



## *Planning & Zoning* Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF DECEMBER 21, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 21, 2006 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. Ben Gordy, Mr. Michael Johnson, Mr. Rodney Smith and Mr. I.G. Burton, III with Mr. Vincent Robertson – Assistant County Attorney, 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 by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of December 7, 2006, December 14, 2006 and October 27, 2006 as circulated.

### OLD BUSINESS

**C/Z #1604** - - application of **TERRANCE BABBIE** 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 Broadkill Hundred, Sussex County, land lying north of Route 16, 650 feet east of Route 22A and east of Milton, to be located on 3.0 acres, more or less.

The Commission discussed this application, which has been deferred since December 7, 2006.

Mr. Burton stated that he would move that the Commission recommend denial of C/Z #1604 for Terrance Babbie, seeking a Change of Zone from AR-1 to B-1 based on the record made at the public hearing and for the following reasons:

1. The application to change the zoning to B-1 is not consistent with the character of the surrounding property. All of the adjacent property is zoned AR-1.
2. Mr. Burton believes that Mr. Babbie's plans for the property are good, but he is concerned that the County can't limit the use to just what he has proposed if the

zoning is changed to B-1.

3. Although the Applicant stated that the intended uses are limited, a change in zone to B-1 would potentially allow more intensive uses that are not compatible with the surrounding area.
4. Because Mr. Babbie stated that he has a specific use in mind for the property, it

Minutes  
December 21, 2006  
Page 2

would be more appropriate to reconsider this as a Conditional Use Application.

5. If the Applicant should choose to reapply for a Conditional Use, Mr. Burton recommends that the Application Fee be waived and that the application be considered as quickly as possible.

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 denied for the reasons stated. Motion carried 5 – 0.

**C/U #1722** - - application of **WEST REHOBOTH COMMUNITY LAND TRUST** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (4 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 17,500 square feet, more or less, lying southwest of Burton Avenue, 550 feet northwest of Hebron Street and 110 feet southeast of Duffy Street within West Rehoboth Subdivision, and being more particularly described as Lots 13 and 14 in West Rehoboth Subdivision.

The Commission discussed this application, which has been deferred since December 7, 2006.

Mr. Robertson advised the Commission that at the public hearing there were concerns raised about the size of the parcel that was submitted with the site plan; that a survey has been submitted verifying that the site is 100-feet wide with 175-feet in depth; and that the survey is the same as the dimensions on the tax map.

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

**Subdivision #2004 – 54** - - application of **LBI CONSTRUCTION** to consider the Subdivision of land in an AR-1 Agricultural Residential District and GR General Residential District in Indian River Hundred, Sussex County, by dividing 67.92 acres into 115 lots (Cluster Development), located west of Road 288 (Wil King Road), approximately 1,620 feet north of Road 280-B (Conleys Chapel Road).

Mr. Abbott advised the Commission that this application received preliminary approval for 115 lots on October 27, 2005; that the Commission granted a one-year time extension on September 20, 2006; that the final record plan complies with the subdivision ordinance and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this  
Minutes  
December 21, 2006  
Page 3

application as a final. Motion carried 5 – 0.

**Subdivision #2005 – 81** - - application of **BETHANY RIDGE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 104.32 acres into 227 lots (Environmentally Sensitive Developing District Overlay Zone), located north of Road 349, 1,600 feet east of Road 348.

The Commission discussed this application, which has been deferred since December 7, 2006.

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

**Subdivision #2005 – 81** - - application of **JAMES AND MARY BETH PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 32.94 acres into 41 lots (Cluster Development), located west of Route 30, 2,400 feet north of Road 48.

Mr. Abbott advised the Commission that DNREC has issued a septic feasibility statement indicating that the site is suitable for on-site septic systems.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 82 for James and Mary Beth Parker based upon the record and for the following reasons:

1. The project complies with the requirements of the Sussex County Subdivision Code.
2. The project is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is superior to a standard subdivision with the open space protecting the existing wooded areas on the site and a buffer around the entire perimeter of the site. Also, the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.

3. The applicant has proposed only 41 lots within the 32.94-acre project, which is significantly less than the allowable density for an AR-1 subdivision on this land.
4. The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community.

Minutes  
December 21, 2006  
Page 4

5. DNREC has stated that the site is suitable for individual on-site septic systems.
6. This preliminary approval is subject to the following conditions:
  - There shall be no more than 41 lots within the Subdivision.
  - The Applicant shall form a homeowners' association to be responsible for the maintenance of street, roads, buffers, storm water management facilities, and other common areas.
  - The storm water management system shall meet or exceed the requirements of the State and County.
  - All entrances shall comply with all of DeIDOT's requirements.
  - Street lighting shall be provided throughout the development.
  - A paved multi-modal path shall be installed on at least one side of all streets within the Subdivision, and it must connect with the amenities and the entrance to the Subdivision.
  - The Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
  - An area must be set aside within the project for a school bus stop with parking for at least 4 vehicles. The applicant must coordinate with the local school district to determine the location of the bus stop.
  - The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall also show the details of the amenities for the Commission's review and approval.

- Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.

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

## PUBLIC HEARINGS

Minutes  
December 21, 2006  
Page 5

**C/U #1673** - - application of **WILLIAM KEVIN CLARK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automotive sales lot to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.14 acres, more or less, lying south of Jefferson Road (Route 38), approximately 2,100 feet west of Route 30.

Mr. Abbott advised the Commission that a letter from Marion Bennett was received in support of this application; that a letter from William and Diana Ashley was received in opposition; and that both letters will be made a part of the record.

The Commission found, that based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service A will not change as a result of this application.

The Commission found that William Kevin Clark and Harry Murphy of Charles Murphy Associates were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site is located off of Road 38 4 miles north of Milton; that the applicant has resided on the site for 7 years; that the adjoining property owners are his mother, aunt and grandmother; that he proposes to add 15 more feet of stone to the site for display purposes; that a 12-foot by 16-foot shed is proposed for an office; that he services and details vehicles in the existing metal pole building; that he would like a small sign; that no more than 10 vehicles will be displayed at any given time; that the hours of operation would be from 9:00 a.m. until 9:00 p.m. Sunday through Friday with no Saturday hours; that the display area will be stone since it is easier to clean than asphalt; that oil stains evaporates faster on stones than asphalt; that a 3 tiered fence will be erected around the display area; that the appearance of the shed will be similar to the house on the site; that the sign will be lighted with a flood light; that he has been self employed since he was 25 years old; that he has 5 children and wants to be able to work at home to spend time with his family; that no employees are proposed; that his family has owned the land for over 100 years; that he has looked into purchasing commercial property in other areas but every thing is too expensive; that there is another used car sales lot about 5 miles away; that there is a repair shop and metal works shop in the area; that he is aware of the 25-foot setback for display purposes; that he will comply

with all regulations; that he was not issued a zoning violation; and submitted photographs of the site into the record.

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. Burton, seconded by Mr. Gordy and carried unanimously to defer

Minutes  
December 21, 2006  
Page 6

action for further consideration. Motion carried 5 – 0.

**C/U #1676** - - application of **PETER J. GOEBEL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for retail craft sales to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 3.1469 acres, more or less, lying northeast of Route 404, 550 feet northwest of Route 18.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service E will not change as a result of this application.

The Commission found that Peter and Debra Goebel were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they propose to sell crafts in their detached 3 car garage; that the crafts will be made by them and other people; that they reside on the site and home school their children; that the crafts are handmade; that the garage is probably 150 to 200 feet from Route 404; that the hours of operation would be from 9:00 a.m. until 6:00 p.m. on Tuesday through Saturday with no Sunday and Monday hours; that no employees are proposed; that there is an existing sign on the site that they would like to use; that the sign will be lighted with solar lights; that there will not be any outside displays or sales; that there is no water or septic to the garage and none is needed; that the site has been previously used as a business for a home occupation; and that there is adequate room for customer parking.

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 recommend approval of Conditional Use #1676 for Peter J. Goebel to operate a store for the sale of crafts based upon the record and for the following reasons:

1. The project will not have an adverse impact on the neighboring properties or community. It was also used previously as a home occupation for the sale of crafts.
2. The use is not intensive, and the applicants will continue to reside at the property.
3. The use will not have any significant impact to traffic.

Minutes  
December 21, 2006  
Page 7

4. This recommendation for approval is subject to the following conditions and stipulations.
  - A. Sales shall only occur during daylight hours.
  - B. The sales shall only be from the existing garage structure.
  - C. There shall be no items placed outside for sale.
  - D. One unlighted sign shall be permitted, not to exceed 32 square feet in size.
  - E. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

**C/U #1700** - - application of **STEVE AND WENDY MITCHELL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a deli/store to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 7.4183 acres, more or less, lying northwest of Route 26, 325 feet south of Road 424.

Mr. Abbott advised the Commission that a letter was received from John Downes in support of this application and that the letter will be made a part of the record.

The Commission found, based on comments received from DelDOT that a traffic impact study was not recommended and that the existing level of service C may change to a level of service D as a result of this application.

The Commission found that Wendy Mitchell was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that the town of Gumboro is in serious need of a store/eatery; that the town has been without an establishment since the close of the original store due to a fire; that the locals are forced to travel 10 miles in either direction to obtain milk, bread, food and other miscellaneous items; that a new establishment would bring job opportunities to the

community; it would also service motorist who are passing through; that the hours of operation would be Monday through Saturday from 6:00 a.m. to 8:00 p.m.; that there will be no Sunday hours; that no lottery tickets, cigarettes or alcohol will be sold; that a 40-foot by 40-foot building is proposed; that they would like a lighted sign out front; that a dumpster is proposed and will be screened from neighboring properties; that security lighting will be provided; that groceries and cooked meals will be sold; that they could erect a fence along the western boundary line; that on site septic will be utilized; that parking will be provided in front of the store; and that there will be no outside displays or storage.

Minutes  
December 21, 2006  
Page 8

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 recommend approval of Conditional Use #1700 based upon the record and for the following reasons:

1. The application is for a deli/store. The applicant has established a need and that it would serve the Gumboro area, which is in the need of a store of this nature.
2. With the conditions placed on this conditional use, the application will not have an adverse effect on the neighbors, roadways, and community buildings.
3. This recommendation for approval is subject to the following conditions and stipulations.
  - All entrances shall meet all of DelDOT's requirements.
  - On-site septic and wells must be approved by DNREC.
  - Days of operation shall be Monday through Saturday with no Sunday hours. The hours of operation shall be from 6:00 a.m. to 8:00 p.m.
  - Dumpsters shall be screened from neighbors and any public roadways.
  - Any security lighting shall shine downward and not towards neighbors or public roads.
  - A lighted sign, not exceeding 32 square feet, may be permitted.

- The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

**Subdivision #2005 – 87** - - application of **DERIC PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 22.491 acres into 23 lots and a variance from the maximum allowed

Minutes

December 21, 2006

Page 9

cul-de-sac length of 1,000 feet, located at the northeast corner of the intersection of Road 40 and Road 591.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of July 26, 2006 will be made a part of the record for this application; that the applicant submitted a revised preliminary plan on December 18, 2006 addressing the recommendations of the Technical Advisory Committee; and that a variance is no longer required for the maximum allowed cul-de-sac length.

The Commission found that Deric and Carla Parker and Bob Sigler, Surveyor with Miller – Lewis, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that lots 1 through 4 have already been approved and recorded as part of a minor subdivision plan and will become a part of this subdivision and have the same deed restrictions and be a part of the homeowners' association; that the applicant is a builder and will build all homes in this development; that the minimum square footage of the dwellings will be 1,400 square feet and will also require an attached 2 car garage; that this site is adjacent to a 100 lot subdivision that has sold out; that septic has been approved for all of the lots; that 75% of the lots will have standard septic systems; that streetlights will be provided; that a school bus stop has not been thought of; that the storm water management pond will probably be a dry pond; that it will be designed large enough to handle a 100-year storm; that the final engineering has not yet been completed; that the rear of lot 18 has a drop off; and submitted corrected deed restrictions into the record.

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. Burton, seconded by Mr. Johnson and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

**Subdivision #2005 – 88** - - application of **LINDA McILVAINE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 2.867 acres into 3 lots, located at the southeast corner of the intersection of Road 48 and Road 317.

Mr. Abbott advised the Commission that this is an alteration to an existing strip lot subdivision; that the applicants provided the required 51% approval from the property owners of the lots; and that the restrictive covenants prohibit the resubdivision of the lots.

Minutes  
December 21, 2006  
Page 10

Mr. Robertson advised the Commission that the public hearing can be heard; that in the past, deed restrictions have been handled privately; that the County does not enforce private deed restrictions; and that it is the responsibility of an aggrieved party to pursue this matter.

Mr. Abbott advised the Commission that a survey for this site was approved by him in error; that the survey was recorded in the Office of Recorder of Deeds; that the applicant receives 3 tax bills for the lots; that once it was brought to the staff's attention, a letter was written to the applicant advising her that building permits will not be issued for the 3 lots until this matter is corrected.

The Commission found that Robert Gibbs, Attorney with Wilson, Halbrook and Bayard and Preston McIlvaine were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the owner is proposing to make 2 lots into 3 lots; that the owner of lot 30 is opposed to the application because of the deed restrictions prohibiting any further subdivision; that there is no mechanism to allow for the restrictions to be amended; that the applicant has 82% of the property owners in agreement with the application; that DeLDOT issued a letter of no objection for the entrance locations; and that the survey has already been recorded although it was done in error.

The Commission found that no parties appeared in support of this application.

The Commission found that Drew Lyons and Walter Hyler were present in opposition to this application and stated that the deed restrictions prohibit the resubdivision of the lots; questioned how the lots would be accessed and questioned why the County does not enforce private restrictions.

Mr. Robertson responded that the individual developers create their deed restrictions; that the County does not have the authority to enforce private restrictions; and that if the County makes a stipulation on an application, then the County has the ability to enforce the restriction or condition.

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 #2005 – 89** - - application of **TERRANCE BABBIE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 13.00 acres into 13 lots, located southwest of Road 326, 1,369 feet southeast of Road 432.

Minutes  
December 21, 2006  
Page 11

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of July 26, 2006 will be made a part of the record and that on December 18, 2006 the applicants submitted an Exhibit Booklet and a Revised Preliminary Plan and that these will be made a part of the record.

The Commission found that Terrance Babbie, Robert Gibbs, Attorney, and Mark Davidson and JC Owens of Design Consultants Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this proposal is for 13 lots located on 13 acres; that a single street is proposed; that the site is located east of Route 113 and west of Road 326; that all of the lots are greater than  $\frac{3}{4}$  acres; that the applicant has a contract to purchase the property; that the project complies with the Land Use Plan; that the site is located in a Low Density Area which permits single family detached lots; that the storm water management area is located away from neighboring properties due to the topography of the site; that manufactured homes will not be permitted; that the storm water pond will be located at the lowest point of the site and all lots will be placed further into the site and away from Bethesda Road; that there are no wetlands located on this property and all lots will not be located within any floodplain; that there are no cultural or historic features on the site; that there is 1.40 acres of open space; that Best Management Practices will be utilized; that the items referenced in Section 99-9C of the subdivision code are addressed in the exhibit booklet and referenced the items; that streetlights will be provided; that the project is in character with the surrounding area; that buffers are not required since the project adjoins residential lots and a wooded area; that the site does not have any drainage concerns; and that the closest LUST site is over 1,500 feet away.

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. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 89 for Terrance Babbie based upon the record and for the following reasons:

1. The project complies with the requirements of the Sussex County Subdivision Code.
2. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.
3. The applicant has proposed only 13 lots within the 13.00-acre project, which is less than the allowable density for an AR-1 subdivision of land.

Minutes  
December 21, 2006  
Page 12
4. The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community.
5. DNREC has stated that the site is suitable for individual on-site septic systems.
6. This preliminary approval is subject to the following conditions:
  - There shall be no more than 13 lots within the subdivision.
  - The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, storm water management facilities and other common areas.
  - The storm water management system shall meet or exceed the requirements of the State and County.
  - All entrances shall comply with all of DelDOT's requirements.
  - The Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the final site plan and it is recommended that a tree or forested buffer be installed between the adjoining properties.
  - The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
  - Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.

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

Meeting adjourned at 7:40 p.m.