

MINUTES OF THE REGULAR MEETING OF DECEMBER 12, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 12, 2013, 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. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, 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. Johnson and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Minutes of November 14, 2013 as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Minutes of November 21, 2013 as amended. Motion carried 5 – 0.

OLD BUSINESS

**Subdivision #2013-11 – Joseph J. & Jo Ann Tittermary**

Application of **JOSEPH J. & JO ANN TITTERMARY** to consider the Subdivision of land in a GR General Residential District in Broadkill Hundred, Sussex County, by dividing 28,629 square feet into 2 lots, located south of Bayshore Drive (Road 16A) and being Lot 2 Subdivision of Lands of Jennie H. J. Layton, et al (Tax Map I.D. #2-35-10.00-1.06).

The Chairman referred back to this application, which was deferred at the November 14, 2013 meeting.

Mr. Burton stated that he would move that the Commission deny preliminary approval of Subdivision #2013 – 11 for Joseph J. and JoAnn Tittermary for a 2 lot subdivision in a GR General Residential Zone based upon the record made during the public hearing and for the following reasons:

1. The proposed new lot does not meet the minimum lot area requirements for a lot in the GR Zone.
2. The application does not meet the lot area and width requirements for lots within a Conservation Zone under Section 115-194 of the Sussex County Zoning Code.

3. The property is part of an existing subdivision, and the applicants have not provided the consent of 51% of the property owners within the subdivision as required by Section 99 – 13 of the Sussex County Subdivision Code.
4. The Preliminary Site Plan does not comply with the wetlands buffer required by Section 115 – 193 of the Sussex County Zoning Code.
5. The applicant has not provided a statement from the Delaware Department of Natural Resources and Environmental Control confirming that the new lot is suitable for a septic system.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to deny this application for the reasons stated. Motion carried 5 – 0.

**AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-179B OF THE CODE OF SUSSEX COUNTY, ENTITLED “HEIGHT REGULATIONS” IN REGARD TO THE HEIGHT OF CERTAIN BUILDINGS.**

The Commission discussed this Ordinance which has been deferred since November 14, 2013.

Mr. Burton stated that he still feels that a workshop with the County Council is needed.

Mr. Johnson stated that he opposes any increase in the height over and above 42 feet and questions the definition of “Semi-Public”. Mr. Johnson also agreed that there is a need for a workshop.

Mr. Ross stated that the Commission just needs to be consistent; and that if public/governmental buildings are acceptable at a higher height, why aren't semi-public buildings. Mr. Ross agreed that there is a need for a workshop.

Mr. Smith questioned if the height should affect Residential Planned Communities; added that he also sees a need for a workshop; and added that he would like to see other agencies comment in a workshop format, especially DeIDOT and County Engineering.

Mr. Wheatley stated that there is not a “loop-hole” in the current regulations; and that in recent years there have been a few applications filed for semi-public buildings.

Mr. Robertson advised the Commission that there are two options for consideration: 1) a recommendation against the proposed ordinance would leave the ordinance as is with commercial type buildings where the public is invited, plus schools, hospitals and institutions going to 60 feet, but still subject to the increased setbacks; or 2) a recommendation for the proposed ordinance that would limit the 60 foot height to just governmental buildings, hospitals, and institutions.

Mr. Ross stated that he would move that the Commission recommend against the adoption of the ordinance to amend Chapter 115, Article 25, Section 115-179B of the Code of Sussex County entitled “Height Regulations” in regard to the height of certain buildings. The current ordinance appropriately permits certain structures to be constructed to a height of 60 feet, provided that additional setbacks are implemented, and the use is permitted in the underlying district.

No one seconded the motion, therefore the motion died for the lack of a second.

Mr. Johnson stated that he would move that the Commission recommend in favor of the adoption of the ordinance to amend Chapter 115, Article 25, Section 115-179B of the Code of Sussex County entitled “Height Regulations” in regard to the height of certain buildings. The ordinance amendment states that only governmental buildings, schools, hospitals and institutions can be constructed to a height of 60 feet if the use is permitted in the underlying zoning district. However, in making this recommendation, it is also his recommendation that the County Council schedule a workshop as soon as possible to have a more comprehensive discussion of height regulations in the County, to determine if there are appropriate locations for taller structures, and how taller structures may relate to existing and future infrastructure needs such as traffic, sewer, water, parking, open space, and other issues; and that the Board of Adjustment and the County Engineering Department should be included in the workshop.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with three (3) votes to two (2) votes to forward this ordinance amendment to the Sussex County Council with the recommendation that the ordinance amendment be approved. Motion carried 3 – 2.

The Vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Smith – yea, Mr. Ross – nay, and Mr. Wheatley – nay.

## PUBLIC HEARINGS

### **Conditional Use #1976 – Indian River School District**

Application of **INDIAN RIVER SCHOOL DISTRICT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an elementary school expansion to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 26.77 acres, more or less, lying southwest of Road 331 (Iron Branch Road) 1,200 feet southeast of Road 339 (Old Landing Road) and northwest of 1<sup>st</sup> Street in Riverview Subdivision (Tax Map I.D. #1-33-17.00-41.00 and 42.00).

The Commission found that the Applicants submitted a survey/site plan with the application and advised in a cover letter that they had met with DelDOT on October 7, 2013; that DelDOT will not require a traffic impact study, but will require right-of-way and permanent easement

dedications, construction of a sidewalk along Irons Branch Road, and that a formal submission through DelDOT's review process is required to obtain a "Letter of No Objection".

The Commission found that on November 26, 2013 DelDOT commented that the Department has received the preliminary site and entrance plan, and that they are in the process of reviewing said plans.

The Commission found that on December 9, 2013 the Department received comments from the County Engineering Department Utility Planning Division referencing that the site is located in the Town of Millsboro sewer district; that the school expansion will connect to the Town's central sewer system; that conformity to the North Coastal Planning Study will be required; that the school is not in an area where the County will provide sewer service; and that a concept plan is not required.

The Commission found that Garth Jones, Professional Engineer with Becker Morgan Group, was present on behalf of the application and stated that they are proposing a one-story building with a height of 22 feet; that the school property is a legal non-conforming use of the property; that they have added additional acreage to the property, and are asking for a Conditional Use to bring the entire property into compliance; that they are proposing to add eight (8) additional classrooms and some restrooms; that DelDOT will be requiring sidewalks, multi-modal paths, and some dedication of roadway to expand the right-of-way of Iron Branch Road; that there should be no adverse impact on neighboring properties or the community, or area roadways; that the existing parking already exceeds the minimum required by the Code; and that the use will serve the need for additional capacity at the existing school to serve the children in the District.

The Commission found that there were no parties present in support of or in opposition to this application.

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

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 1976 for the Indian River School District for an expansion of an elementary school based upon the record made during the public hearing and for the following reasons:

- 1) This is the expansion of an existing elementary school that has been in its present location for many years. Its existence predates the Sussex County Zoning Code.
- 2) The use as a school is a public use that is beneficial to the residents of Sussex County.
- 3) The expansion of the school under this conditional use will not adversely affect the neighboring properties, roadways or community.

- 4) The Indian River School District has stated that this expansion is necessary to serve the growing population of families within the District.

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 stated, and with the following condition:

A. This recommendation for approval is subject however to the condition that the Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion carried 5 – 0.

**Conditional Use #1977 – Matthew T. Favinger**

Application of **MATTHEW T. FAVINGER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a doctors office to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8,276 square feet, more or less, lying northwest corner of Route 30 (Gravel Hill Road) and Horseshoe Drive west of Route 24 (John J. Williams Highway) (Tax Map I.D. #2-34-32.00-9.00).

The Commission found that the Applicant submitted a survey/site plan with the application.

The Commission found that on September 30, 2013 DelDOT commented that a traffic impact study is not recommended, and that the current Level of Service “C” of Gravel Hill Road will not change as a result of this application.

The Commission found that on December 9, 2013 the County Engineering Department Utility Planning Division commented that the site is located in the Town of Millsboro growth and annexation area; that the proposed doctor’s office will be served by an on-site septic system; that conformity to the North Coastal Planning Study will be required; that the parcel is not in an area where the County will provide sewer service; that the Applicant should contact the Town of Millsboro for sewer related information; and that a concept plan is not required.

The Commission found that Matthew T. Favinger was present and stated in his presentation and in response to questions raised by the Commission that he is an Audiologist and his practice creates minimal office use; that he typically will have only eight (8) patients per day; that the site was previously used as a Doggie Day Spa, and previous to that was used for a dentist office; that parking already exists and was adequate for the previous business uses; that the existing ground sign is adequate in size; that the existing wall sign is adequate in size; and that business hours will be Monday through Friday from 8:30 a.m. to 4:30 p.m.

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. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 1977 for Matthew T. Favinger for a doctor's office based upon the record made during the public hearing and for the following reasons:

- 1) This property was previously used as a dental office and most recently as a pet spa.
- 2) There should be no adverse impact on area roadways or neighboring properties.
- 3) This Application shall be subject to the following conditions:
  - A. The hours of operation will be from 8:30 a.m. to 4:30 p.m. Monday through Friday.
  - B. One (1) ground sign shall be permitted, no greater than 32 square feet per side, and may be lighted.
  - C. The Final Site Plan shall be subject to the review and approval of the staff.

Motion by Mr. Johnson, 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 stated. Motion carried 5 – 0.

#### **Change of Zone #1739 – Vance Phillips**

Application of **VANCE PHILLIPS** to amend the Comprehensive Zoning Map of Sussex County from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 16,150 square feet, more or less, lying northwest corner of U.S. Route 13 and Route 24 (Tax Map I.D. # 3-32-1.08-39.00).

Mr. Ross announced that he would not be participating in this public hearing.

The Commission found that on January 7, 2013 DelDOT provided comments referencing this parcel and three (3) other parcels in consideration of a rezoning to CR-1 Commercial Residential; that the Department comments acknowledged that no use has been specified for the land to be rezoned; that they presently cannot predict the site's trip generation with enough accuracy to make a traffic impact study useful; and that they are willing to postpone a decision on their requirement for a traffic impact study until the subject land has been rezoned and a site plan has been developed for it.

The Commission found that on December 9, 2013 the County Engineering Department Utility Planning Division provided comments referencing that this site is located in the Western Sussex – Laurel Growth Area; that an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Dean Campbell, Esquire, was present on behalf of the applicant and stated in his presentation and in response to questions raised by the Commission that the rezoning is proposed to bring the property into compliance with the other three corners of the intersection of Route 13 and Route 24; that the southwest corner of the intersection is zoned C-1 General Commercial and is improved by an auto repair facility; that the northeast corner of the intersection is C-1 General Commercial and is improved by an auto sales and repair facility and a motel; that the southeast corner of the intersection was just recently rezoned from AR-1 and C-1 to CR-1 Commercial Residential for a proposed convenience store and gas filling facility; that the property to the west, on the north side of Route 24, aka 4<sup>th</sup> Street, is zoning AR-1 with an existing auto parts store that has existed at this location for many years; that the 2008 Comprehensive Land Use Plan indicates that the site is located in a Town Center District, a growth area; that the property is improved by a single family dwelling that is a rental and has a home occupation for a Palm Reader; that there should be no adverse impact on surrounding property values; that the rezoning may enhance the values; that any use of the property shall be subject to DeIDOT; that the site is not served currently with central water or sewer; that there is no intended change in use at this time; that the rezoning complies with the Comprehensive Plan; and that the majority of the commercial uses of the intersection and area have been in existence since prior to the establishment of zoning.

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. Burton, and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0. Mr. Ross did not participate in public hearing.

**Subdivision #2013012 – John and Beverly Starr**

Application of **JOHN AND BEVERLY STARR** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 2.29 acres into 2 lots, and a waiver from the street design and forested buffer requirements, located east of Route 5, approximately 800 feet south of Road 231 (Tax Map I.D. #2-35-7.00-156.00 and 158.00).

Mr. Abbott advised the Commission that a waiver from the forested buffer requirements is not required since the subdivision only contains 2 lots and that buffers are required for subdivisions of more than 4 lots.

Charles Adams, Surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a septic site evaluation has been completed and sent to DNREC for approval; that the site is suitable for a gravity fed system; that the site is near Milton; that the parcel has been owned by five previous owners; that the site was originally two tracts at one time and that the two parcels were combined into one parcel; that both of the lots will be for residential use; that the owner is proposing to create a 50-foot easement on the northern portion of the site; that the applicant is requesting a waiver from the street design requirements since only two lots are proposed; that both of the lots exceed 32,670 square feet (0.75 acre); that only one entrance is proposed; and that the plan has not been submitted to DelDOT for approval yet.

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 approval of Subdivision #2013 – 12 for John and Beverly Starr based on the record made during the public hearing and for the following reasons:

1. 2 lots on 2.29 acres is less than the maximum allowable density in the AR-1 Zone.
2. The lots will be served by individual wells and septic systems.
3. But for the location of the road, this application could be approved without a public hearing.
4. The subdivision will not adversely affect neighboring properties or roadways.
5. The application meets the requirements of the Sussex County Planning and Zoning Commission.
6. Final Site Plan approval is required from the Planning and Zoning Commission.

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

#### OTHER BUSINESS

#### **Agricultural Preservation Districts** Discussion



Mr. Robertson advised the Commission that he has reviewed the State Statute concerning Agricultural Preservation Districts; that there is nothing written that requires a public hearing; that the Commission has always held a public hearing on these applications; that advertising of public notices is not paid for by the applicant; that the County bares the cost of advertising these applications; that Agricultural Preservation Districts need to be approved by 2 of the following Boards: Delaware Agricultural Lands Preservation Foundation, Sussex County Farmland Preservation Advisory Board, and/or the Sussex County Planning and Zoning Commission; and that it seems that the Commission can review and act on these applications as an Other Business Item.

It was the unanimous consensus of the Commission that Agricultural Preservation District applications be reviewed as Other Business Items on a regular Agenda of the Commission.

**George & Nancy Dodd**

Lot on 50' Easement – Road 321

Mr. Abbott advised the Commission that this is a request to create a 2.0 acre parcel with access from a 50-foot easement off of Road 321; that the owner is proposing to create the 50-foot easement over an existing lane; that the residual lands will contain 124 acres, more or less, and has road frontage along Road 321; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

**Gary & Tracy Chorman**

Lot on 50' Easement – Road 264

Mr. Abbott advised the Commission that this is a request to create a 1.50 acre parcel with access from a 50-foot easement; that the owner is proposing to extend an existing 50-foot easement to serve as access to the parcel; that the Commission approved the existing 50-foot easement in February 2006; that the residual lands will contain 11.33 acres, more or less; that DeIDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Meeting adjourned at 7:23 p.m.