



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 13, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 13, 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. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of November 29, 2007 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/U #1707 – application of **THE KEITH CORPORATION** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail store and mini-storage to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 9.47 acres, more or less, lying west of U.S. Route 13, 450 feet north of Route 46 (Elks Road).

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

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to defer action for further consideration. 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, STORAGE 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.

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

PUBLIC HEARINGS

C/U #1713 – application of **KEITH SMITH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for commercial storage buildings to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.2278 acres, more or less, lying north of Route 17, 200 feet west of Road 382 (Route 20) at Roxana.

The Commission found that prior to the meeting the Applicant submitted an Exhibit Booklet, which contained a survey of the site, photographs of the buildings on the site, a deed, the DelDOT Support Facilities Report, a statement explaining the application, and proposed Findings of Facts.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Hammonton loamy sand and Mullica mucky sandy loam; 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 area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that the Applicant will be required to follow State sediment and stormwater program guidelines.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is not capable of being annexed into a County operated sanitary sewer district; that if and when the County provides sanitary sewer service, a connection to the system will be required; that the County does not have a schedule at this time to provide sewer service; and that a concept plan is not required.

The Commission found that a letter of opposition was received from Paul A. Trionfo expressing his opposition to the change from Agricultural Residential to Commercial; questioning if the Applicant has been paying taxes on the existing buildings; that the Applicant has been renting the buildings; that the property has been for sale; that approval of this application would open the property up to any amount of day and night activities, noise and traffic congestion.

The Commission found that Keith Smith was present with Shannon Carmean, Attorney, and stated in their presentations and in response to questions raised by the Commission that the application was filed to convert four (4) storage buildings into four (4) commercial storage buildings for contractors; that one building on the site has historically been used for the sale of antiques, an upholstery business, an office, retail sales, and originally as a gas station; that no additional buildings are proposed at this time; that the Applicant purchased the building for storage for his plumbing business; that the use is compatible with the neighborhood and surrounding uses; that the site is in close proximity to an antique store, a custom countertop business, a gift shop, etc.; that the Comprehensive Plan Update references that the site is in a Low Density District which references providing for a full range of agricultural activities and to protect agricultural lands as one of the County's most valuable natural resources from the depreciating effect of objectionable, hazardous and unsightly uses; that the Update also references that the District provides for low-density single-family residential development, together with such churches, commercial, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings; that the guidelines for non-residential use in the Low Density District provides that the predominant use in this District will continue to be agriculture and agricultural related uses; that industrial uses that support or depend on agricultural and forest products are also appropriate; that limited retail business uses for convenience shopping and District related services will also be appropriate; that the existing buildings are in good condition and not unsightly and are in character with the area; that they anticipate no negative impact on the neighborhood; that the storage buildings will be leased out and can be divided into 4 to 12 units; that DelDOT did not recommend a traffic impact study; that the maximum number of units would be 12 within the storage buildings; that normal business hours would be from 7:00 a.m. to 7:00 p.m.; that there is presently a centralized dumpster on the site; that a violation was received for conversion of the buildings from personal to commercial use; that the Applicant immediately applied for the Conditional Use once he found out that he was in violation; that no retail sales will be permitted from the storage buildings; that no manufacturing is proposed; that no outside storage is proposed; that the non-conforming building with carport are used as an antique store and upholstery shop; that the shed is utilized for storage of upholstery material; and that the garage is used by an blacksmith artist.

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. Gordy and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1714 – application of **BERNARD DERA** to consider the Conditional Use of land in a GR General Residential District for a multi-family dwelling structure (4 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County,

containing 32,653 square feet, more or less, lying west of Route 357 (Cedar Neck Road) and north of Assawoman Canal.

The Commission found that prior to the meeting the Applicant submitted an Exhibit Booklet which contained an introduction, a copy of the deed, a site plan, an aerial site plan, photographs of nearby uses, a front elevation of the proposed building, and proposed Findings of Facts.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Brockatonorton-Urban land complex and Downer loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that a portion of the property is in a FEMA Flood Zone "AE"; that it may not be necessary for any off-site drainage improvements; that the Applicant will be required to follow State sediment and stormwater program guidelines; and that no tax ditches are affected.

The Commission found that Bernard Dera was present with John Sergovic, Attorney, and Susan Frederick, Architect, and that they stated in their presentations and in response to questions raised by the Commission that the lot could not be subdivided due to its triangular shape; that the site is zoned GR General Residential; that the site is located within the Environmentally Sensitive Developing Area; that the site can be served by County sewer service; that the Comprehensive Plan Update recommended a density of 4 units per acre; that the Sussex Shores Water Company has verbally committed to extend water service subject to the approval of the Public Service Commission; that the site is across the Assawoman Canal from Ocean View; that the use is compatible with the neighborhood; that the uses in the neighborhood include single-family homes, offices and retail, and manufactured homes; that the site is in close proximity to some multi-family projects; that there is a mixture of residential uses in the area; that the building has been located to create a lesser impact on the neighboring dwellings to allow for privacy for both the neighbors and the units; that the Conditional Use is appropriate for the site because such residential development is appropriate in areas where central sewer is available; that sewer capacity is available; that two (2) 6-inch laterals exist to serve the site; that the rear area of the lot is wooded; that the units are proposed near the front of the site so as not to impact the view toward the Canal from a neighboring property; that wetlands have not been delineated since the site is upland of the Assawoman Canal; that fencing exists on the site; that a landscape plan can be submitted with the site plan if the use is approved; that the Applicant originally intended to divide the site to provide a lot for his daughter; that if the site could be subdivided there is enough square footage for 3 lots, but there is not adequate frontage; that they are requesting 4 units to allow for assistance in the cost of developing the site; that the proposed building will contain 2 stories maximum; that they have no objections to a restriction or condition limiting the height of the building to 2 stories; that they have not had any direct contact with DelDOT

relating to the entrance location; and that the site is approximately 70-feet from the waterline of the Canal.

Mr. Kautz advised the Commission that Cedar Neck Road is a major collector road.

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

The Commission found that Bob Dera, John W. Lewis, and Robert Deith were present and spoke in opposition to this application and expressed concerns relating to loss of trees; that DelDOT has not granted entrance location approval; debris; storage of debris on State lands; the lack of adequate space on the site for the improvements; that the neighbors do not want central water; that townhouses will change the character of the area; traffic and traffic safety; discrepancies in surveys; and negative impacts on property values.

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

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration and to leave the record open for comments from the County Engineering Department Utility Planning Division on the availability of sewer. Motion carried 5 – 0.

C/Z #1631 – application of **GARRETT W. HERRING (HERRING REAL ESTATE, LLC)** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying southeast of Route 24, 1,000 feet northeast of Love Creek, to be located on 1.0 acres, more or less.

The Commission found, based on comments received from the Office of State Planning Coordination, that their Office waived the requirement that the Applicant apply through the PLUS process; and that their Office feels that the proposed project is in keeping with the adjacent proposed and existing land use activities.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “E” of John J. Williams Highway will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Downer sandy loam and Hurlock sandy loam; 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 any off-site drainage improvements; and that the Applicant will be required to follow recommended State sediment and stormwater program guidelines.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated and maintained sanitary sewer and/or water district; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Area Study will be required; that the County is currently conducting a planning study for the North Coastal Sussex Area; that the study is scheduled to be completed in 2008; that the County has no schedule to provide service to this project; and that a concept plan is not required.

The Commission found that Garrett Herring was present and stated in his presentation and in response to questions raised by the Commission that he and his brother received approval for a Conditional Use on the property for a Chiropractic Office in 2001; that his brother passed away within a year of their opening the business; that he maintained the business along with his practice in Milford until 2006; that he intended to sell the property with hopes of selling it to another professional and was unable to sell the property since the Conditional Use was limited to a chiropractic office only; that he has applied for rezoning to Neighborhood Business, the same zoning as the neighboring properties to the east of the site; that he has had no problem with traffic to and from the site; that parking exist to the rear of the building; and that the use is compatible with the uses on the south side of Route 24.

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

Subdivision #2006-46 – application of **McDANIEL CONSTRUCTION CO.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 17.496 acres into 17 lots, located west of Road 533, 550 feet south of Route 18 (Delaware Route 404).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; and that to date, the applicant has not provided supporting statements or restrictive covenants for review.

The Commission found that Shawn Stewart, Realtor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that there are no wetlands located on the site; that there are no known historical features on the site; that due to sandy soils, the site is not conducive to farming and is no longer farmed; that the permitted dwelling types will be stick-built homes only and that modular and manufactured homes will not be permitted; that the minimum size of the dwellings will be 1,300 square feet; that there is a need for affordable type housing in the area and the homes will sell for \$180,000.00 to \$230,000.000; that the soils work has been done and the septic systems should be standard systems; that Jay Duke

performed the soil work; that the streets will be private and built to Sussex County specifications; that a homeowners' association will be responsible for the maintenance of the streets; that the project will be an asset to area property values; that the site adjoins farm land and the required 30-foot buffers have been provided; that the project will not have a negative impact on the local school district; that the project will be marketed for first time home buyers; that there is adequate room for a school bus shelter to be located on Lot 17; that the restrictive covenants will be submitted for review and approval; that the storm water management area is located in the lowest site on the parcel and there is a culvert at this location for an outfall; that the storm water management area could be relocated if required to be; and that the applicant has not decided on the type of and size of trees for the proposed buffer.

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.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC and for the submittal of restrictive covenants. Motion carried 5 – 0.

Subdivision #2006-47 – application of **SHELLEY A. DESILVA** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 5.5179 acres into 2 lots, and a waiver from the street design requirements, located west of Road 62, 720 feet southeast of Road 451.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; that DelDOT has issued a Letter of No Objection for the entrance locations that was received on June 26, 2006; and that a letter in opposition to this application was received from Thomas and Amanda Rosenthal.

The Commission found that Shelley DeSilva Foskey was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that she is requesting 1 additional lot; that the parcel originally contained 11 acres and that she sold 5 acres; that the land was offered to the adjoining property owner first; that the proposed parcel could be for her son and that it could be sold; that a 4.31 acre parcel is proposed; that she is not opposed to a restriction prohibiting further subdivision; that the existing dwelling parcel has a LPP septic system; that the proposed parcel should be able to handle the same type of system; that she is requesting a waiver from the street design requirements; that there is a cemetery on the lot with the existing dwelling; that the existing dwelling is classified as a type C dwelling and was erected in 2002; that the dog kennel will be relocated; and submitted 4 letters from adjoining property owners in support of the application.

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. Gordy stated that he would move that the Commission grant preliminary and final approval of Subdivision #2006 – 47 for Shelley A. DeSilva based upon the record and for the following reasons:

1. The Subdivision is in compliance with the Subdivision Code.
2. The Subdivision only creates one additional lot, and will not adversely affect neighboring property owners.
3. This approval is subject to the following conditions:
 - A. Only one new lot shall be created. No further subdivision shall be permitted.
 - B. A waiver from the County's street design requirements shall be granted.
 - C. The dog kennel across the new lot line shall be removed.
 - D. The location of the entrance to the new lot and the remaining lands shall be subject to the review and approval of DelDOT.
 - E. Access to the existing cemetery on the smaller lot shall be provided.

Motion by Mr. Gordy, 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.

APD #2007-2 – application of **J. E. WALLS, JR., TRUST** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for two (2) parcels of land totaling 267 acres, more or less, located on both sides of Road 528 (Emory Walls Road) and 1,000 feet north of Route 18 (a.k.a. Route 404 Seashore Highway), for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that this property contains 30 acres of cropland, 203 acres of reforested woodland and an additional 34 acres containing ditches, ponds, and roads.

The Commission found that Lynn Moore, a Real Estate Consultant, was present on behalf of the owners of the property and stated that the Walls family has owned the property in excess of 100 years; that the site has been reforested; that the family plans on continuing the use and to dedicate the property to agricultural preservation.

The Commission found that Edwin Odor, an adjoining landowner, was present in support of this application and stated that his property has also been dedicated to agricultural preservation and that he supports 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.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to forward this agricultural preservation district to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the district be approved since the use is consistent with agricultural lands in the area and since it is proposed for agricultural preservation. Motion carried 5 – 0.

Meeting adjourned at 8:25 p.m.