



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF DECEMBER 15, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 15, 2005 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Acting Chairman Wheatley presiding. The following members of the Commission were present: Mr. Wheatley, Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Burton with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Mr. Robertson advised the Commission that Bruce Rogers, Attorney, had submitted a letter requesting that the application of Michael Orndorff be withdrawn due to title questions.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as corrected by acceptance of the withdrawal of the Orndorff application.

OLD BUSINESS

C/Z #1592 – application of **J & Y PARKER FAMILY, L.P.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying southwest of Road 334 (a.k.a. Route 20), 450 feet southeast of Road 333, and being more particularly described as Lots 76, 77, and 78 of the Houston Acres Subdivision, to be located on 3.52 acres, more or less.

The Commission discussed this application which has been deferred since November 17, 2005.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1592 for J & Y Parker Family, L.P. for a change of zone from AR-1 Agricultural Residential to C-1 General Commercial based upon the record made at the public hearing and for the following reasons:

- 1) The property that is the subject of this application is part of a larger tract of land containing C-1 General Commercial uses and zoning.
- 2) The basis for this change of zone is to increase a limited portion of the existing

- C-1 District so that the district is consistent with the lot boundaries of the Applicants property.
- 3) This application will not have any effect on traffic since it only re-designates the location of existing C-1 District lines.
 - 4) The neighborhood and other adjacent and surrounding properties will not be adversely affected given the relative small size of the property that is the subject of this application.

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- 5) C-1 zoning is appropriate since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping and personal and miscellaneous service activities located along arterial roadways where a general mix of commercial and service activities now exists.

Motion by Mr. Smith, seconded by Mr. Johnson and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0 – 1. Mr. Burton did not vote on this application since he was not present during the public hearing.

PUBLIC HEARINGS

C/U #1632 – application of **TIMOTHY AND VICKIE O’HARE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a wood shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 34.9557 acres, more or less, lying southeast of Route 54 (Omar Road) across from Road 343.

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 Route 54 (Omar 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 Evesboro loamy sand, Klej loamy sand, Pocomoke sandy loam, Rumford loamy sand and Woodstown sandy loam; that the Evesboro, and Rumford soils have slight limitations for development; that the Klej and Woodstown soils have slight to moderate limitations; that the Pocomoke soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Klej, Pocomoke and Rumford soils are considered of Statewide Importance; that the Pocomoke and Woodstown soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that the soils report references the entire parcel and that according to the Soil Map the area being utilized for the Conditional Use is primarily Klej soils.

The Commission found that Timothy O'Hare and Vicki O'Hare were present on behalf of their application and stated in their presentation and in response to questions raised by the Commission that they operate their home building construction office from the site and would like to utilize their wood shop for construction of custom cabinetry, furniture,

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entertainment centers, and custom closet materials for the homes that they build; that the closest residence is approximately 1,000 feet from the shop; that their typical business hours are from 7:00 a.m. to 5:00 p.m. Monday through Friday and occasionally on Saturday from 7:00 a.m. to Noon; that they do not propose to erect a sign; that they live on the site; that they may have 4 to 5 deliveries per month; that they may have 2 to 5 employees on the site on a rainy day; that adequate space is available on the site between the house and shop for parking; and that security lighting already exists.

The Commission found that the Applicants submitted a letter in support from G. Matt Matthews, a property owner that lives directly across from the entrance.

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1632 for Timothy and Vickie O'Hare to operate a wood shop business based upon the record made at the public hearing and for the following reasons:

- 1) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 2) The operation of a wood shop business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.
- 3) This recommendation for approval is subject to the following conditions and stipulations:
 1. All cars, trucks and trailers associated with the wood shop business shall only be parked in the designated parking area as shown on the site plan.
 2. No outside storage, except for trailers, shall be allowed on the premises.
 3. The hours of operation of the business on this site shall be limited to 7:00 a.m. to 4:00 p.m. Monday through Friday and 7:30 a.m. until 12:30 p.m. on weekends.
 4. The site plan shall be subject to approval of the Planning and Zoning Commission.

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 stated. Motion carried 5 – 0.

C/U #1633 – application of **MICHAEL ORNDORFF** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (16 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.1 acres, more or less, lying northeast of Road 358 (Sandy Cove Road) and northwest of Road 357 (Cedar Neck Road).

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This application was withdrawn prior to the meeting.

C/U #1655 – application of **EDWARD CHIASSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a gift shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 38,653 square feet, more or less, lying northwest of Route 54 across from Road 394A and ¼ mile southwest of Route 20.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “E” 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 Osier loamy sand and Rumford loamy sand; that the Rumford soils have slight limitations for development; that the Osier soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that both soil types are considered of Statewide Importance; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is not located in a County operated or maintained sanitary sewer and/or water district; that the project is adjacent to the Fenwick Island Sanitary Sewer District; that conformity to the South Coastal Area Planning Study will be required; that the project is within the West Fenwick Planning Area; that the Engineering Department currently has no schedule to provide service to this area; that based on sewer allocation the proposed gift shop cannot exceed 11,000 square feet; and that a concept plan is required.

The Commission found that Edward Chiasson was present with Tasha Stevens, Attorney, and that they stated in their presentations and in response to questions raised by the

Commission that the Applicant has owned and lived on the site for approximately 30 years; that a previous application for rezoning to C-1 General Commercial was denied and that it was suggested by the Commission and the County Council that they reapply for a Conditional Use; that a gift shop is proposed for the sale of gifts and nautical items; that adequate parking area is available on the site; that the neighboring properties are improved by a water tower, a carpet shop, an auto repair, and offices; that business hours are proposed to be from 8:00 a.m. to 6:00 p.m. 7 days per week during the summer season; that in the off season the business will be open 4 days per week; that the Applicant would like to erect one (1) ground sign and install a wall sign on the building; that one delivery per week is anticipated; that the maximum number of employees shall

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not exceed two (2); that he would like to display some of his nautical items outside between the house and Route 54 and near the sheds; that the sheds will be utilized for some of the retail sales and display; and that some of the items that he sells include replica lighthouses with heights from 4-feet to 20-feet.

Mr. Lank advised the Commission that the shed closest to the Brasure property may have to be relocated to conform to the setback requirements.

Mr. Lank advised the Commission that a commercial entrance permit will be required from DelDOT.

The Commission found that Ms. Stevens submitted copies of some photographs of the area and site.

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.

There was a consensus of the Commission that they were concerned about outdoor display locations.

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

C/Z #1584 – application of **ROBERT WILLIAMSON** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Seaford Hundred, Sussex County, land lying west of Road 532 (Camp Road) 0.4 mile south of Route 18, to be located on 41,009 square feet, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Road 532 may change to a Level of Service "B" based on the proposed rezoning.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Kenansville loamy sand and Woodstown sandy loam; that the Evesboro and Kenansville soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Evesboro soils are considered of Statewide Importance; that the Kenansville and

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Woodstown soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the Office had received four (4) letters in support of this application from Bruce A. Henry of Delmarva Builders, Inc., Scott Smith, John A. McFarland of American Water Well Systems, Inc., and Irene King.

The Commission found that Robert Williamson was present and stated in his presentation and in response to questions raised by the Commission that he is the owner of Bobby's Plumbing; that he provides a service for the area; that his company has two (2) work trucks (pickups with utility bodies) for plumbing and service work in the area; that all of the work is actually performed off-site; that the existing storage building is used for his personal use and for storage of materials relating to the business; that he stores some supplies for emergency calls; that he has one (1) employee; that his normal business hours are from 8:00 a.m. to 4:30 p.m.; that a typical weekend activity would be for an emergency; that all deliveries are by step van; that there is minimal noise; that he does not do any manufacturing on the site; that the area around the site is commercial; that he has lived on the site since 1989; that there are several business uses, mostly small contractors, in the area; that he does some model train repairs for friends as a hobby; and that he does work on his personal race car.

The Commission found that John McFarland was present in support of the application and stated that the Applicant cannot expand his business due to the existing improvements; that other neighbors will be applying for their business uses; that all of the neighbors operating business uses on their lots live on site; that the Applicant maintains a clean and neat business site; and that he has no objections to the rezoning.

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. Wheatley stated that he would prefer a Conditional Use for this area.

Mr. Gordy stated that he would move that the Commission recommend denial of C/Z #1584 for Robert Williamson, seeking a Change of Zone from AR-1 Agricultural Residential to C-1 General Commercial based on the record made at the public hearings and for the following reasons:

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- 1) I do not believe that the application is consistent with the character of the surrounding property. All of the adjacent property is zoned AR-1, with only one exception. The other property that was recently rezoned to C-1 was approved over the Commission's recommendation for denial.
- 2) Although the Applicant stated that the intended uses are limited, a Change of Zone to C-1 would potentially allow more intensive uses that are not compatible with the surrounding area.
- 3) If the Applicant should choose to reapply for a Conditional Use I recommend that the application fee be waived and that the application be expedited.

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

C/Z #1585 – application of **BAYVILLE SHORE ASSOC. I, L.L.C.** to amend the Comprehensive Zoning Map with an Ordinance to amend Condition No. 12 of Ordinance No. 1122 to increase the density from 332 units to 342 units (10 additional units) in the Bayville Shore HR-2/RPC High Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 2,000 feet north of Route 58B, 2,500 feet north of Route 54 and south of Little Assawoman Bay, to be located on 91.88 acres, more or less.

The Commission found that the Applicants had provided an Exhibit Booklet prior to the meeting. The Exhibit Booklet contained a copy of the application for zoning amendment, a site plan proposal, a site location map, a tax map, a copy of Ordinance No. 1122 with conditions, a proposed Ordinance, a copy of the DelDOT Support Facilities Report, an aerial view of the site, a copy of Soil Map #78, a drainage and flooding statement, a statement from Sergovic & Ellis, P.A. explaining the application and its compliance with the Zoning Ordinance and the 2002 Comprehensive Plan Update, and a proposed Findings of Fact.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Bayville 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 are mapped as Evesboro loamy sand, Fallsington sandy loam, Fallsington loam, Keyport fine sandy loam, Rumford loamy sand, Tidal marsh, and Woodstown sandy loam; that the Evesboro and Rumford soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Keyport soils have slight to severe limitations; that the Fallsington and Tidal marsh soils have severe limitations; that the Applicant will be required to follow recommended

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erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Fallsington, Keyport and Rumford soils are considered of Statewide Importance; that the Fallsington and Woodtown soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Fenwick Island Sanitary Sewer District; that wastewater capacity is available; that the current system connection charge rate is \$3,640.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer during the sewer concept plan approval process; that conformity to the South Coastal Area Planning Study will be required; and that a concept plan is required.

The Commission found that Coleman Bunting was present with Shannon Carmean, Attorney, and Jack Daggett, Sales Manager, and stated in their presentations and in response to questions raised by the Commission that they propose to amend Condition #12 of Ordinance NO. 1122 by adding 10 additional units in place of 40 storage units; that the site is in the Environmentally Sensitive Developing Area; that there should be no adverse impact on the community; that the 10 units will enhance the community, rather than the existing and proposed storage units; that the storage units are under utilized by the residents in the community; that the condominium documents advise the unit owners that the applicant may apply for expansion of the site; that presently the area of the storage area is under separate ownership and will be combined with the project; that they originally proposed to build 105 storage units; that they only built 37 units; that only 6 units have been leased; that they proposed to relocate the 37 units to the westerly side of the site and build two condominium buildings, one with 6 units and one with 4 units; that 30 parking spaces will be set aside for the units; that the units will front over looking the tennis courts; that amenities are provided throughout the project and include a pool and clubhouse, tennis courts, basketball court, piers, tot-lots, and walking trails; that the units will be similar in construction to the units existing in the project; that fencing and

landscaping exists along Lot 1 of Swann Point; that the storage building will be relocated to an area already approved for storage buildings; that originally they thought that the storage units would provide a service for the residents in the project; that over the last 4-years there has been no interest in the storage units; that 90% of the units in the project have garages or storage areas; that a letter was sent to the residents to explain the proposal and meetings were held with homeowners; that it appeared that they was no objections to the removal of the storage units; and that Homeowners Association fees will be modestly reduced since 10 additional uses will be added into the fee system.

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The Commission found that Ms. Carmean provided the Commission with a copy of a typical letter sent to all of the residents and a copy of a Bayville Shores Community Newsletter for the Spring of 2005, which included an article about the proposed 10-unit project.

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. Gordy stated that this expansion should be an asset to the community; that the project is well built; and that the present use of this portion of the site is an eyesore.

Mr. Wheatley agreed and added that he is not opposed to this application, but it does bother him that they are amending a previous decision, that the Commission does not want to establish a precedent, and that stipulations can be placed on the approval, if the use is approved.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1585 for Bayville Shore Assoc. I, L.L.C. to amend Condition No. 12 of Ordinance No. 1122 to increase the density from 332 units to 342 units (10 additional units) based on the record of the public hearing and for the following reasons:

- 1) The property was intended by the developer to be used for storage units by the homeowners, but has been underutilized.
- 2) The proposed development is compatible with the community, as it includes an additional 10 units in place of forty storage units.
- 3) Bayville Ministorage, LLC shall convey lands consisting of the storage units to Bayville Shore Assoc. I, L.L.C. so that it may become part of the proposed expansion.
- 4) The amendment to Condition No. 12 of Ordinance No. 1122 will have no adverse or detrimental impact on neighboring areas.

- 5) The proposed development will have no significant impact upon traffic in the area.
- 6) It should be noted that no passive or active amenities will be compromised by amending this Ordinance. We are not losing any open space.
- 7) My recommendation is due to the consideration of this being a unique change of use within the RPC and viewing this change as a positive change and elimination of an under utilized asset by the RPC.
- 8) This recommendation is subject to the following conditions:
 1. The maximum number of units in the expansion shall not exceed 10 units.
 2. The Final Site Plan shall be subject to review and approval by the Planning and Zoning Commission.

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

SUBDIVISION #2005-9 – application of **JOHN WAYNE HARRIS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 8.66 acres into 3 lots, located south of Road 231, 600 feet east of Road 226.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since it is a minor subdivision of the residual acreage of the parcel and since no streets are being created.

The Commission found that John Wayne Harris was present and stated in his presentation and in response to questions raised by the Commission that he proposes to create 3 lots; that he had already created 4 lots as a minor subdivision; that all of the lots are for residential use; that 1 lot is proposed to be conveyed to a family member and 1 lot is proposed to be conveyed to a neighbor; and that the 5.725 acres will be retained with his home.

The Commission found that Tom Davis, a neighbor, was present in support and stated that he is the neighbor interested in buying one of the lots.

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. Burton, seconded by Mr. Johnson and carried unanimously to approve this subdivision of 3 lots since there should be no negative impact on the roadways or property in the area. Motion carried 5 – 0.

SUBDIVISION #2005-10 – application of **STAR PARTNERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 56.07 acres into 2 lots, located east of Road 579, 1,920 feet north of Route 18.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since it is a minor subdivision of the residual acreage of the parcel and since no streets are being created.

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The Commission found that Elwood Hunsberger was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this is the last proposed subdivision of the parcel; that the same style of homes are proposed on these 2 lots; that all of the lots are residential; that 7 of the existing 14 lots are improved with dwellings; that they have no plans for the remaining acreage at this time; and that lots 7 and 8 are being retained for possible future access to the acreage from Road 579.

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. Gordy stated that he would move that Subdivision #2005-10 be approved since the subdivision meets the purpose of the Zoning and Subdivision Ordinances in that it promotes the orderly growth of the County; since the land is zoned AR-1 which allows for a low density application with 2 lots, each containing more than one acre of land, and since the application will not have an adverse effect on the neighborhood.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of this subdivision for the reasons stated. Final approval shall be subject to the staff receiving an entrance approval from DelDOT. Motion carried 5 – 0.

Meeting adjourned at 8:03 p.m.