



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 8, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 8, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

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

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of November 17, 2011 as circulated. Motion carried 5 - 0.

OLD BUSINESS

C/U #1913 – application of **JEREMY W. SMITH** to consider Conditional Use of land in AR-1 Agricultural Residential District for yard waste and composting facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.01 acres, more or less, lying west of Road 347 (White's Neck Road) 1,850 feet south of Road 349 (Old Mill Road).

The Commission discussed this application, which has been deferred since October 27, 2011.

Mr. Smith stated he feels that the Commission shares the same concerns about noise, smells, contamination of soils and water, wells, etc. that the opposition put forth in the public hearing; that those concerns are to be addressed by the State DNREC in the permitting process; that preference would have been to have them acted on prior to the public hearing process, but the State DNREC would not act on the permit unless the County acted on the Conditional Use application favorably; that the site could be developed by-right with more intense agricultural or residential uses; that this application maintains approximately 20 acres of open space and woods; that the Commission can recommend that the County Council impose some restrictions and ensure that reasonable buffers are installed; and that the State Forestry Department is supportive of composting as an agricultural and necessary use to lessen the impacts on landfills and for the environment.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1913 for Jeremy W. Smith for a yard waste and composting facility based upon the record made at the public hearing and for the following reasons:

- 1) The land is zoned AR-1 Agricultural Residential, and this use is consistent with the agricultural purposes of this District. It also promotes the goals of the Conservation Element of the Sussex County Comprehensive Land Use Plan.
- 2) The proposed use will not adversely affect traffic or area roadways.
- 3) The composting facility will benefit the citizens and the environment of Sussex County by recycling yard waste, tree trimmings and other materials so that there will be a reduction of materials ultimately going to the landfills.
- 4) This application serves as a public/semi-public use of the property.
- 5) The use will be limited to organic yard waste and not poultry waste or other more objectionable materials. It will also be the subject of DNREC permitting and regulations.
- 6) This recommendation is subject to the following conditions:
 - A. The use shall be limited to an organic yard waste composting facility only. No poultry manure, sludge or other agricultural or solid or liquid wastes shall be accepted at the site. No lumber, stumps, or construction waste shall be accepted at the site.
 - B. The use shall comply with all DNREC and Sussex Conservation District requirements and permits necessary for the Organic Yard Waste Composting Facility.
 - C. The Applicant shall install a 20-foot landscaped buffer between the roadway and the common boundary between the site and Lots 12 through 18 of the Squirrel's Run development. The buffer area shall comply with the requirements for buffers set forth in Section 99-5 of the Sussex County Code. The buffer area shall be shown on the Final Site Plan.
 - D. As offered by the Applicant, there shall be a 50 foot buffer along the rear of the site.
 - E. Sales, composting, and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No Sunday hours shall be permitted.
 - F. There shall be no composting, grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for composting, grinding and processing shall be shown on the Final Site Plan.
 - G. The areas set aside for any mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.
 - H. Delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday, with no Sunday hours. The site shall be gated at the entrance along White's Neck Road so that after-hours deliveries or dumping do not occur.
 - I. Water shall be available to control dust and for fire prevention within the site.
 - J. The site shall have one (1) non-illuminated on-premise sign not to exceed 32 square feet per side.
 - K. Any security lighting shall not shine on neighboring roadways or properties.
 - L. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Ross, 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 and with the conditions stated. Motion carried 4 – 0, with Mr. Burton abstaining since he was not present for the public hearing.

C/U #1914 – application of **STEVEN KREBS AND BARBARA KREBS** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a barbeque prep and sales to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.5 acres, more or less, lying northeast of Route 20 (a.k.a. Road 382) approximately 1,100 feet northwest of Road 384.

The Commission discussed this application, which has been deferred since November 17, 2011.

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use #1914 for Steven Krebs and Barbara Krebs for barbeque prep and sales based on the record made at the public hearing and for the following reasons:

- 1) The site currently has an approved Conditional Use for commercial greenhouses and a retail garden center. The Applicant has stated that the prior Conditional Use will be terminated and replaced with the BBQ. This change in use will not adversely affect neighboring properties, the community or roadways.
- 2) The use is of a semi-public character.
- 3) Several parties submitted letters in support of the use, and no parties expressed any opposition to the application.
- 4) This recommendation is subject to the following conditions:
 - A) The use shall be limited to a barbeque preparation and sales facility.
 - B) Conditional Use #1795 (Ordinance No. 2087) for commercial greenhouses and a retail garden center is repealed, as stated by the Applicant. The site shall no longer be used for those purposes upon approval of this Conditional Use.
 - C) The Applicant shall comply with all DelDOT requirements regarding entrances and roadway improvements.
 - D) The Applicant shall comply with all requirements of Sussex County regarding the provisions of sewer service to the property.
 - E) Food service for take-out, delivery, and off-site catering shall be permitted.
 - F) The hours of operation, as stated by the Applicant, shall be from 11:00 a.m. until 8:00 p.m., six (6) days a week.
 - G) Any security lighting shall be screened from view of neighboring roadways or properties.
 - H) All dumpsters shall be screened from view.
 - I) 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. 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.

PUBLIC HEARINGS

C/U #1915 – application of **MICHAEL VAN DRUNEN** to consider Conditional Use of land in AR-1 Agricultural Residential District for a manufactured home installation business and related equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 3.0 acres, more or less, lying southeast of Road 293 (Dodd Town Road) ¼ mile southwest of Route 5.

The Commission found that the Applicant submitted a survey/site plan with his application, and that he submitted an Exhibit Packet on November 29, 2011 which included: 1) Petition in support; 2) Parcel Map; 3) Company Profile for Choice Auto Sales; 4) Company Profile for Homeworks; 5) Company Profile for Shady Oak Farm; 6) Delmarva Yellow Pages – Evergreen Tree Service; and 7) Photographs.

Mr. Lank advised the Commission that the application was filed after complaints were received and violation notices were sent.

The Commission found that DelDOT provided comments on May 31, 2011 which reference that a traffic impact study was not recommended, and that the current Level of Service “A” of Dodd Town Road will not change as a result of this application.

The Commission found that the Sussex Conservation District prepared comments on November 30, 2011, received on December 6, 2011, which reference that there are three (3) soil types on the parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that the project will not necessitate any off-site drainage improvements; and that it may be possible that on-site drainage improvements will be required.

The Commission found that a letter in opposition was received from Michael and Kathy Schlitter expressing concerns that they purchased their property as residential with restrictions; that a neighboring property owner had applied for a Conditional Use and withdrew it because of the neighborhood opposition; that they did not purchase their property with the intention of having businesses operate on neighboring properties; that the applicant has not adhered to the restrictions of record; that they have made numerous complaints about old mobile homes being brought into the property and left in an unsightly manner; that a large building has been placed in the back of the property with equipment stored for business purposes; that there are often loud noises from tractors and large trucks coming in and out of the property; that the property is piled with rubbish, dirt piles and is an embarrassment for neighbors; that rodents have been seen due to the trash that has accumulated on the property; that the property should be cleaned up and the business equipment and debris removed so that residents can live in a peaceful, beautiful residential area as originally intended; and that they request that the application be denied.

The Commission found that a memorandum and five (5) photographs were received from Robert Davidson in opposition to this application expressing concerns about devaluation of property values, noise from dumpsters being loaded and unloaded and equipment running, that the site is unsightly now and probably be worse after zoning, and that the use is not in keeping with an AR-1 neighborhood.

The Commission found that Michael Van Drunen was present with James Waehler, Attorney with Steen, Waehler & Schrider-Fox, LLC, and Cornelius Van Drunen and that they stated in their presentations and in response to questions raised by the Commission that they did submit a packet of information for the record; that the parcel contains approximately 3 acres and is located in a Low Density Area according to the Sussex County Comprehensive Land Use Plan; that there are other business uses in the immediate area and referenced a nursery/greenhouse business, an auto sales business, a tree service business, and a landscaping/satellite equipment business; that the Applicant hopes to continue his manufactured home installation and electrical contracting business; that the business started on the land of Cornelius Van Drunen, his Father, and has been in operation for approximately 30 years on either his Father's property or this site; that employees arrive between 7:00 a.m. and 8:00 a.m. daily, leave for job sites, and then return around 5:00 p.m.; that the existing storage building is used for storage of materials and equipment; that 16 of his neighbors have signed the petition in support of the application; that he has 12 employees; that there is no construction, fabrication or business activities performed on site, other than the parking of vehicles, and the storage of materials and equipment; that the use should be a benefit to the County by allowing the use to continue due to the creation of jobs, taxes, and the services provided; that the company operates under the title of "Dutch Brothers" and primarily serves the Lewes, Rehoboth Beach, and Long Neck areas, with some service work in other areas of Delaware and out of state; that the business currently does more electrical work than manufactured home service work; that in reference to the complaints reported in the Schlitter letter, no rodents have been seen; that the only manufactured home that has been brought into the property is the dwelling on the premises, which is actually a modular home; that they have been cleaning up the site recently and the trash has been placed in the dumpsters on site and when filled will be hauled to the landfill; that there are no known sites available to relocate the business at any reasonable cost; that most of the material in storage is either in the storage building or under the lean-to on the rear of the building; that they have a total of ten (10) dumpsters for recycling on job sites, and that there may be three (3) dumpsters on the site on a regular basis; that they may extend the shop and storage building in the future; that he is willing to buffer/screen the activities by planting landscaping and erecting solid vinyl fencing behind the fenced in yard area; that the parties that signed the petition in support live in close proximity along Dodd Town Road; that the parking area will be improved; and that he would like to erect a sign to advertise the business.

The Commission found that Cornelius Van Drunen spoke in support of the application and stated that he was the originally operator of the manufactured home installation business, formerly known as "Butch's Mobile Home Repair"; that his home, immediately adjacent to this site, was the first home built on Dodd Town Road within this group of parcels; that he worked from home and did not realize that he could not operate the business as a home occupation; and that the business started with family members and grew to several employees.

The Commission found that Jason Brown, an area resident, was present and spoke in support of the application and stated that he has owned his land across Dodd Town Road for approximately 5 years; that he has never seen a mobile home on the site; that he has no complaints about traffic or noise; that the dumpsters are used for recycling; that there should not be any negative impact on the neighborhood; and that he has never seen any rodents.

The Commission found that Vince Lickman, an area resident and owner of Evergreen Tree Service, was present and spoke in support of the application and stated that he has lived there since 1989; that he has no objection to this application; and that he supports the application since the Applicant recycles his waste.

The Commission found that Mark Wyatt, an area resident, was present, submitted a video tape to Mr. Robertson, and stated that he has asked the Applicant repeatedly to clean up the lot; that the Applicant has improved the appearance of the properties since he took over the business; and that fencing would be an improvement.

The Commission found that Phil Watkins, an area resident for eight years, stated that he has also called several times about overflowing dumpsters with trash blowing; that dumpsters are required to be covered; that he has seen piles of tires; that some trash is brought to the site from job sites; that the area is residential; that solid fencing would improve the appearance of the neighborhood; that he opposes dumpster storage in residential areas; that he did own Choice Auto with a sales lot on Route 9; and that he no longer operates that business.

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

Mr. Robertson stated that he will review the video tape and try to make copies available for the Commission to review.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to allow the Commission time to review the video tape. Motion carried 5 – 0.

OTHER BUSINESS

Chipotle Mexican Grill Revised Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this item was deferred at both November 2011 meetings; that the applicants are requesting to restripe the parking spaces at 9-feet by 18-feet as referenced in the zoning code and have the required parking calculations based on 5 spaces per 1,000 square feet of gross leasable area; and that the Commission was previously provided supporting documentation for this request.

Mr. Johnson advised the Commission that he reviewed the supporting documents that were submitted by the Applicants and that he still does not prefer the 9-foot by 18-foot parking spaces and that it seems the applicants are picking what sections of the Ordinance that they want to use.

Mr. Wheatley advised the Commission that he does not like the revised site plan but the Zoning Ordinance permits it.

Mr. Burton advised the Commission that vehicles can park in 9-foot by 18-foot parking spaces and that not everyone drives large vehicles.

Mr. Ross advised the Commission that the site plan complies with the Zoning Ordinance.

Motion by Mr. Burton, seconded by Mr. Ross and carried 3 votes to 2 with Mr. Johnson and Mr. Smith opposed, to approve the revised site plan with the parking calculations based on 5 spaces per 1,000 square feet of gross leasable area and the spaces at 9-feet by 18-feet as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 3 – 2.

Saint Andres Antiochian Church
Preliminary Site Plan – MacKenzie Way

Mr. Abbott advised the Commission that this is a preliminary site plan for a 4,364 square foot, 125-seat church located on 1.88-acres; that the site is zoned AR-1; that ingress/egress to the site is from Mackenzie Way a private subdivision street off of Road 275 (Plantation Road); that the building setbacks meet the minimum requirements of the zoning code; that 32 parking spaces are required and 49 are proposed; that the parking lot is proposed to be stone at this time; that the site will be served by central sewer from Sussex County and private water; that there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Wheatley questioned if the stone parking area is permitted.

Mr. Abbott advised the Commission that in the past the Commission has permitted parking areas to be stone until such a time that the church has funding to improve the parking area and since they are only used a few times per week.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Advance Auto Parts
Preliminary Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary site plan for 9,125 square feet of retail located on 1.01-acres; that the site is zoned C-1; that a 6,125 square foot auto parts store and a 3,000 square foot retail store are proposed; that the building setbacks meet the minimum requirements of the zoning code; that ingress/egress to the site is from a cross access easement from the adjacent Home Depot site; that no new direct access to Route One is proposed; that 46 parking spaces are required and proposed; that there is an existing 20-foot Highway Corridor Overlay Zone buffer that is already in place from the Home Depot site; that additional plantings are proposed; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that if preliminary approval is granted, final site plan approval

could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Meeting adjourned at 7:30 p.m.