listed on federal or state registers are located on the site; that 43% (20.9 acres) of the total site will be retained as open space; that active and passive recreation will be provided; that the preserved forested areas will provide natural scenic amenities; that a forested buffer surrounding the project will act to naturally screen and transition from the project to neighboring properties; that storm water management ponds and significant forest block screens a majority of the project's road frontage on New Road; that Artesian Water Company has provided a letter to serve the project and an extension of its existing nearby system; that public water and sewer, telephone, electric and cable will be provided; that the streets will be private and built to Sussex County specifications; that the streets, open space, forest retention areas and storm water management areas will be maintained by a homeowners' association; that central sewer will reduce the possibility of pollution of surface and groundwater; that the storm water management plan will include utilizing Best Management Practices; that there will be minimization of erosions and sedimentation; minimal changes in groundwater levels, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized; that an erosion and sediment control plan is to be developed for approval by the Sussex Conservation District; that retention of significant wooded areas will contribute to prevention of erosion; that a forested buffer will surround the project; that the project will have no adverse affect to any area waterways; that sidewalks will be provided throughout the community; that two entrances onto New Road are to be designed in conjunction with DelDOT to ensure safe and proper ingress/egress to the site; that the project will have a positive affect on nearby property values as with Americana Bayside, Arrington Woods and Ashley Manor; that the project is expected to have a positive economic effect in the form of an expanding tax base, transfer taxes, patronizing local businesses; that the project does not take away active farmland; that due to the prospective buyer market, the project is not expected to have a significant impact on the local school district; that with amenities on site, the project will not be a burden to community facilities; that DelDOT did not require a traffic impact study and the project will have minor impacts on area roadways; that the project is expected to generate 944 total trips on a typical day in peak season; that the project complies with Livable Delaware; that the Restrictive Covenants have been submitted and approved; that the project is designed to implement the goals, strategies and requirements of Livable Delaware, the Sussex County Subdivision Ordinance, the Environmentally Sensitive Developing District Ordinance and the Sussex County Comprehensive Plan; that the price range for lots will be from \$125,000 to \$250,000; that there may be different builders in the project; that a homeowners association will be established; that street lighting is proposed; that there is adequate room for a school bus stop; that tree planting locations are to be determined; that a majority of the area supports the project; that there is not a tax ditch located on the site; that the amenities will be constructed within two years of the issuance of the first building permit; that the items in Section 99-9C have been adequately addressed; that the wetlands delineation was performed by Edward Lunay; and that the agricultural use protection notice and wetlands disclosure will be included in the final restrictive covenants.

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

The Commission found that Ellen Magee was present in opposition to this application and raised questions about the amount of tree disturbance; walking trails being located in the buffers; if the Indian River School District has been contacted; that New Road is not a paved road; that tree farming is an agricultural use; which sanitary sewer district will serve the project and that the site is entirely wooded.

Mr. Smith responded that the sidewalks and walking trails will be located within the interior wooded areas; that they have met with DelDOT and if the project is approved, the developers will comply with all of DelDOT's requirements.

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

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously 4 votes to 1, with Mr. Johnson opposed, to defer action for further consideration and receipt of P.L.U.S. comments and to leave the record open for 30 days for written comments after the applicant responds to the P.L.U.S. comments and P.L.U.S. responds to the applicant's comments. Motion carried 4 – 1.

Subdivision #2006-45 – application of **ANTHONY ESPOSITO** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 2.8213 acres into 2 lots, located north of Creek Falls Road, 120 feet east of Hudson Street Extended within Creek Falls Farm Subdivision northwest of Road 258 (Hudson Road).

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since no new improvements are required; that the streets in the development are existing; and that the applicants have submitted proof that 63% (17 out of 27) of the property owners are aware of and not opposed to this application.

The Commission found that Tony and Marsha Esposito were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the proposed lot is for one of their children; that the existing dwelling on the site is noted to be removed or it will be remodeled to meet the minimum required setbacks; that each lot will have a driveway; and that the silos will remain on the site.

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. Burton stated that he would move that the Commission grant preliminary and final approval of Subdivision #2006 – 45 for Anthony Esposito based upon the record and for the following reasons:

1. The Applicant is seeking to subdivide a lot within the Creek Falls Farm Subdivision.

2. The Applicant has submitted the consent of 63% of the property owners within Creek Falls Farm.
3. The subdivision will not adversely affect the neighboring properties and the new lot will be consistent with the others in the subdivision.
4. The subdivision is in compliance with the County Subdivision Code.
5. This approval is subject to the following conditions:
 - A. The subdivision shall be limited to 2 lots as shown on the Subdivision Plan.
 - B. The addresses for the lots shall be subject to the review and approval of the County Mapping and Addressing Department.
 - C. The lots shall be governed by the existing Restrictive Covenants for Creek Falls Farm.
 - D. The existing structure would have to be removed or renovated to eliminate any setback violations, or the applicant would need to submit a new site plan with the dividing line altered to eliminate the setback violation.

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

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS.

Mr. Lank summarized the Ordinance Amendment and read the synopsis of the Ordinance Amendment.

Mr. Lank read a letter from Mable Granke relating to the Ordinance Amendment which referenced that there does not seem, as written, to be provision for existing forested buffers; that mature trees already in place should not be destroyed; questioning what is the definition of a landscape; that the proposed ordinance indicates trees of a certain size with provisions for temporary ground cover; questioning why the title of the ordinance refers only to a forested buffer; that forested buffers should protect all neighboring properties including agriculture; that allowing a period of 18 months to provide a forested buffer is too long; that it would seem that as soon as possible would help stabilize the area; that inclusion of requiring maintenance by both the developer and any subsequent homes association is essential and must be retained; that there should be verification that the State Forester has reviewed; that since there is a requirement that a Landscape Architect must design the site plan, that verification should also be included; that the ordinance amendment should be corrected as necessary and the ordinance should be on the books and enforced as soon as possible.

The Commission discussed the Ordinance Amendment. There was a consensus of support for the need of such an ordinance.

The Commission found that there were no parties present in support of or in opposition to the Ordinance Amendment.

At the conclusion of the public hearings, the Commission discussed the Ordinance Amendment.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as presented. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a Memorandum and attached PLUS report for C/U #1707 for The Keith Corporation; reminded the Commission that they had deferred this application on October 8, 2007 pending receipt of the PLUS report and that the record was left open for an additional 14 days after the report is submitted to the Commission for written comments; and that the 14 day period ends on December 13, 2007.

Mr. Lank advised the Commission that David Baker, County Administrator, staff members Mr. Lank, Mr. Abbott, Mr. Kautz, Hal Godwin, Assistant to the County Administrator, Russ Archut, Assistant County Engineer, and Paul Driscoll and Charlie Schmehl of URDC met with the PLUS agencies on November 28, 2007 to discuss the Comprehensive Plan Update and that the agency responses seemed very negative.

Meeting adjourned at 9:00 p.m.