



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF JANUARY 18, 2007

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, January 18, 2007 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. I.G. Burton, III, Mr. Ben Gordy, Mr. Michael Johnson and Mr. Rodney Smith with Mr. Vincent Robertson – Assistant County Attorney, Ms. Rebecca Trifillis – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

OLD BUSINESS

C/U #1711 - - application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sewer treatment facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 13.41 acres, more or less, lying north of Route 336 (Piney Neck Road), 2,100 feet west of Route 335 (Bunting Road), and 2,200 feet east of Road 335A (Adams Road).

The Commission discussed this application, which has been deferred since November 16, 2006.

Mr. Robertson advised the Commission that there are on going negotiations between Artesian Water Company, Sussex County Engineering Department and Tidewater Utilities; and that no resolution has been reached yet between the three.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action and to leave the record open until the February 2007 Special Meeting of the Commission. Motion carried 5 – 0.

Subdivision #2005 – 7 - - application of **THOMAS HEAD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex

County, by dividing 46.43 acres into 43 lots, located south of Road 410 (Godwin School Road), 500 feet southeast of Route 20 (Hardscrabble Road).

Mr. Abbott advised the Commission that this is a final record plan for a standard 43-lot subdivision application; that the Commission granted preliminary approval for 43 lots on January 4, 2006; that the final record plan is the same as the preliminary plan, complies with the requirements of the subdivision and zoning codes, the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a final. Motion carried 5 – 0.

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Subdivision #2005 – 50 - - application of **KGH PROPERTIES DEVELOPMENT, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 80.55 acres into 112 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 290, 770 feet north of Road 292.

Mr. Abbott advised the Commission that this application has been deferred since August 16, 2006; that the application was reduced to 105 lots at the public hearing; that Artesian Water Company will provide central sewer to the site; and that Artesian was granted a conditional use to operate a wastewater treatment plant on December 5, 2006.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 50 for KGH Properties Development, L.L.C., based upon the record and for the following reasons:

1. The Development is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is superior to a standard subdivision with about 60% of the project as open space on the site. Also, the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed. And, the Applicant has only proposed 105 lots with an average lot size of 8,500 square feet at a density of 1.35 units per acre, with every lot next to open space. For these reasons, the Development is superior to a standard subdivision.
2. The project will not have an adverse impact on the neighboring properties or community.
3. There will not be any adverse impact upon traffic in the area by this Development,
4. The lots will be served by central sewer and water.
5. The site's design has a minimal impact on wetlands and no wetlands are included within any lots, and there will be buffers from the wetland areas.

6. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
7. Amenities will be provided, including a clubhouse, pool, playground area, tennis and basketball courts, trails and an equestrian facility.
8. This preliminary approval is subject to the following conditions:
 - There shall be no more than 105 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.

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- The storm water management system shall meet or exceed the requirements of the State and County. Best Management Practices shall be used in the maintenance of the system.
- All entrances shall comply with all of DelDOT's requirements.
- Street lighting shall be provided, and the location of the streetlights shall be shown on the final site plan.
- Sidewalks shall be installed on both sides of all streets.
- The site shall be served by central water and sewer systems.
- No wetlands shall be included within any lot lines.
- Amenities, including a clubhouse, swimming pool, playground area and equipment, basketball and tennis courts, trails and equestrian facility shall be constructed and open to use by residents of the development within 2 years of the issuance of the first residential building permit.
- Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- A school bus shelter shall be established on the site. The location shall be coordinated with the local school district and shown on the final site plan.
- 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 approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 5 – 0.

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 Development District Overlay Zone), located northeast of Road 298, 3,950 feet southeast of Route 24.

Mr. Abbott advised the Commission that this application has been deferred since October 12, 2006; that the record was left open for 15 days after receipt of comments from DelDOT in reference to the traffic impact study; that the record was closed on December 1, 2006; and that the Commission received copies of the comments from DelDOT and from the opposition.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 72 for Bridlewood at Baywood, based upon the record and for the following reasons:

1. The project is an AR-1 Development in the Environmentally Sensitive Developing District Overlay Zone.
2. Clustering has been used to preserve wooded areas and the natural buffer next to the wetlands, and there are greenways and small park areas throughout the site. There are also sidewalks and walking, jogging and bike trails promoting interconnectivity within the project.
3. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.
4. The applicant has proposed 621 lots within the project. In response to questioning during the public hearing, the Developer has applied for a Conditional Use for the equestrian center on the site. Because this has reduced the total acreage of the subdivision, the total number of lots will be reduced to 597. This is a permissible density within an AR-1 subdivision on the land.
5. As part of the project, tree, vegetation and soil removal will be minimal and enhanced through landscaping features.
6. Objectionable features, including homes next to neighboring properties or public roads, will be avoided or screened through the use of landscaped berms.
7. The lots will be served by central water and sewer.
8. The site's design has a minimal impact on wetlands and no wetlands are included within any lots.
9. The proposed subdivision meets the purposes and standards of the Subdivision Ordinance, and it complies with the County's Land Use Plan.
10. Subject to DelDOT's approval, the project will provide safe vehicular and pedestrian movement within the site and on to connecting roadways. All required upgrades to area roadways will be at the Applicant's expense.
11. This preliminary approval is subject to the following conditions:
 - There shall be no more than 597 lots within the Subdivision. This shall be phased with no more than 120 residential building permits issued within any calendar year.

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- The Applicant shall be responsible for the maintenance of streets, roads, buffers, storm water management facilities, open space, and other common areas.
- The storm water management system shall meet or exceed the requirements of the State and County. Best Management Practices shall be used in the maintenance of the system.
- All entrances and roadways improvements shall comply with all of DelDOT's requirements.
- Street lighting shall be provided and the location of the streetlights shall be shown on the final site plan.
- Sidewalks shall be installed on both sides of all streets within the subdivision.

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- A school bus shelter shall be provided on the Final Site Plan. The character and location of the shelter shall be coordinated with the local school district and shown on the final site plan.
- No wetlands shall be included within any lot lines. The trees surrounding the wetland areas shall be preserved. There shall be a 100-foot buffer from all wetlands.
- There shall be a 50 foot wooded buffer from all neighboring and adjacent properties.
- The project must be served by central water and sewer.
- Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- Recreational amenities including a pool and clubhouse, tennis courts and community center shall be completed within 2 years of the issuance of the first building permit.
- Agricultural buffers shall be provided as required by State and County requirements.
- As noted in the PLUS comments, the applicant is encouraged to relocate the storm water management pond currently located on the north side of Green Road to another location. This will help preserve additional trees and natural forest in this area.
- The Agricultural Use Notice shall be included in the leases for lots.
- 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. Gordy and carried unanimously to approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2005 – 79 - - application of **PARADISE PROPERTY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 84.27 acres into 169 lots, (Environmentally Sensitive Developing District Overlay Zone), located south of Road 336, 4,300 feet southwest of Road 335A and north of Pepper Creek.

Mr. Abbott advised the Commission that this application has been deferred since November 30, 2006; and that either Artesian Water Company, Sussex County or Tidewater Utilities will provide central sewer to the site.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2005 –79 for Paradise Properties based upon the record and for the following reasons:

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1. The Development is for land zoned AR-1 within the Environmentally Sensitive Development District Overlay Zone.
2. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.
3. The design preserves the natural environment by retaining approximately 75% of the existing forested areas.
4. The applicant has proposed 169 lots within the project, which is less than the allowable density for a standard AR-1 subdivision on this land.
5. The project will not have an adverse impact on the neighboring properties or community.
6. The lots will be served by central water.
7. The lots will be served by public or private central sewer.
8. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance and the Comprehensive Development Plan.
9. This approval is subject to the following conditions:
 - There shall be no more than 169 lots within the Subdivision.
 - The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, any 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. Best Management Practices shall be used in the maintenance of the system.
 - All entrances shall comply with all of DelDOT's requirements.
 - Street lighting shall be provided, and the location of the streetlights shall be shown on the Final Site Plan.
 - As stated by the Applicant, walking trails shall be installed throughout the project, with their location shown on the final site plan.

- As stated during the Applicant's presentation, the Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
- Amenities shall be constructed on the site, including a swimming pool, clubhouse, game courts and playground. These shall be open to use by residents within 2 years of the issuance of the first residential building permit.
- A school bus shelter shall be located on the site in coordination with the local school district. The shelter shall be shown on the Final Site Plan.
- Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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Motion by Mr. Smith, 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.

OTHER BUSINESS

Zonko Builders Office
CU #1618 Site Plan – Road 381A

Mr. Abbott advised the Commission that this site plan for a contractor's office and storage yard was reviewed at the November 20, 2006 special meeting; that action was deferred pending the relocation of the parking area out of the front yard setback; that a revised plan has been submitted with the parking being relocated; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

Mills Warehouses
CU #1644 Site Plan – Route 20

Mr. Abbott advised the Commission that this is a preliminary site plan for an office/warehouse complex located on 16.82 acres; that the conditional use was approved on August 15, 2006 with 14 conditions; that 10, 60-foot by 50-foot buildings are proposed and permitted; that there is a 100-foot minimum building separation between each building; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that the final site plan needs to reference the conditions of approval; and that the site plan is suitable for preliminary approval.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the site plan as a preliminary with the stipulations that final site plan approval shall be subject to the staff receiving all agency approvals and that the 14 conditions of approval be referenced on the final site plan. Motion carried 5 – 0.

Phillip D. Murray
CU #1670 Site Plan – Road 415B

Mr. Abbott advised the Commission that this is a preliminary site plan for an auto repair and sales facility; that the conditional use was approved on December 12, 2006 with 4 conditions; that a 40-foot by 120-foot building is proposed; that the setbacks meet the requirements of the zoning code; that on-site sewer and water are proposed; that the final

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site plan needs to reference the conditions of approval and that the site plan is suitable for preliminary approval.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with the stipulations that final site plan approval shall be subject to the staff receiving all agency approvals and that the 4 conditions of approval be referenced on the final site plan. Motion carried 5 – 0.

Compass Point Associates
CU #1671 Site Plan – Route 9

Mr. Abbott advised the Commission that this is a preliminary site plan for a surveyor's office; that the conditional use was approved on December 12, 2006 with 4 conditions; that all improvements and infrastructure exist; that the conditions of approval are referenced on the final site plan; and that the site plan is suitable for preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Oyster House Villas
CU #1642 Site Plan – Oyster House Road

Mr. Abbott advised the Commission that this is a preliminary site plan for a 30-unit multi-family project located on 4.21 acres; that the conditional use was approved on March 21, 2006; that the Commission granted a one-year time extension on December 14, 2006; that the 7 conditions of approval are referenced on the site plan; that the

setbacks, building separations, and building lengths meet the minimum requirements of the zoning code; that 90 parking spaces are required and 94 are provided including an attached garage for each unit; that Sussex County will provide central sewer and the City of Rehoboth Beach will provide central water; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Heritage Village MR/RPC
Revised Record Plan – Road 283

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Mr. Abbott advised the Commission that this is a request to increase the depth of each unit to allow the owner the option of having a screened porch or a master bedroom or a deck as originally approved on the site plan; that this request gives the owner three options; and that the minimum 40-foot building separation must still be adhered to.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request with the stipulation that the 40-foot building separation must still be maintained. Motion carried 5 – 0.

The Peninsula MR/RPC
Lot 125 Marina Bay Phase 5C – Revised Setback

Mr. Abbott advised the Commission that this is a request to permit a bay window to encroach 1.16-feet into the side yard setback of 6 feet; that the bay window extends from the floor to the ceiling; that since this is a residential planned community, the Commission may allow lesser setbacks to create a superior living environment through design ingenuity; and that the structure has already been built.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this request with the stipulation that the staff advise the developers, by letter, that this is a one time decision and that the developers and builders should be meeting the approved setback requirements. Motion carried 5 – 0.

Midway Water Park
CU #1108 Revised Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised site plan for the re-alignment of an existing go-kart track and an addition of an elevated track and a 300-foot long, 10-foot

wide lazy river; that both of the proposed uses are part of an existing amusement park for the same uses; and that this could either be approved as submitted or require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the site plan as submitted. Motion carried 5 – 0.

Stonewater Creek and Pelican Point
Wastewater Treatment Facility Site Plan – Route 5

Mr. Abbott advised the Commission that this is a revised site plan for the wastewater treatment plant and disposal area for Stonewater Creek Subdivision and a disposal area for the Pelican Point Subdivision; and that an area also has been reserved for a future utility lot.

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Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve the site plan as submitted. Motion carried 5 – 0.

Ralph Timmons
3 Lots on a 50' Right of Way – Route 26

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot right of way; that the owner proposes to widen an existing farm road to a 50-foot right of way; that all of the lots will be a minimum of 0.75 acres; that the request can be approved as submitted or require an application for a major subdivision; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision.

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

Phyllis J. Gillinger
Reconsideration of Condition of Approval – Road 331

Mr. Abbott advised the Commission that a November 20, 2006 the Commission approved a request to create 2 lots with access from a 50-foot right of way with the stipulation that the pump house be relocated out of the proposed right of way; and that the owner has requested that the Commission reconsider this condition of approval since the building is a 12-foot by 16-foot masonry building that has electric running to it; and that it would not be feasible to move the structure.

Mr. Smith stated that he visited the site; that the pump house will not impede ingress/egress to the lot in the rear; that the lot in the rear is for a family member; and that it would not be financially feasible to be required to move the shed at this time.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to delete the condition of approval with the stipulation that if the shed is ever rebuilt, it must conform to current regulations or that if the lot is ever sold to someone out of the family, a lease agreement will be required. Motion carried 5 – 0.

The Peninsula MR/RPC
Amended Condition of Approval – Road 299

Mr. Abbott advised the Commission that the developers are requesting that a condition of their approval be deleted since it will never be used by the residents in the development;

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and that since the condition of approval originated at the Commission level, the Commission has the authority to amend the condition.

The Commission discussed this request and questioned how this condition was imposed, i.e., proffered by the applicant or requested by someone.

Mr. Abbott advised the Commission that the staff would have to research the minutes from the public hearing.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action to allow the staff time to research the minutes. Motion carried 5 – 0.

Bridgeville Microtel
Commercial Site Plan – Route 404

Mr. Abbott advised the Commission that this is a preliminary site plan for a 3-story, 59 room hotel located on 3.42 acres; that the site is zoned C-1; that access to the site is from service roads located between Route 404 and U.S. Route 13; that the setbacks meet the minimum requirements of the zoning code; that 91 parking spaces are required and that 109 spaces are provided; that all or portions of 60 spaces are located within the 60-foot front yard setback and are subject to site plan review; that Tidewater Utilities will provide central water to the site; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

The Commission discussed the parking located within the front yard setback, the number of parking spaces proposed, and questioned if there is parking within the front setback for other projects in the area.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to deny the site plan as submitted. Motion carried 5 – 0.

Subdivision #2004 – 50 - - PGS Properties, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval on October 13, 2005; and that if an extension is granted, it should be retroactive to the anniversary date of approval.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve a one-year time extension with the stipulation that the extension is retroactive to the anniversary date of approval. Motion carried 5 – 0.

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Subdivision #2004 – 57 - - Blue Ribbon Properties, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval on October 13, 2005; and that if an extension is granted, it should be retroactive to the anniversary date of approval.

Motion by Gordy, seconded by Mr. Smith and carried unanimously to approve a one-year time extension with the stipulation that the extension is retroactive to the anniversary date of approval. Motion carried 5 – 0.

Subdivision #2004 – 60 - - Phillips Branch Associates, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; and that the Commission granted preliminary approval on February 1, 2006.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve a one-year time extension. Motion carried 5 – 0.

Subdivision #2005 – 1 - - Pinewater Woods, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval on January 4, 2006; and that if an extension is granted, it should be retroactive to the anniversary date of approval.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve a one-year time extension with the stipulation that the extension is retroactive to the anniversary date of approval. Motion carried 5 – 0.

Subdivision #2005 – 11 - - PNH Harmon, L.L.C.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; and that the Commission granted preliminary approval on February 9, 2006.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve a one-year time extension. Motion carried 5 – 0.

ADDITIONAL BUSINESS

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Mr. Lank reminded the Commission of the upcoming public workshops for the Comprehensive Land Use Plan Update.

The Commission discussed a possible amendment to the subdivision ordinance concerning the length of time for preliminary approval.

It was the consensus of the Commission to have a Special Meeting for Old and Other Business items at 3:00 p.m. on Tuesday, February 20, 2007.

Meeting adjourned at 4:35 p.m.