



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 10, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 10, 2009 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. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott, Assistant Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as revised due to the withdrawal of C/Z #1665, the application of Delmarva Woodlands Alliance Hilton, LLC. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of November 12, 2009 as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of November 19, 2009 as amended. Motion carried 5 - 0.

OLD BUSINESS

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

The Commission discussed this application which has been deferred since November 19, 2009.

Mr. Johnson stated that he would move that the Commission grant preliminary approval for Subdivision #2008-9 for Underhill Properties, L.L.C. based upon the record and for the following reasons:

- 1) The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet, with an average area over 10,400 square feet.
- 2) A subdivision on this site will not have an adverse impact on the neighboring properties or community.

- 3) The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
- 4) The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
- 5) I am satisfied that this project is a superior design under the Subdivision Ordinance. It is a superior design because it preserves open space (over 50%), preserves most of the trees (89%), and provides for active and passive recreational uses, including a swimming pool, clubhouse/community center, walking trails, etc.
- 6) The design addresses the requirements of Section 99-9C of the Subdivision Code.
- 7) The subdivision will have no more than 134 lots on 93.81 acres. This results in a density that is less than the maximum density permitted in the AR-1 zone.
- 8) The subdivision will be served by central water and sewer.
- 9) This preliminary approval is subject to the following:
 - A. There shall be no more than 134 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - G. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lots.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located on both sides of all streets in the subdivision.
 - L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
 - M. Upon the issuance of the 50th residential building permit, the developer shall construct all of the recreational amenities.
 - N. There shall be a 25-foot minimum buffer from all wetland areas.
 - O. While the Applicant has proposed a buffer average of 229-feet from the 404 Wetlands line to the back of proposed lots in response to DNREC's concerns to protect water quality, I am not satisfied that this is sufficient to protect the sensitive headwaters of Cherry Walk Creek. By their own acknowledgement, some lots are within 13-feet of

the wetlands. Given the extensive open space (over 50%), there is more than adequate land available to increase the minimum buffer to at least 25-feet and provide for a design that is even more superior than proposed. This 25-foot minimum buffer from all wetlands should not result in the Applicant having to reduce the number of lots, should not cause any undue hardships, and should provide for a more environmentally sensitive development.

- P. 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 with 4 votes to grant preliminary approval of Subdivision #2008-9 for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0, with Mr. Ross not voting since he was not present at the public hearing.

PUBLIC HEARINGS

C/U #1802 – application of **MARY P. KELLY** 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 Baltimore Hundred, Sussex County, containing 1.45 acres, more or less, lying east of Road 361 (Kent Avenue) one-quarter (1/4) mile south of Jefferson Bridge Road.

The Commission found that the Applicant provided revised site plans and an Exhibit Booklet on November 30, 2009 and that the Exhibit Booklet contains a copy of the application form, a copy of the site plan, an aerial map with zoning references, a color rendering overlay on an aerial photograph, DelDOT comments, proposed Findings of Fact and Conditions, and a draft copy of the proposed Code of Regulations for Westward Pines Condominium.

The Commission found, based on comments from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “C” of Kent Avenue will not change as a result of this application.

The Commission found, based on comments from the County Engineering Department Utility Planning Division, received on December 8, 2009, that the project is located within the South Bethany Sanitary Sewer District; that wastewater capacity is not available for this project; that capacity is available for 5.67 EDUs; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,438.00 per EDU; that there is a six-inch lateral located in Kent Avenue to serve each parcel; that the Sewer Planning Study EDU allotment for these parcels total 5.67 EDUs; that the County Engineering Department opposes this rezoning because of the potential for increased wastewater flow with the construction of the proposed 16 multi-family dwelling units; that a proposal that exceeds 5.67 EDUs could require a review of downstream infrastructure; that any required upgrades would be at the developer’s expense; that if upgrades are not required at this time, the Engineering Department recommends that those EDUs above planning study allotments pay a fee towards future sewer upgrades, and that possibly double the impact fee or another amount set by County Council; that lateral upgrades may be required depending on the number of units per building; and that a concept plan is required.

The Commission found, based on comments from the Sussex Conservation District, that the soils on the site are mapped as Hurlock loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some on-site drainage improvements.

The Commission found that Dexter Bruce was present on behalf of the Applicant with Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A. and Ken Christenbury, Professional Engineer with Axiom Engineering, and that they stated in their presentations and in response to questions raised by the Commission that the site is currently improved by a motel and single family residence; that the motel has not been in operation for a year or more due to the health of the Applicant; that they are proposing 16 multi-family units; that the site is located in the Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that the site is located in an Investment Level 2 Area according to the State Strategies; that conceptually the use is compatible to the surrounding area which has a mix of residential, multi-family and commercial uses; that they will be meeting with the County Engineering Department to discuss sewer capacity; that there are presently 3 entrances to the site, one to the dwelling and 2 to the motel, and that they are proposing to delete those entrances and to create a new entrance to the site, subject to DelDOT approval; that a drainage ditch exist to the rear of the site for outfall; that they are proposing to construct a swimming pool for recreational activities; that Artesian Water Company will provide water service; that the County will provide sewer service; that the draft Code of Regulations includes maintenance provisions for the project; that the use is compatible since they are proposing to convert an inactive 14 unit motel and dwelling into housing in a housing area; that the use is in close proximity to commercial uses on Route One; that they have provided suggested Findings of Fact and Conditions of Approval for consideration; that the existing units are small rooms with baths and can sleep 4 people; that parking for the proposed units include 1 garage space and 1 driveway space for each unit and an additional 8 parking spaces; that the stormwater management pond location was established by design for the entrance and for a scenic view; that drainage will comply with Sussex Conservation District requirements; that a sign will be erected to identify the project; that they will be contacting the local school district for input on the need for and location of a bus stop; that the units will be privately owned; that the swimming pool will comply with all Public Health regulations; and that the buildings will not exceed 42-feet in height.

In response to a question from Mr. Smith, Mr. Lank advised the Commission that the density for the Sea Colony West area was established to not exceed 18 units per acre.

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.

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

C/U #1803 – application of **TIM ELDER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for the sale of produce, barbeque, snowballs, lawn furniture, firewood and gifts to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.00 acre, more or less, lying south of Route 26, 0.55 mile west of Road 340.

The Commission found that the Applicant provided a packet of information on November 12, 2009 which includes suggested Conditions of Approval; a revised site plan; an aerial photograph depicting the site and the area; a portion of the zoning map depicting the site; a portion of the State Strategies Map depicting the site; a portion of the FEMA Flood Maps showing the site; a Ground Water Recharge Map; a map showing State Wetlands in the area, but not on the site; a portion of a USGS Quad Map showing the site; and a soils map showing the site.

The Commission found, based on comments from DelDOT, that a traffic impact study was not recommended; and that the current Level of Service “D” of Vines Creek 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, received on December 9, 2009, that the site is located in the Dagsboro/Frankford Planning Area; that the proposed use will use an existing septic system; that the project is not capable of being annexed into a sewer district at this time; that conformity to the Dagsboro/Frankford Planning Study will be required; that when the County provides central sewer service the on-site system must be abandoned and a direct connection to the central sewer system is mandatory; and that a concept plan is not required.

The Commission found, based on comments from the Sussex Conservation District, that the soils on the site are mapped as Rosedale loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it will not be necessary for off-site drainage improvements; and that it may not be necessary for any on-site drainage improvements.

Mr. Lank advised the Commission that the Applicant provided proposed Conditions of Approval and referenced that Condition #2 states that “The uses will be limited to Outdoor Food Sales and Limited Produce”.

The Commission found that Timothy Elder was present and stated in his presentation and in response to questions raised by the Commission that he had applied for a similar use near Ocean View earlier this year and was denied and that he has reduced this application to outdoor food sales and limited produce sales; that since 1990 he has operated a business on the Bethany Beach boardwalk; that this site is outside of and east of Dagsboro; that the site is in close proximity to other commercial uses along Route 26 and referenced, specifically, a restaurant, a convenience store and a campground; that he proposes to barbeque foods by use of a smoker grille and to sell local produce; that the home on the site is a rental and has a separate driveway and a fenced in back yard; that he has revised his site plan and proposed to establish the use to the rear of the rental home with a concession trailer, picnic tables, and portable toilets; that he has proposed

some Conditions of Approval which include: 1) The hours of operation 9:00 a.m. to 7:00 p.m., 7-days per week, Spring, Summer and Fall; 2) The uses will be limited to Outdoor Food Sales and Limited Produce; 3) Preliminary and Final site plan review by Planning and Zoning shall be required; 4) The existing dwelling will remain as a single family rental property. The backyard will remain screened with a 6-foot high privacy fence and at the discretion of DelDOT, the existing entrance will remain for the dwelling only; 5) All trash container areas and Porto-O-Potty areas shall be screened with a 6-foot high privacy fence and landscaping; 6) The proposed use shall be served by temporary Porto-O-Potty's by a licensed Waste Hauler Company; 7) Potable drinking water shall be provided by an existing on-site well. If a proposed well is needed, a permit will be obtained by DNREC prior to installation; 8) Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable and State and County requirements and shall be operated utilizing Best Management Practices to provide positive groundwater recharge; 9) The site shall have one non-illuminated on-premise sign of which the sign shall not exceed 32 square feet on any side or facing, identifying the uses permitted on the same premises. The sign shall contain no more than two sides or facings, back to back, and shall conform to a minimum setback of 25 feet from the right-of-way line and a minimum setback of 15 feet from all adjacent property lines; 10) Parking lot and security lighting will be provided and will have downward illumination and shielded so that no illumination will encroach over any property line; 11) A landscaping plan will be provided as a part of the Final Site Plan; 12) No outside speakers, bells or ringers will be permitted; and 13) No outside storage of pallets, crates, or building materials will be permitted; that his reference to Spring, Summer and Fall should reference April 1st to October 31st; that he feels that his proposed parking is adequate to serve the use and that there is additional space for overflow parking if needed; that the impact on traffic should be minimal; that DelDOT may require a deceleration lane; that everything is mobile or removable; and that the sheds on the site will be relocated to conform to regulations.

Mr. Lank advised Mr. Elder that it may be necessary that he apply to the County Board of Adjustment to use the mobile type structure.

The Commission found that Ron Steen, an adjoining property owner, was present in support of this application and stated that there are more commercial activities along Route 26 than those the Applicant mentioned; that he has no objections to the use and no objections to the barbeque odor; and that his property has historically been used for commercial activities (originally a grain mill).

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 #1803 for Tim Elder for the sale of produce, barbeque and outdoor food sales based upon the record and for the following reasons:

- 1) The use will generally be consistent with other existing uses in the area. The site, along Route 26, is appropriate for this type of use.

- 2) The use as a produce sales facility promotes local agriculture.
- 3) The use as a produce and outdoor food sales is desirable for the general welfare and convenience of residents and visitors of the area.
- 4) This recommendation is subject to the following conditions:
 - A. The hours of operation 9:00 a.m. to 7:00 p.m., 7-days per week, April 1 through October 31.
 - B. The uses will be limited to Outdoor Food Sales and Produce. No sales or displays shall be located in front of the existing dwelling.
 - C. The existing dwelling will remain as a single family rental property. The backyard will remain screened with a 6-foot high privacy fence and at the discretion of DelDOT, the existing entrance will remain for the dwelling only.
 - D. All trash container areas and Porto-O-Potty areas shall be screened with a 6-foot high privacy fence and landscaping.
 - E. All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT and within the time periods required.
 - F. The proposed use shall be served by temporary Porto-O-Potty's by a licensed Waste Hauler Company.
 - G. Potable drinking water shall be provided by an existing on-site well. If a new well is needed, a permit will be obtained from DNREC prior to installation.
 - H. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated utilizing Best Management Practices to provide positive groundwater recharge.
 - I. The site shall have one non-illuminated on-premise sign of which the sign shall not exceed 32 square feet on any side or facing, identifying the uses permitted on the same premises. The sign shall contain no more than two sides or facings, back to back, and shall conform to a minimum setback of 25 feet from the right-of-way line and a minimum setback of 15 feet from all adjacent property lines.
 - J. Parking lot and security lighting will be provided and will have downward illumination and shielded so that no illumination will encroach over any property line.
 - K. A landscaping plan will be provided as a part of the Final Site Plan.
 - L. No outside speakers, bells, ringers or live entertainment will be permitted.
 - M. No outside storage of pallets, crates, or building materials will be permitted.
 - N. The number of employees shall not exceed 2 and the owner.
 - O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
 - P. This approval is for the use in addition to the existing rental home on the property. In the event that the Applicant desires to convert the home into produce and food sales, or substantially change the approved Final Site Plan, a public hearing shall be required.

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

C/U #1804 – application of **WAYNE DRYWALL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and warehouse to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.53 acre, more or less, lying at the northwest corner of the intersection of Route 20 (Pyle Center Road) and Route 17 (Roxana Road).

The Commission found that the Applicant provided revised site plans and an Exhibit Booklet on November 25, 2009 and that the Exhibit Booklet contains site data and contact references; that the site will utilize existing on-site water, existing on-site septic, and existing Verizon services; references to compliance with the Zoning Code and Subdivision Code 99-9C; preliminary site plans and color renderings; an aerial photograph; photographs of the site and surrounding area; a DelDOT letter of no objection to the entrance location; a copy of the deed to the property and a tax map; references to surrounding zoning decisions for Delmar Plumbing, Inc., Keith Smith, and John Gilman.

The Commission found, based on comments received on December 9, 2009 from County Engineering Utility Planning Division, that the site is located in the Roxana Planning Area received on December 9, 2009; that an individual on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that there are no immediate plans for sewer service for the property; and that a concept plan is not required.

The Commission found, based on comments from the Sussex Conservation District, that there are two soil types on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it will not be necessary for off-site drainage improvements; and that it may not be necessary for any on-site drainage improvements.

The Commission found that Kevin Shoemaker of Wayne Drywall was present with James Fuqua, Jr., Attorney with Fuqua and Yori, P.A., and Ken Coleman of ECI Engineering Consultants International, LLC, and that they stated in their presentations and in response to questions raised by the Commission that they plan to utilize the existing home for an office for the drywall business and to, in the future, remove the office and build a storage building for 3 storage units containing 1,120 square feet each; that they would like to erect one lighted sign, not exceeding 32 square feet or 2 sides or facings; that there are no wetlands or natural features on the site; that 3 sheds also exist on the site; that they are proposing to utilize the existing well and a new septic system that was installed in 2008; that there will be no outside storage of materials, except for the storage of a lift-truck that may be occasionally stored on the site; that office hours are proposed to be from 6:30 a.m. to 9:00 p.m. Monday through Saturday; that they have a no objection letter to the entrance location from DelDOT; that they will landscape along the property line with the adjacent residential lot; that they do not anticipate any negative impact on traffic; that a Conditional Use for a similar storage facility exists on the adjacent property that was approved in 2008; that several business uses exist in the general area that are zoned B-1 and C-1; that a Conditional Use for Delmar Plumbing was approved in 2007; that a Conditional Use for a Fitness Center was approved in 2008; that the use is appropriate in this area due to the other Conditional Use applications and business and commercial uses in the area; that the first phase of

the project will be to convert the home into an office; that the future phase of the project will be to remove the home and build the storage building for lease purposes; that the storage building is a Flex-Space building design with movable interior walls that would allow for a different number of units within the same structure; and that a unit may or may not have a small office to support the storage unit.

The Commission found that Mr. Fuqua submitted some suggested Findings of Fact and Conditions of Approval for consideration.

The Commission found that John Gilman was present in support of the application and stated that there are approximately 20 business uses within one mile of the intersection, and that he has no objections to this application.

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.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1804 for Wayne Drywall for an office and warehouse/storage facility based upon the record and for the following reasons:

- 1) The proposed use of the existing building as an office and future construction of warehouse/storage buildings is an appropriate use of the property and consistent with the nature of the area.
- 2) A warehouse/storage complex exists next to the site as well as an antique shop and other office use. The lands across Route 17 contain several business uses and are zoned B-1 and C-1.
- 3) The proposed use will not generate a significant increase in traffic due to the nature of the proposed uses.
- 4) The proposed Conditional Use promotes the health, safety, convenience and welfare of County residents and with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring or adjacent properties.
- 5) Approval is subject to the following conditions and stipulations:
 - A. The Conditional Use shall be for use of the existing building as an office and future construction of warehouse/storage facilities. There shall be no more than 3 warehouse or storage facilities on the site.
 - B. A landscape buffer shall be provided along the rear boundary of the property.
 - C. One lighted sign, not exceeding 32 square feet per side shall be permitted.
 - D. Maximum hours of operation of the office shall be from 6:30 a.m. to 9:00 p.m. Monday through Saturday.
 - E. No outside storage of materials or equipment shall be permitted on site, except for the Applicant's boom (lift) truck.
 - F. There shall be one (1) centralized dumpster on the site which shall be shown on the Final Site Plan and screened from view of neighboring properties.
 - G. Outside lighting shall be screened with downward illumination to avoid shining on neighboring properties.

H. 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. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 5 – 0.

C/Z #1663 – application of **KEITH PROPERTIES, INC.** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying southwest of Route 54 and northwest of Fenwick Shoals Boulevard, and being Lot No. 1 of Fenwick Shoals Subdivision, to be located on 0.24 acres, more or less.

Mr. Lank announced that just prior to the public hearings William Scott, Attorney with Scott and Shuman, P.A., withdrew this application.

C/Z #1665 – application of **DELMARVA WOODLANDS ALLIANCE HILTON, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a GR General Residential District to an AR-1/RPC Agricultural Residential District – Residential Planned Community and a GR/RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying east of Old State Road (Road 213), 1.0 mile north of Route 16 and north of Ellendale, to be located on 126.86 acres, more or less.

Mr. Lank announced at the beginning of the meeting that this application was withdrawn on December 9, 2009.

Meeting adjourned at 7:38 p.m.