



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 15, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 15, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

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

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of December 8, 2011 as amended. Motion carried 5 - 0.

OLD BUSINESS

Subdivision #2005-72 – application of **BAYWOOD, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 311.93 acres into 679 Lots (Environmentally Sensitive Developing District Overlay Zone), located northeast of Road 298, 3,950 feet southeast of Route 24.

Mr. Abbott advised the Commission that this is the final record plan for Phase 1 of the Bridlewood at Baywood Subdivision; that this application received preliminary approval for 597 lots on January 18, 2007 and the Commission granted one-year time extensions on February 20, 2008, February 18, 2009, January 20, 2010 and February 3, 2011; that Phase 1 contains 174 single-family lots; that the final record plan for Phase 1 complies with the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant final approval of Phase I of the Bridlewood at Baywood Subdivision. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1916 – application of **TIM ELDER** to consider Conditional Use of land in B-1 Neighborhood Business District for a hotdog / hamburger vendor to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 24,743 square feet, more or less, lying northwest corner of Shortly Road (Road 431) and Hardscrabble Road (Route 20).

The Commission found that the Applicant submitted a survey/site plan for review.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided a memorandum on December 13, 2011 which advises that the site is located in the Western Sussex Planning Area #5; that an on-site septic system is proposed to serve the site; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Tim Elder was present and stated in his presentation and in response to questions raised by the Commission that he currently proposes to use the hotdog cart temporarily while renovating the Workman's Store building; that he spent considerable of funds already and is hoping to create a little revenue while working on the store building; that he proposes to park the cart near the corner of the intersection to be more visible between the building and the parking area; that the cart is portable and will be stored indoors or behind the building when not in use; that he would like to be able to place picnic tables near the cart for convenience; that regular hours would be from 10:00 a.m. to 5:00 p.m., weather permitting, seven days per week; that he will have one employee; and that he would prefer to not have to abandon the use once the Certificate of Compliance is issued for the store building remodeling, whether the store is completed as retail, food service, or both.

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. Ross stated that he would move that the Commission recommend approval of C/U #1916 for Tim Elder for a hotdog/hamburger vendor based upon the record and for the following reasons:

- 1) The property is zoned B-1 Neighborhood Business, which permits small-scale neighborhood type businesses. This use is consistent with that zoning.
- 2) The proposed use is very limited in scope and will not adversely affect area roadways or properties.
- 3) With the proposed conditions, the use will be temporary, until the property is renovated.
- 4) This recommendation is subject to the following conditions:
 - A. The use shall be limited to a temporary hotdog/hamburger stand.
 - B. The hotdog/hamburger stand shall not be permanently located on the site, and shall be removed or relocated to the rear of the building when not in use.
 - C. The hours of operation shall be 10:00 a.m. to 5:00 p.m., seven days per week.
 - D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

- E. This Conditional Use shall automatically expire upon the issuance of a Certificate of Compliance/Certificate of Occupancy for any permanent structure on the property.

Motion by Mr. Ross, seconded by Mr. Smith, 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 #1917 – application of **ROSSEVELT DOMOND** to consider Conditional Use of land in AR-1 Agricultural Residential District for a beauty salon, barber shop, and spa to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 17,228.6 square feet, more or less, lying northeast corner Trussum Pond Road (Road 462) and Gordy Road (Route 70).

The Commission found that the Applicant submitted a survey/site plan for review.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided a memorandum on December 13, 2011 which advises that the site is located in the Western Sussex – Laurel Growth Area; that an on-site septic system is proposed to serve the site; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that DelDOT provided a Support Facilities Report on September 19, 2011 which advises that the Department has reviewed Trussum Pond Road and Gordy Road in this evaluation; that a traffic impact study was not recommended; that the current Level of Service “B” of Trussum Pond Road will not change as a result of this application; and that the current Level of Service “A” of Gordy Road will not change as a result of this application.

Mr. Lank provided copies of nine (9) letters in opposition to this application from Lane and Rebecca Joseph, Frank E. Ward, John and Janice Whitby, Robert M. Bowie, Marvin and Sharon Jones, Richard L. O’Neal, Trudy J. Murray, Paul and Brenda Harper, and Joseph and Virginia Patchett. The letters expressed concerns referencing that the Laurel area already has 20 plus beauty shops/barber shops and many more nail/tanning/massage spas; that it is not believed that there will be any benefit to the neighborhood or the Town of Laurel to change another residence into another such business; that this is a quiet neighborhood; that the residential neighborhood has grown by 14 new homes in one development along Trussum Pond Road and four new homes and homes under construction on Gordy Road; that they realize that traffic is being increased by the new homes; that this site is located on a high traffic intersection with a main access to U.S. Route 13, which is used frequently by emergency vehicles to respond to accidents and fires occurring on the southeast side of Laurel, and is also a main route to both the Laurel High School and Laurel Middle School for daily school buses; that the use will not be an improvement or an asset to this residential area; that there is not sufficient parking and sewer accommodation to support such a business; that the use will not enhance nor will it be in keeping with our mature, established agricultural residential area; that the subject property will not support such activity with existing sewer and parking issues; that parking issues relating to this property include vehicles back out from the site into traffic onto Trussum Pond Road, and instances of near

collisions involving vehicles turning onto Trussum Pond Road from Gordy Road with vehicles entering or leaving the site; that the residence on the site has been converted into three apartments; that when the three apartments were rented the tenants had trouble with their sewer system not being adequate for all units; that the proposed business will tax the sewer system even further; that noise is a concern; that there are other locations in the Laurel area that are zoned for such use; that residential property values may depreciate; that there are children in the area and safety is a concern; and that the parking layout proposed will require the vehicles to back out into Trussum Pond Road.

The Commission found that Roosevelt Domond was present and stated in his presentation and in response to questions raised by the Commission that the dwelling on the property is actually three apartment; that the tenants have caused some problems with trash, vehicles, etc.; that he plans on improving the building; that he does not want to be a nuisance and wants to be a good neighbor; that the existing parking causes vehicles to back out onto Trussum Pond Road; that he may fence the easterly property line similar to the fence on the northerly property line; that he anticipates two employees for the beauty shop and two employees in the barber shop; that he is not sure how many employees will be in the spa or if he will create the spa; that he is presently remodeling a part of the building; that the operating hours are proposed to be from 10:00 a.m. to 5:00 p.m. six days per week, Monday through Saturday; that he would like to erect a small unlighted sign; that he can place a screened dumpster to the rear of the building; that he understands that some of the neighbors do not see a need for the uses since there are other similar uses throughout the Laurel area, but he feels that life is competitive and it depends on the quality of the work performed; that he plans on retaining two apartments and converting the other into the shops; that he has replaced some plaster with dry wall; that when he purchased the property it contained three apartments; that the septic system is located to the northeasterly corner of the lot; that there are some small businesses in the general area, but not in the immediate area; and that a church is located in close proximity to the property.

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

The Commission found that Marvin Jones, a resident living across the street from the property, was present in opposition to the proposed uses, not the Applicant; that he cannot figure out how the parking layout can prevent vehicles from backing out into Trussum Pond Road; that neighbors believe that salons and spas will require more water and sewer than the three apartment, and added that the tenants have reported in the past that the septic has failed; that the previous owner converted the dwelling into apartments, not the Applicant; and that the site is not an appropriate location for the use.

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

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

C/U #1918 – application of **ANTHONY S. NERLINGER** to consider Conditional Use of land in MR Medium Density Residential District for a multi-family dwelling structure (2 Units) to be located on a certain parcel of land lying in Baltimore Hundred, Sussex County, containing 6,000

square feet, more or less, lying east of Ocean Drive across from Cove Road and being Lot 84 in Tower Shores Subdivision east of Route One.

The Commission found that the Applicant submitted a survey/site plan for review.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided a memorandum on December 13, 2011 which advises that the site is located in the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project based on their offices interpretation of Ordinance 508; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$4,697.00 per EDU; that the parcel is served with one 8-inch lateral (with a 6-inch cleanout stack) located approximately in the middle of the parcel's frontage along Ocean Road; that conformity to the South Coastal Area Planning Study 2005 Update will be required; and that a concept plan is not required.

Mr. Lank provided copies of letters in opposition to this application from Stacey Boehm-Russell, Bob Klopfenstein, Judy Marcus, and Ken Adams, jointly, and Judy and Joel Marcus, Raymond and Marian Leibfried, and Bob Klopfenstein, individually, expressing concerns about the public notice process, i.e. lack of notice, and requesting rescheduling of the public hearing for more participation; that the lot is currently a sand dune, and is located fully seaward of the building line, as set by the State DNREC; that the current condition of the lot is a large, very high and healthy dune that is protecting the homes directly behind it on Ocean Road, as well as the homes on Cove Road and even Route One from storm surges and flooding; that the plans indicate that the Applicant intends to remove and displace copious amounts of sand; that they are protesting construction of any building on this dune lot since the Sussex County Code provides in 115-189(C) that "no primary dune material may be removed or displaced, except that the driving of piling shall not be considered displacement of dune material. No material from the berm or beach may be removed or displaced prior to the completion of all buildings and structures on a given lot"; that the County Code is consistent with the FEMA definitions and guidelines, which reference that "Human alteration of sand dunes within V Zones is prohibited unless it can be demonstrated that such alteration will not increase potential flood damage. Sand dunes are important first lines of defense against coastal storms and can do much to reduce losses to inland coastal development. It can be assumed that any removal or other alteration of a sand dune will render the dune more susceptible to erosion and increase potential damages to structures behind that dune. Communities are advised to prohibit all alterations of sand dunes unless the applicant can submit engineering analyses that demonstrate that flood damages will not be increased prior to issuing any permits"; that there is no possible way that a legitimate engineering analysis could show that flood damage will not be increased if the sand dune on this lot is altered to accommodate the construction of any dwelling; that there have already been numerous occasions of storm surge flood damage to homes on both Ocean Road and Cove Road due to the construction on the dune lot directly south of Lot 84; Construction on Lot 84, because of its location at the corner would in fact be expected to cause far greater property damage from storm surges and flooding; that FEMA has set forth guidelines to minimize flooding and relies on Sussex County to enforce the guidelines; that the FEMA website references that nearly 20,000 communities across the United States and its territories participate in the National Flood

Insurance Program by adopting and enforcing floodplain management ordinances to reduce flood damage; that in exchange, the National Flood Insurance Program makes Federally backed flood insurance available to homeowners, renters, and business owners in these communities; that the ability of homeowners in Tower Shores to be eligible to get flood insurance depends on Sussex County being good stewards of FEMA guidelines; that the County has incorporated these guidelines into its regulations and residents expect the County to uphold its own regulations, i.e. 115-189(A) of the Sussex County Code references that "The purpose of this section is to assist in the preservation and restoration of the primary coastal dune, thereby contributing to the safety and welfare of the occupants of lands adjacent to and landward thereof to provide for construction control and land development measures for all new construction and substantial improvement occurring within the flood-prone districts, to limit the visual obstruction of beach and berm by structures erected thereon and to limit the encroachment of shadow on the beach by structures located adjacent thereto; that in 2010 a number of northeasters cut the beach down by up to 12 feet in front of this lot; there are concerns about the height of the building proposed; the residents do not want any more damage to their properties due to removal of the dune; the residents do not want to lose their flood insurance as a result of said damage; the residents want to preserve the value of their properties by keeping the total building height comparable to that of the neighborhood; that the proposed building plans consist of two dwellings, each with five bedrooms, with a potential occupancy of 10 people per dwelling or 20 total; that only one parking space per dwelling is proposed under each unit; that there is no additional street or lot parking in Tower Shores; that there should be a safety concern due to the narrowness of the streets in Tower Shores with people walking on the streets for access to the beach; that the proposed construction plans show the dunes being leveled and lowered, and the excess sand being pushed forward towards the ocean; that lowering the dune permits the 3-story dwelling to remain at the maximum height of 42 feet; that parking will be under the units thereby establishing a 4-story building; that the dunes on the site are 5' high next to Ocean Road and progress to 10' on the ocean side; that it is mathematically impossible to construct a 42' high structure the same height as other buildings without lowering the dune; that a person cannot see over the dune while standing on Ocean Road; that if the dunes are pushed forward towards the ocean, the first northeaster storm will completely wash the sand away; that the pushed dune sand will be too close to the ocean water line; that the impact of lowering the dunes can easily be seen by viewing the Four Winds Townhouses on the adjacent lot; that the dunes are completely gone; there is parking below the units; that a person can stand on Ocean Road and see the ocean under the Four Winds Townhouses; and that high ocean storm water continually goes under this building and onto Ocean Road, and under Atlantis II Townhouses.

The Commission found that Tony Nerlinger was present and stated in his presentation and in response to questions raised by the Commission that in response to the letters in opposition and in review of the site plan, he is proposing to construction a building similar to the condominium building immediately adjacent to the south side of the site; that the elevations of the construction drawings will allow him to build above the existing dune; that DNREC has jurisdiction for the dune line; that just beyond the proposed deck is a dune approximately 6' high; that he has no intent to remove the sand from the property; that he acknowledges that Jeff Shockley of the Planning and Zoning staff will have to review the project for compliance with County Flood Zone regulations; that he would agree to relocate portions of the sand, with the blessing of the DNREC for the improvement of Tower Shores and the adjacent condominium building; that the

ocean side of the lot, not the street, is considered the front of the lot; that he has submitted plans to DNREC for consideration; that John Shade, the builder for the adjacent condominium building, will be the builder; that he is planning on retaining one of the units; that restrictive covenants will be provided; that he will become a member of the Tower Shores Homeowners Association; that the site is just south of the 10' beach access to the ocean front; that the units will be connected to County sewer and central water; and that a single-family detached home could be built on the lot and that the building setbacks would be the same.

Mr. Robertson reminded the Commission that the Commission needs to look at whether this use is an appropriate land use for this parcel.

Mr. Lank advised the Commission that the site was properly posted and advertised in two newspapers, and that complimentary notices were sent out to landowners within 200 feet of the site. Mr. Lank added that after reading the correspondence in opposition to the application earlier this week, which voiced concerns about lack of public notice, he reviewed the computer system records under the Planning and Zoning inquiry and the Assessment inquiry and found that the parcel referenced in the letters as the Four Winds Condominium was indicated as being an "invalid number", and that he then reviewed the computer system records under the Map Search inquiry and found that the parcel was referenced with unit numbers A through E.

Mr. Robertson stated that he is satisfied that proper notice was provided.

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

The Commission found that Dean Campbell, Attorney, was present on behalf of some of the residents in the immediate area of the site and expressed concerns that most of the units in the immediate area were built in the 1950s; that the site is environmentally sensitive with dunes; that sand removal is a concern; that a duplex building will require more sand removal for parking; that the neighbors are concerned about the loss of dune material; that the building will be built across the Beach Preservation Building Restriction Line established by the State DNREC; that the neighbors are concerned about the size of the units, the setbacks, and the height of the building; that the Applicant has not produced a permit from DNREC; and that different environmental circumstances exist now, compared to those with previous development of projects within this subdivision. Mr. Campbell submitted an aerial photograph of the area.

The Commission found that Bob Klopfenstein, President of Atlantis II and III across from the site, was present and expressed concerns that the Applicant is proposing to construct two three-story dwellings on the sand dune; that each dwelling has five bedrooms, 4 and ½ baths, and a seven foot high space under the building to permit parking for two cars; that the dwelling would be 42 feet high and will require the relocation of the current 10 foot high sand dune; that he is concerned that: 1) DNREC regulation 5.02 requires that notice of the proposed building be mailed to all adjacent property owners 20 days prior to any application decision. As of today, no such notice has been mailed nor received by the 13 owners directly adjacent and touching Lot 84. These are the five owners of Four Winds and the eight owners of Atlantis II. Strangely, notice was mailed to 28 other owners in Tower Shores, but again none to the most impacted adjacent owners; 2) Each proposed dwelling contains five bedrooms, that could potentially be

occupied by 10 people, and 20 people total, with parking spaces for two cars per dwelling. Parking is very limited in Tower Shores. There are no public parking lots and no on the street parking. In addition, Ocean Road is very narrow, about 10 feet wide, and people and children use this road constantly to walk to and from the beach access ramp, next to Lot 84. Permitting additional cars and traffic could be a serious safety issue; 3) The construction plans show the sand dunes being lowered and removed, and the excess sand pushed forwards towards the ocean. The current dune is five feet high next to Ocean Road, and 10 feet high on the ocean side. Removal of the sand is critical to the construction plans in order to permit under the building parking and to stay within the 42 feet height restrictions. The plans propose to push all this sand forward towards the ocean. I estimate this will require shifting 42,000 cubic feet of sand towards the ocean. This will create a massive dune directly in front of the new dwelling, and out of alignment with the other current existing dunes, and potentially could be washed away with the first storm; that it is a mathematical impossibility to construct a three story multi-family building, seven feet about ground level, and stay within the 42 feet height of the adjacent Four Winds units, without significantly lowering the dunes; that lowering/removing/relocating sand from the dunes will enhance the possibility of significant flooding to Tower Shores; that the removal of dunes under Four Winds on Lot 85 has resulted in constant flooding under the dwellings and damage to Ocean Road and under Atlantis II townhouse complex; that during the past 30 years, he has witnessed many storms that have washed away the dunes and resulted in a 6 -7 foot drop-off in the sand; that the current dune is part of a continual barrier stretching from the State Park half way across Tower Shores, not just an isolated dune; that County Code #115-189 (C) states "No primary dune material may be removed or displaced...." and FEMA dune guidance state "Human alteration of sand dunes within V Zones is prohibited Unless engineering analysis demonstrate that flooding damage will not be increased.."; that before any construction plans are approved, he believes additional engineering studies need to take place, or the storm surge damage to Tower Shores, the adjacent properties, and roads could be significant; and that with global warming and the ocean levels rising this very likely could happen. Mr. Klopfenstein submitted three photographs of the Atlantis II site showing sand and debris that washed in during a storm.

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

Mr. Smith stated that in looking at this application for Conditional Use, most of the issues in the opposition comments are construction-oriented issues, not land use issues.

Mr. Robertson reminded the Commission that this application is similar to the Gibson application where multi-family units existed in the area, and that the Court action was taken because regulations already exist for height, bulk and area requirements.

Mr. Wheatley stated that the Commission must decide if this use is an appropriate land use at this location.

Mr. Smith stated that he moves that the Commission recommend approval of C/U #1918 for Anthony S. Nerlinger for a multi-family dwelling structure for 2 units based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use will have no significant impact upon traffic.

- 2) Tower Shores has evolved into a development consisting primarily of multi-family dwelling structures, and there are other, similar multi-family structures with two (2) or more units in the immediate vicinity. The project and how it is situated on the lot is very similar to structures along Ocean Road on either side of Lot 84.
- 3) The project will not have an adverse impact on the neighboring properties or community.
- 4) The property is in the Environmentally Sensitive Development District Overlay Zone according to the Sussex County Comprehensive Land Use Plan.
- 5) The project will be served by Sussex County sewer and central water.
- 6) This recommendation for approval is, however, subject to the following conditions and stipulations:
 - A. Only two (2) units shall be constructed upon the property.
 - B. The development of this property shall comply with all County and DNREC setbacks and building restriction lines.
 - C. The units shall be served as a part of a Sussex County Sanitary Sewer District.
 - D. The developer shall comply with all requirements of the Sussex County Engineering Department for connection to the Sewer District.
 - E. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 8:00 a.m. and 6:00 p.m.
 - F. The project shall be served by central water.
 - G. This recommendation is contingent upon consideration by the County Board of Adjustment and issuance of a 10 foot variance from the required 30 foot front yard setback and a variance to allow two (2) multi-family units on a 6,000 square foot lot.
 - H. The site plan shall be subject to review and approval of the Planning and Zoning Commission.

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

Subdivision #2011-7 – application of **MICHAEL AND KATHLYN NEWCOMB** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 9.425 acres into 2 lots, located north end of Hudson Street, approximately 2,850 feet northwest of Falls Road and being Lot 27 within Creek Falls Farm Extended Subdivision.

Mr. Abbott advised the Commission that this is a request to subdivide Lot 27 within Creek Falls Farm Extended Subdivision into 2 lots; that the existing parcel contains 9.425-acres; that the proposed Lot 27-A will contain 5.5534-acres and the proposed Lot 27-B will contain 3.8720-acres; that this application was not reviewed by the Technical Advisory Committee since no new improvements are required; that the applicants have provided documentation that 23 out of 30 (77%) property owners are aware of and consent to this application; that a minimum 51% agreement is required by Code; that on November 7, 2011 the Sussex County Board of Adjustment granted a variance of 14.99 feet to allow the proposed Lot 27-B to have a lot width of 85.01 feet; that there have been two other subdivision applications in this development; that Subdivision #2004 – 23 was approved for 6.56-acres into 2 lots on March 31, 2005; that

Subdivision #2006 – 45 was approved for 2.82 acres into 3 lots on November 29, 2007 and that the Commission was previously provided a copy of the proposed subdivision request.

Kathlyn Newcomb was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that her husband and parents were the original developers of Creek Falls Farms Subdivision; that none of her neighbors is opposed to the subdivision; that there have been two other subdivision applications within the subdivision that have been approved; and that the Board of Adjustment has granted a variance for the lot widths.

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 and final record plan approval of Subdivision #2011 – 7 for Michael and Kathlyn Newcomb, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 2 lots on 9.245 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. The Sussex County Board of Adjustment has granted a variance for the minimum lot width requirement.
7. This approval is subject to the following condition:

A. There shall be no more than 2 lots within this subdivision.

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

AN ORDINANCE TO AMEND CHAPTER 99, SECTION 99-32, OF THE CODE OF SUSSEX COUNTY TO ALLOW A LANDOWNER TO PERFORM SITEWORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY.

Mr. Robertson advised the Commission that this Amendment was originally discussed administratively and summarized the bonding needs for project to proceed with construction; that bonding protects 3rd party purchasers; that the proposed Ordinance Amendment carves out an exception to the land development bonding requirements for a landowner constructing

improvements on his or her own land; that no lots can be transferred and no building permits will be issued until the work is complete or guaranties are provided; and that building permits are easier to police than the transfer of properties.

Mr. Robertson continued by suggesting that the Amendment could include amended language in Subsection D(i) be deleting “approved” and replacing it with “substantial completion”; by adding a sentence at the end of the existing language “In the event no bond or other guaranty is provided, a Notice in the form acceptable to the County Attorney shall be recorded in the Office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or other guaranty is provided as required by this Section”; and that the Ordinance be reviewed by Council two (2) years after its adoption for effectiveness.

The Commission discussed this Ordinance Amendment.

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

Mr. Robertson stated that he had a proposed motion and stated that the motion would be to move that the Commission recommend approval of the Ordinance to amend Chapter 99 Section 99-32 of the Code regarding Bonds and Performance Guarantees, with the following suggestions:

- 1) That Subsection D(i) be amended to reference “substantial completion” instead of “approved”.
- 2) That the Ordinance be amended to include the following sentence at the end of the existing language: “In the event no bond or other guaranty is provided, a Notice in the form acceptable to the County Attorney shall be recorded in the Office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or guaranty is provided as required by this Section”.
- 3) That the Ordinance be reviewed by Council two (2) years after its adoption for effectiveness.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be adopted as read by Mr. Robertson. Motion carried 5 – 0.

OTHER BUSINESS

Dewey W. & Patricia A. Boothe
Lot on 50' Right-of-Way – Road 13-A

Mr. Abbott advised the Commission that this is a request to create a 1.3733-acre lot with access from a 50-foot right of way out of a 5.5879-acres parcel; that the proposed lot will have access from an existing right of way; that the owner is proposing to widen an existing 20-foot right of way to 50-feet over his property to serve as access to the lot; that the residual land will contain 4.2146-acres and have access from an existing entrance off of Road 13-A; 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. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Huong Le-Si

Lot on 50' Easement – Road 554

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from a 50-foot easement out of a 30.54-acre parcel; that there is currently a 50-foot easement serving as access to the 30.54-acre parcel and to a 20.01-acre parcel; that the owner is proposing to extend the 50-foot easement over an existing asphalt and dirt driveway; that the request may be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision since this would be the third lot having access from the easement; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Curtis James

Lot on 50' Easement – Road 549

Mr. Abbott advised the Commission that this is a request to create a lot with access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing dirt farm lane on another of the applicant's property; 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.

Meeting adjourned at 8:30 p.m.