



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF FEBRUARY 1, 2006

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, February 1, 2006 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. Burton, Mr. Gordy, Mr. Johnson, Mr. Smith and Mr. Wheatley, with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz – Land Use Planner, and Mr. Abbott – Assistant Director.

Mr. Lank advised the Commission that item #6 under Other Business has been removed from the agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the agenda as amended.

OLD BUSINESS

Subdivision #2004 – 37 - - application of **WAYNE MITCHELL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 21.75 acres into 24 lots, located west of Road 288-A, 0.5 mile south of Road 280-B.

Mr. Abbott advised the Commission that this application for a standard subdivision was deferred on June 23, 2005 pending receipt of a septic feasibility statement from DNREC; and that DNREC has indicated that the site is suitable for individual on-site septic disposal systems.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2004 – 37 for Wayne Mitchell, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.

2. The proposed subdivision density is less than the maximum density permitted by the existing AR-1 zoning.

3. The proposed subdivision is integrated into the existing terrain and surroundings.

4. A buffer has been established between the project and the old Angola Landfill site.

5. The proposed subdivision will be a restricted residential development and will not

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adversely affect nearby uses or property values.

6. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.

7. DNREC has indicated that the site is suitable for individual on-site septic systems.

8. Central water will be provided by Tidewater Utilities for the proposed lots.

9. A homeowners' association will be created to maintain streets, open space, storm water management areas and street lighting.

10. This recommendation is subject to the following conditions:

- There shall be no more than 16 lots within the subdivision.
- The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
- The storm water management system shall meet or exceed the requirements of the State and County, including specifically the direction of the County Engineering Department. In addition, the Development shall not cause increased water runoff onto neighboring or adjacent properties.
- All entrances shall comply with all of DelDOT's requirements. Also, an area for a school bus stop shall be established.
- A system of street lighting shall be provided by the Applicant, and the location of the streetlights shall be shown on the final site plan.
- The Restrictive Covenants shall include the Agricultural Use Protection Notice.

- Addressing shall be subject to the approval of the Sussex County Addressing Department.

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

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Subdivision #2004 – 60 - - application of **PHILLIPS BRANCH ASSOCIATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 47.63 acres into 95 lots (Cluster Development), located at the southwest corner of the intersection of Road 48 (Hollymount Road) and Road 302 (Phillips Branch Road).

Mr. Abbott advised the Commission that this application for a clustered subdivision was deferred on October 27, 2005 pending a decision on Conditional Use #1629 for Handler Mitchell for a central wastewater treatment disposal facility located in Stonewater Creek Subdivision that will provide wastewater treatment to this site; and that the County Council approved the Conditional Use on January 3, 2006.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2004 – 60 for Phillips Branch Associates, 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 approximately 44% of the project as open space. Also, the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed. For instance, standard $\frac{3}{4}$ acre lots would result in little or no open space.
2. The Applicant has designed the site plan so that all lots adjoin open space to the rear of each lot. Also, the design preserves the natural environment by retaining approximately 85% of the existing forested areas.
3. The applicant has proposed 85 lots within the project, which is less than the allowable density for a standard SR-1 subdivision on this land.
4. The project will not have an adverse impact on the neighboring properties or community.
5. The lots will be served by central water. Sewer service will be provided by a private regional wastewater treatment system serving this project along with others in the area.

6. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.

7. This approval is subject to the following conditions:

- There shall be no more than 85 lots within the subdivision.

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- The Applicant shall cause to be formed 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.
- 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.
- Sidewalks shall be installed, as shown on the preliminary site plan.
- Amenities shall be constructed on the site, including a multi-purpose athletic field, playground and passive recreation areas. The location of these areas shall be shown on the final site plan.
- Addressing shall be subject to the approval of Sussex County 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.

OTHER BUSINESS

The Preserves at Long Neck
Final Site Plan – Road 22

Mr. Abbott advised the Commission that this is a final site plan for 74 multi-family units located on 11.21 acres; that the site is zoned C-1; that the Commission granted preliminary approval on September 11, 2003 for 79 units; that the site plan meets the requirements of the zoning code; and that all agency approvals have been received.

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

Delmar Mini Storage
Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a preliminary site plan for 71,985 square feet of mini storage located on 9.68 acres; that the site is zoned LI-2; that there are 13 buildings proposed; that the buildings range in size from 8,100 to 2,400 square feet; that the setbacks meet the requirements of the zoning code; that the final site plan will be required to show landscaping as required by the Highway Corridor Overlay Zone ordinance; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Smith and carried 4 votes to none, with Mr. Wheatley not participating, 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 4 – 0 – 1.

Blue Heron Square
Commercial Site Plan – Road 22

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story, 6,000 square foot building for retail and office space located on 36,543 square feet; that the site is zoned C-1; that the setbacks meet the requirements of the zoning code; that 30 parking spaces are required and that 48 are proposed; that 10 spaces are located within the 60-foot front yard setback; that these spaces are approximately 37-feet from the front property line; that Tidewater Utilities will provide central water and Sussex County will provide central sewer to the site; that there are not any wetlands on the site and the site is not located in a flood zone; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

The Commission found that Doug Warner, Engineer with ECI was present on behalf of this review and stated in his presentation and in response to questions raised by the

Commission that this site was previously approved for retail space in 2001; that the previous owner did not proceed with the project; that 6 units are proposed by the new owner; that the storm water management will be underground; that there are 10 parking spaces located in front of the building since this is where the main entrance to the building is; that other commercial uses in the area have parking in the front yard setback; and that no residential uses are proposed.

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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 and to approve the 10 parking spaces located within the front yard setback. Motion carried 5 – 0.

James R. Gibson
CU #1540 Site Plan – Pine Lane

Mr. Abbott advised the Commission that this is a preliminary site plan for a 3-story, 3-unit multi-family dwelling structure located on 11,850 square feet; that the site is zoned MR; that this site was the subject of a Conditional Use application and that the Commission recommended that the Conditional Use be approved; that the County Council denied the Conditional Use application and that the Court reversed the Council's decision; that since the Court approved the use, there are not any conditions of approval; that the setbacks meet the requirements of the zoning code; that there are six parking spaces provided including an attached garage for each unit; that parking is located within the front yard setback; that Sussex County will provide central sewer and water to the site; 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. Gordy 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.

Louis Travalini
CU #1591 Revised Site Plan – Road 346

Mr. Abbott advised the Commission that this is a request to add a 4th model home/professional office building to an approved conditional use application; that the conditions of approval do not prohibit any additional buildings; and questioned if the Commission will consider a revised site plan or require the applicant to obtain an amended conditional use application.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request as a concept with the stipulation that an engineered site plan be submitted for review. Motion carried 5 – 0.

Sea Air Mobile Home Park
Revised Lots – Route One

This item was removed from the Agenda.

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Joseph Warnell
3 Lots and a 50' Right of Way – Road 38

Mr. Abbott advised the Commission that this is a request to create a 50-foot right of way over an existing paved driveway to serve as access for 3 new lots and residual land; that 2 lots would be 0.75-acres and the other 2 would be 1.39-acres each; and that the request can be approved as submitted or require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Johnson 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.

Gary Chorman
2 Parcels and a 50' Right of Way – Road 258

Mr. Abbott advised the Commission that this is a request to create 2 parcels with access from a 50-foot right of way; that the owner proposes to create the 50-foot right of way over an existing dirt road; and that the request can be approved as submitted or require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Gordy 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.

Thomas E. and Charlene A. Jones
Parcel on a 50' Right of Way – Route 30 & Emma Lane

Mr. Abbott advised the Commission that this is a request to create a 3.42-acre parcel with access from an existing 50-foot private road (Emma Lane); that DelDOT has issued a letter of no objection to the site having access from Emma Lane only; and that if this were approved, it would exceed the 3 lots having access from the private road.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to deny the request as submitted. The applicant shall be required to apply for a major subdivision application. Motion carried 5 – 0.

Elizabeth P. Isaacs
Parcel on a 50' Right of Way – Route 30 & Emma Lane

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre parcel with access from an existing 50-foot private road (Emma Lane); that DelDOT issued a letter of

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no objection to the site having access from Emma Lane only; and that if this were approved, it would exceed the 3 lots having access from the private road.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to deny the request as submitted. The applicant shall be required to apply for a major subdivision application. Motion carried 5 – 0.

Bobby J. and Diann Miller
3 Lots – Mallard Point

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from an existing 50-foot private road (Mallard Point) out of a 3.63-acre parcel; that 2 lots will be 1.11-acres and the other will be 1.20-acres; that the remaining land will be an extension to an adjoining parcel; and that if this were approved, it would exceed the 3 lots having access from the private road.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to deny the request as submitted. The applicant shall be required to apply for a major subdivision application. Motion carried 5 – 0.

Thomas J. Ayd, Sr.
2 Lots and a 50' Right of Way – Road 420

Mr. Abbott advised the Commission that this is a request to create 2, 2.50-acre parcels and a 50-foot right of way to serve as access to the 2 lots and the remaining 40-acres; and that the request can be approved as submitted or 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.

Angela Francisco
Parcel and a 50' Right of Way – Route 18

Mr. Abbott advised the Commission that this is a request to create a 1.78-acre parcel with access from a 50-foot easement; that the owner proposes to create the easement over an existing paved driveway; 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 approved as a concept only since a variance will be required for the setback of the dwelling from the easement and a variance for the lot depth.

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Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as a concept only with the stipulation that final approval shall be subject to the applicant obtaining the necessary variances from the Board of Adjustment. Motion carried 5 – 0.

Linwood G. Burbage
Parcel on a 50' Right of Way – Honeysuckle Drive

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre lot with access from an existing 50-foot right of way; that if approved, this would be the second lot with access from the right of way; and that this can be approved as submitted or 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 stipulations that the right of way shall be shown all the way out to Route 20 on the final survey and that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Jack Payton
Lot and 50' Right of Way – Road 587

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot and a 50-foot right of way to serve as access to a 9.25-acre tract; and that the request can be approved as submitted or 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.

Subdivision #2004 – 58 - - Norris Niblett
Amended Condition – Cross Key Village

Mr. Abbott advised the Commission that this is a request to delete the condition of approval that no wetlands be located on any individual lots; that the engineers have advised the staff that if this condition is not removed, it will be necessary for them to realign the proposed street layout and will cause further impacts to the wetlands; and that a jurisdictional determination has been received from the Army Corps of Engineers.

Mr. Robertson advised the Commission that the Subdivision Ordinance allows the Commission the authority to add conditions of approval and that this condition has been a policy of the Commission for some time now.

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Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to deny this request. Motion carried 5 – 0.

Subdivision #2003 – 25 - - Rich Moonblatt
Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval for 3 lots on January 8, 2004; that the Commission granted a one-year time extension on July 28, 2005; that this is the second request for an extension; and that if an extension is granted, it should be retroactive to the anniversary date of approval.

Motion by Mr. Burton, seconded by Mr. Smith and carried 4 votes to 1, with Mr. Wheatley opposed, to grant a one-year time extension with the stipulation that this will be the last extension granted by the Commission. Motion carried 4 – 1.

Subdivision #2004 –16 - - Dyer Reed, 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 for 170 lots on February 17, 2005; and that this is the first request for an extension.

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

ADDITIONAL BUSINESS

It was the consensus of the Commission to hold a special meeting on March 1, 2006 at 3:00 p.m. for Old Business and Other Business items.

Mr. Robertson provided the Commission members with a copy of the Court decision of the Walmart Case.

Meeting adjourned at 4:15 p.m.