



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 17, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 17, 2009 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as posted, which reference rescheduling of C/U #1809 and the withdrawal of C/U #1812.

Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Robertson described the public hearing process.

Mr. Lank reminded the Commission that during the Public Hearings on December 10, 2009 the Commission advised William Scott, Attorney for Lawman Properties, LLC that the public hearing for C/U #1811 would be scheduled first on the agenda for this evening.

C/U #1811 – application of **LAWMAN PROPERTIES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 42,418 square feet, more or less, lying north of Route 54, 200 feet west of Road 387 (Hudson Road).

The Commission found that the Applicant provided an Exhibit Booklet on December 8, 2009 and that the Exhibit Booklet contains a copy of the application form; a copy of the survey/site plan; a Tax Map of the general area; an E-mail referencing that DelDOT has voiced “no objection to the entrance location”; letters of support from the Marvel family at 37108 Hudson Road, Edward R. Lynch, Ronald and Helga Brown, and Margaret A. Dennis; and photographs of the site and the general area.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the current Level of Service “C” of Lighthouse Road will not change as a result of this application; and that on December 16, 2009 the Planning and Zoning Office received a “Letter of No Objection” from DelDOT for the entrance location only.

The Commission found that the County Engineering Department Utility Planning Division provided comments on December 8, 2009 and referenced that the site is located in the Town of Selbyville Growth and Annexation Area; that the proposed use will use an existing septic system; and that the Applicant should contact the Town of Selbyville for information regarding connection to the Selbyville sewer system.

The Commission found that the Sussex Conservation District provided comments on December 10, 2009 and referenced that there are three soil types on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it may not be necessary for any off-site drainage improvements; that on-site drainage improvements may be necessary; and that a Tax Ditch may be affected since the westerly property line is on a Tax Ditch.

The Commission found that additional letters of support were received from David Efird, Sally H. Dowling, M.D., Michael A. Franklin, President and CEO for Atlantic General Hospital, and Thomas D. Beck, Jr. of Atlantic Orthopedics, referencing support for relocation of a doctor's office at this location; that a doctor's office will be harmonious with the surrounding properties and will be an asset to the community; that lower Sussex County is underserved by Family Physicians; that the office is essential in providing quality primary healthcare to the community; that approximately 15% of the Atlantic General Hospital admissions come from this area of Sussex County; that primary care physician services are becoming more and more scarce throughout the Country, and the convenient availability and access to such services in a community provides improved quality of life and economic benefit to those in the community; and that the use will help meet the medical needs of this community.

The Commission found that Leonard Wright of Lawman Properties, LLC was present with Dr. Christine Griffin, M.D. and William Scott, Attorney with Scott and Shuman, P.A., and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to convert an existing house on the site into a doctor's office; that the house will be remodeled and the driveway will be altered to meet DelDOT requirements; that the photographs in the Exhibit Booklet show the site and the general area; that a boat and boat trailer storage facility and a storage facility exist in close proximity to the site; that DelDOT is requiring that the westerly entrance be closed and that the easterly entrance be improved; that they have contacted the neighboring residents and heard no objections; that they have received several letters in support; that DelDOT has issued a "Letter of No Objections" to the entrance location; that the tax ditch easement has been reduced to 25-feet from the top of the ditch bank on Buntings Tax Ditch; that the site will be served by the Town of Selbyville sewer and water utilities; that the use is a public or semi-public use; that the site is located in a Town Center Area according to the County Comprehensive Plan Update; that the site is located in a Growth/Annexation Area according to the Town of Selbyville Comprehensive Plan; that the site is located in an Investment Level 2 area according to the State Strategies; that some commercial uses exist in close proximity; that the only proposed changes to the site will be abandonment and improvement of entrances, to create a parking area, and to erect a sign; that the project will comply with the Town Center Guidelines of the Comprehensive Plan Update; that the use will provide jobs; that there are no historic features on the site; that they would like to erect a lighted sign; that normal business hours would be from 8:30 a.m. to 4:30 p.m. Monday through

Thursday and 8:30 a.m. to 12:30 p.m. on Fridays with some emergency Saturday hours; that employee numbers equal 1 doctor, 2 full time employees, and 2 part-time employees; and that they would be willing to annex into the Town of Selbyville if requested.

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 the use should be limited to use of the existing structure.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1811 for Lawman Properties, LLC for an office based on the record and for the following reasons:

- 1) The use will serve the community and this area of Route 54.
- 2) The location along Route 54 and near the Selbyville Town Limits is appropriate for this type of use.
- 3) The Applicant has stated that the proposed use is for a medical office. The use is of a public character that will benefit the health, safety and welfare of residents of Sussex County.
- 4) The use will not have a significant adverse impact on traffic.
- 5) The property is served by water and sewer from the Town of Selbyville.
- 6) This recommendation is subject to the following conditions:
 - A. Lighting for the property in general will be “down” lights pointing away from adjacent properties so that the lighting will not shine on adjacent properties or Route 54.
 - B. The office hours will be from 8:00 a.m. until 8:00 p.m. Monday through Saturday.
 - C. Required parking will be provided and handicapped parking will be marked.
 - D. The building, stormwater management, and parking shall all be located in such a way that, in the event that Route 54 is widened, the impact on the subject property will be minimal.
 - E. There shall be one lighted sign on the property not larger than 32 square feet in size.
 - F. The Applicant shall comply with all DelDOT requirements regarding the entrance to the project.
 - G. As stated by the Applicant, the use of the property shall be limited to medical offices.
 - H. The use is limited to the existing structure only. Any substantial expansion or replacement of the structure shall require a new public hearing.
 - I. The site plan shall be subject to the review and 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 #1805 – application of **MICHAEL D. HERHOLDT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a maintenance dispatch office to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing

2.92 acres, more or less, lying west of North Union Church Road (Road 42), 1.665 feet south of Rust Road (Road 635).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the current Level of Service "A" of North Union Church Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on December 8, 2009 and referenced that the site is located in Western Sussex Planning Area #1; that the proposed use will use an existing septic system; that conformity to the Western Sussex Planning Study will be required; that the project is not in an area where the County currently plans to provide sewer service; that when the County does provide central sewer service, the on-site system must be abandoned and a connection to the central sewer will be mandatory; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on December 10, 2009 and referenced that the soils on the site are mapped as Rosedale loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that on-site drainage improvements may be necessary if part of the area is paved.

Mr. Lank provided the Commission with copies of the proposed site plan.

The Commission found that John Herholdt was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that they are proposing a dispatch office for both of the family owned companies to operate from this location; that the companies are Satterfield and Ryan Electrical Contracting and Delaware Coastline Railroad; that the rancher style office structure will appear to be a dwelling; that the pole barn will be used for storage of equipment and materials, and occasionally their two large trucks; that there will be one full-time employee in the office and three part-time employees; that 9 employees work from their trucks or vans which have computer access; that the only time there may be more than the office employees on the site are during meetings of the staff which may occur one time every two weeks; that normal business hours are from 7:00 a.m. to 4:30 p.m. Monday through Friday; that they have been in business for 31 years; that they would like to be able to erect a sign, not larger than 32 square feet in size; that the parking area would be improved with gravel; that electrical materials would be stored in the pole building; that the only outside storage would be utility poles and possibly a transformer on a concrete pad; that outside storage would be screened; that access will be from the existing driveway to the side of the property; and that cypress trees will be planted on both sides of the 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.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1805 for Michael Herholdt for a Conditional Use for a Maintenance Dispatch Office based upon the record made at the public hearing and for the following reasons:

- 1) The use will not have an adverse impact on the neighboring properties or community.
- 2) The use as a Maintenance Dispatch Office will not generate a significant amount of additional traffic.
- 3) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 4) The use as a Maintenance Dispatch Office is of a public or semi-public character and is desirable for the general convenience and welfare of the area and the County.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - A. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
 - B. An unlighted sign shall be permitted on-site, not to exceed 32 square feet in size.
 - C. The hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday.
 - D. The Applicant shall comply with any DelDOT requirements regarding the entrance.
 - E. No hazardous materials shall be stored on site.
 - F. The location of any outside storage shall be shown on the Final Site Plan and shall be screened from view of neighboring properties.
 - G. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Burton, 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 #1806 – application of **TIMOTHY MORRIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a Christian book store/clothing store to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 37,836 square feet, more or less, lying north of Route 46 (Old Furnace Road), 140 feet west of Road 531 (Eskridge Road).

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

The Commission found that the County Engineering Department Utility Planning Division provided comments on December 8, 2009 and referenced that the site is located in the City of Seaford Growth and Annexation Area; that the proposed use will use an existing septic system; that the Applicant should contact the City of Seaford for information regarding connection to the Seaford sewer system; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on December 10, 2009 and referenced that there are three soil types on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may

not be necessary for any off-site drainage improvements; and that on-site drainage improvements may possibly be required.

The Commission found that Timothy Morris was present and stated in his presentation and in response to questions raised by the Commission that he would like to operate a Christian bookstore and clothing store from the site; that the site was occupied by a store in the 1960s; that several housing developments have been established in the area; that the area needs local store access; that he has spoken to area residents and received support for his intended store; that he proposes to sell clothing and books, music, and art for both adults and children; that he would like to be able to erect a lighted sign; that he would have a total of 4 employees including himself; that business hours would be from 8:30 a.m. to 6:00 p.m. Monday through Saturday; that if he has a dumpster, it would be screened from view; and that if he is ever asked to consider annexation into the City of Seaford he would have no objection to annexation.

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 C/U #1806 for Timothy Morris for a Christian Book Store and Clothing Store based upon the record made at the public hearing and for the following reasons:

- 1) The project is limited in scope. With the conditions and stipulations placed upon it the use will not have an adverse impact on the neighboring properties or community.
- 2) The project is desirable for the general convenience and welfare of Sussex County.
- 3) The site was previously used as a store several years ago.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 - A. As proposed by the Applicant, the use shall be limited to a book, music and clothing store.
 - B. Sales shall only occur between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday.
 - C. The Applicant shall comply with all DelDOT requirements, including entrance permits.
 - D. There shall be no more than one lighted sign, not to exceed 32 square feet per side.
 - E. There shall be no more than 4 employees, including the owner, on the site.
 - F. The location of any dumpster shall be shown on the Final Site Plan and shall be screened from view of neighboring and adjacent properties.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1808 – application of **KELLY R. JANSEN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a home business office with clerical staff to be located

on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 5.06 acres, more or less, lying south of Road 565, 700 feet west of Route 42.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the current Level of Service "A" of Wood Branch Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on December 8, 2009 and referenced that the site is located in Western Sussex Planning Area #1; that the proposed use will use an existing septic system; that conformity to the Western Sussex Planning Study will be required; that the project is not in an area where the County currently plans to provide sewer service; that when the County does provide central sewer service, the on-site system must be abandoned and a connection to the central sewer will be mandatory; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on December 10, 2009 and referenced that the soils on the site are mapped as Woodstown 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 may not be necessary for any off-site drainage improvements; and that on-site drainage improvements are not likely.

The Commission found that letters were received from Preston E. Brasure and Brenda V. Brasure in support of this application and that the letters reference that most of the properties along this road are large settings and would not have much impact since the Applicant's house and garage are situated well back into the woods; that there would be no noise impact with this business; that the area is very rural; and that while considering this application, please consider that we are neighbors and relatives and would like to see this application approved.

The Commission found that Kelly Jansen was present, submitted an aerial photograph of the site and area, and stated in her presentation and in response to questions raised by the Commission that the area properties contain acreage; that no construction is proposed; that she has an office over the garage; that neighbors are not opposed; that she assumed that her business was a home occupation until she found that she could not have employees on site; that she filed her application so that she could have clerical employees; that the company provides for private investigation, pre-screening and attorney services; that she does not want to erect a sign; that clients do not come to the property; that she does receive UPS and Fed-Ex shipments regularly; that she has four employees; that due to the type of work being provided someone may be in the office from 8:00 a.m. to 12:00 a.m.(Midnight) seven days per week.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1808 for Kelly R. Jansen for a home business office with clerical staff based upon the record and for the following reasons:

- 1) The Applicant is seeking a Conditional Use for office space. As described during the public hearing, the proposed use is very nearly a home occupation and with the conditions and limitations placed upon it, will have little or no impact on neighboring or adjacent properties.
- 2) The use will be limited to the existing buildings on the site and that a garage will be utilized for office space.
- 3) There will be no traffic impact generated by this use.
- 4) This recommendation is subject to the following conditions:
 - A. The use of the property shall be limited to a small home occupation-style business with clerical staff.
 - B. As stated by the Applicant, no signage shall be permitted.
 - C. There shall be no more than 4 employees on the site at any one time.
 - D. The Final Site Plan shall show all parking and driveway areas as well as building entrances dedicated to the business use.
 - E. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1809 – application of Curtis McDonald

Mr. Lank advised the Commission that this application has been rescheduled for January 14, 2010.

C/U #1812 - application of ROXANA PREFERRED PROPERTIES to consider the Conditional Use of land in a GR General Residential District for retail and commercial with 20 apartment units to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.69 acres, more or less, lying south of Zion Church Road (Road 382), approximately 1,660 feet west of Bayard Road (Road 384).

Mr. Lank advised the Commission that this application was withdrawn on December 7, 2009.

Meeting adjourned at 7:10 p.m.