



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF FEBRUARY 3, 2011

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, February 3, 2011 in the County Council Chambers, Sussex 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. Michael Johnson, Mr. Martin Ross, Mr. Rodney Smith and Mr. Robert Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded Mr. Johnson and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

OLD BUSINESS

Subdivision #2008 – 24 - - application of **GREGORY A. AND CHARLOTTE L. HASTINGS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 14.37 acres into 10 lots (Cluster Subdivision), located south of Route 404, 2,700 feet west of Road 528.

Mr. Abbott advised the Commission that this is the final record plan for a 10-lot cluster subdivision application; that the Commission granted preliminary approval on May 14, 2009 and granted a one-year time extension on May 19, 2010; that the final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve this application as a final. Motion carried 4 – 0.

OTHER BUSINESS

Stockley Sand and Gravel, LLC
CU #1829 Site Plan – Road 322

Mr. Abbott advised the Commission that this is a site plan for the expansion of a borrow pit; that this Conditional Use was approved on June 8, 2010 with 20 conditions; that the 20 conditions are noted on the site plan; that the site contains 40.85 acres; that the pit will

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be excavated in 2 phases; that condition of approval #16 requires a 30-foot vegetated buffer planted with native species; that the developer is requesting to plant seedlings of Loblolly Pines; that the Department of Agriculture has agreed that the Loblolly Pines are acceptable, however that would prefer a larger planting; that the developer is proposing to plant 1,000 seedlings and proposing a post a \$5,000.00 bond with the County until the seedlings reach 1.5" in caliper and the slopes are stabilized; that all agency approvals have been received; that the site plan is suitable for final approval if the Commission agrees with the developer's request in reference to the vegetated buffer; and that the Commission was previously provided a copy of the site plan, a letter from the developer's engineer explaining the buffer request and a letter from the Department of Agriculture.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the site plan as a final. Motion carried 4 – 0.

Karl M., III and Melanie Klink
CU #1668 Site Plan – Route 20

Mr. Abbott advised the Commission that this is a site plan for a 1,150 square foot country store; that this Conditional Use was approved on June 12, 2007 with 10 conditions; that the conditions of approval are noted on the site plan; that the County Council granted a one-year time extension on November 30, 2010; that the site plan complies with the conditions of approval and the zoning code; that 8 parking spaces are provided; that on-site septic and well are proposed; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Mr. Smith questioned if the conditions of approval referenced feather flags being prohibited.

Mr. Abbott advised the Commission that feather flags are not referenced.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a final. Motion carried 4 – 0.

Tanger Outlet Center
Revised Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised site plan for a 2,905 square foot bank in the Tanger Outlets Shopping Center; that the proposed bank replaces a previously approved 5,871 square foot restaurant that was approved by the Planning and Zoning Commission on July 6, 2006; that as with the previously approved site plan, there are 54 parking spaces located within the front yard setback that is subject to site plan review; that parking within the front yard setback is also located on the adjoining parcels; and that the Commission was previously provided a copy of the site plan.

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Mr. Johnson questioned what would happen with the existing storm water management pond.

Mr. Lank advised the Commission that the storm water management pond would be replaced with an infiltration storm water management system.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Echelon Design Center

Shared Parking Agreement Interpretation – Route One

Mr. Abbott advised the Commission that the Echelon Design Center and Bigger Fish, LLC are proposing a shared parking agreement; that the 2 sites front along Route One but are separated by Phillips Street, a 50-foot right of way; that the 2 uses combined would require 152 parking spaces; that the Echelon Design Center requires 77 spaces and the Big Fish Grill site requires 75 spaces; that between the 2 sites, there are 153 spaces provided; that 115-165 B references shared parking agreements and reads (1) "Location. All uses that participate in a single shared parking plan shall be located on the same lot or on lots that share a common boundary. The shared parking lot shall be developed and used as though the uses on the lots were a single unit."; that staff and the engineer are questioning if the shared parking agreement can be utilized in this case since the site is split by Phillips Street; that another section of the Shared Parking ordinance states that the parking cannot be located more than 600 feet from the use; and that the Commission was previously provided a copy of the site plan and a letter explaining the request.

The Commission discussed the Ordinance. It was a consensus of the Commission that the request does not meet the requirements of the ordinance and that the applicants could apply for a variance from the Board of Adjustment.

The Commission did not take any action on this request.

Subdivision #2008 – 6 – Bay Twenty, LLC

Request for Site Work

Mr. Abbott advised the Commission that this item was deferred at the December 9, 2010 meeting; that this is a request to commence site work prior to obtaining final record plan approval; that the applicant's engineer is requesting that the applicant be able to relocate tax ditches and place fill in accordance with State and Federal Wetlands permits; that they are also requesting permission to plant forest buffer areas with seedlings since the lots that will be affected by the buffer zones will not be marketed for sales for several years and that this will allow time for the buffer to mature; that the required plantings are under the previous buffer ordinance, which did not specify certain sizes for the plantings; that usually site work is not permitted until a Notice to Proceed has been issued after

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obtaining final site plan approval; that if this is allowed to occur, a precedent may be established; and that the Commission was previously provided a copy of the request.

The staff advised the Commission that trees could be planted at any time on the site; and that the relocation and filling of ditches could occur if proper approvals are obtained.

Ken Christenbury, P.E. with Axiom Engineering advised the Commission that the ditches are regulated by three different entities; that their approval dates are not the same; and that the approvals limit the amount of disturbance that is permitted.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny the request. Motion carried 4 – 0.

Subdivision #2004 – 18 – Milton Brunner
Amended Condition

Mr. Abbott advised the Commission that this is a request to delete a condition of approval for the Cherry Walk Woods Subdivision; that this application received preliminary approval on March 3, 2005 and final approval on November 30, 2005; that one of the conditions of approval required a solid vinyl clad or equivalent fence along the entire property line adjacent to the Davis lands prior to the issuance of any building permit for a lot along the buffer next to the Davis lands; that the developer is requesting that this condition be deleted and that the Davis family agrees with the request; and that the Commission was previously provided a copy of the request and a letter of no objection from the Davis family.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to delete the condition of approval. Motion carried 4 – 0.

Subdivision #2005 – 72 – Baywood, LLC
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this is the fourth request for an extension; that the Commission granted preliminary approval on January 18, 2007 and granted one-year time extensions on February 20, 2008, February 18, 2009 and January 20, 2010; that if an extension is granted preliminary approval will be valid until January 18, 2012; that a new engineering firm has taken over the project; that all agency approvals have been received except DelDOT; that DelDOT has indicated that they have received and reviewed the entrance plans but their approval will be withheld until improvements for another project are agreed upon; and that the Commission was previously provided a copy of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried to unanimously to approve a one-year time extension retroactive to the anniversary date of approval. Preliminary approval is now valid until January 18, 2012. Motion carried 4 – 0.

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Subdivision #2005 – 74 – Delmarva Woodlands Alliance 4, LLC

Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this is the fourth request for an extension; that the Commission granted preliminary approval on December 14, 2006 and granted one-year time extensions on January 17, 2008, January 14, 2009 and December 16, 2009; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until December 14, 2011; and that the Commission was previously provided a copy of the request.

Mr. Johnson questioned what approvals are lacking.

Mr. Abbott advised the Commission that approvals have been received from DelDOT and the Department of Agriculture; and that the check print for obtaining final approval have been completed by staff and that it is not unusual for the engineers to submit all approvals at once.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until December 14, 2011. Motion carried 4 – 0.

Subdivision #2005 – 78 – Delmarva Woodlands Alliance, LLC

Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this is the third request for an extension; that the Commission granted preliminary approval on December 14, 2006 and granted one-year time extensions on December 17, 2008 and December 16, 2009; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until December 14, 2011; and that the Commission was previously provided a copy of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until December 14, 2011. Motion carried 4 – 0.

Subdivision #2006 – 42 – Glen Jones

Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this is the third request for an extension; that the Commission granted preliminary approval on November 29, 2007 and granted one-year time extensions on December 17, 2008 and November 12, 2009; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until

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November 29, 2011; and that the Commission was previously provided a copy of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until November 29, 2011. Motion carried 4 – 0.

Subdivision #2007 – 25 – Jose G. and Mary E. Gutierrez
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this is the second request for an extension; that the Commission granted preliminary approval on December 18, 2008 and granted a one-year time extension on January 20, 2010; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until December 18, 2011; and that the Commission was previously provided a copy of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until December 18, 2011. Motion carried 4 – 0.

Church of God and Saints of Christ
3 Lots and 50' Easement – Route 20

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot easement; that each lot will contain 0.75-acre; that the owner is requesting to create the 50-foot easement over an existing entrance to the adjoining church parking lot; that the request may be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the land will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 4 – 0.

CU #1764 – Buchanan Developers, Inc.
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that this Conditional Use for multi-family dwelling units was approved on March 17, 2009; that the Commission granted a one-year time extension on September 9, 2010; that this is the second request for an extension and the last that the Commission has the authority to grant; that if an extension is granted, approval will be valid until March 17, 2012; and that the Commission was previously provided a copy of the request.

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Mr. Smith passed out photographs of the site and advised the Commission that he has received complaints about the present condition of the site being an eyesore and that it is his hope that the developer would remove the dilapidated structure from the site.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve a one-year time extension. Preliminary approval is now valid until March 17, 2012. Motion carried 4 – 0.

Subdivision #2005 – 85 – Ernest H. Hosse, III

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 February 20, 2008 and granted one-year time extensions on March 18, 2009 and November 10, 2010; that this is the third request for an extension; that if an extension is granted, preliminary approval will be valid until February 20, 2012; and that the Commission was previously provided a copy of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve a one-year time extension. Preliminary approval is now valid until February 20, 2012. Motion carried 4 – 0.

Subdivision #2006 – 63 – Deep Branch Road, LLC

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 May 14, 2008 and granted one-year time extensions on October 14, 2009 and April 14, 2010; that this is the third request for an extension; that if an extension is granted, preliminary approval will be valid until May 14, 2012; and that the Commission was previously provided a copy of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve a one-year time extension. Preliminary approval is now valid until May 14, 2012. Motion carried 4 – 0.

Subdivision #2006 – 67 – CH3, LLC

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 14, 2009 and granted a one-year time extension on February 17, 2010; that this is the second request for an extension; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until January 14, 2012; and that the Commission was previously provided a copy of the request.

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Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until January 14, 2012. Motion carried 4 – 0.

Subdivision #2008 – 6 – Bay Twenty, LLC

Revised Preliminary

Mr. Abbott advised the Commission that this is a request to revise the preliminary subdivision plan by deleting a cul-de-sac street and adding a community swimming pool; that a storm water management facility is proposed for the location of the previously approved cul-de-sac; that 76 lots are still proposed; and that the Commission was previously provided a copy of the revised preliminary plan.

Ken Christenbury, P.E. with Axiom Engineering advised the Commission that some double frontage lots have been removed, that a community pool has been added; and that the storm water management pond has been relocated.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised plan as a revised preliminary plan. Motion carried 4 – 0.

H.P. Layton Partnership

3 Lots – Bay Shore Drive

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from existing 30-foot right of ways; that Lots 1 and 2 contain 1.24 acres and 1.02 acres; that these lots are proposed to have access from an existing 30-foot right of way; that Lot 3 will contain 1.66 acres and has access from an existing 30-foot right of way; that Lot 2 needs to be revised to have a minimum frontage of 150-feet along the Deep Hole Creek; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as a concept with the stipulation that Lot 2 shall have a minimum width of 150 feet along Deep Hole Creek, or a variance shall be obtained. Motion carried 4 – 0.

LJL Realty, LLC

Parcel and 50' Easement – Road 236A

Mr. Abbott advised the Commission that this is a request to create a 5.0-acre parcel with access from a 50-foot easement; that the owner is proposing to create the easement over an existing farm lane; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

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Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as a concept. Motion carried 4 – 0.

Harry S. and Janet L. Brittingham

3 Lots and 50' Easement – Route 30

Mr. Abbott advised the Commission that this is a request to subdivide a 7.77 acre parcel into 3 lots with access from a 50-foot easement; that proposed Lots 1 and 2 will contain 0.75 acre; that the residual lands will contain 6.27 acres; that there is an existing poultry house on the residual lands; that the owner is proposing to extend the existing 50-feet of frontage to serve as the easement; that DelDOT has issued a Letter of No Objection; that the request can be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 4 – 0.

Elizabeth L. West

2 Lots and 50' Easement – Road 401

Mr. Abbott advised the Commission that this is a request to subdivide a 4.0-acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing driveway; that Lot 1 will contain 1.0-acre and the residual lands will contain 3.0-acres; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as a concept. Motion carried 4 – 0.

Bob and Sally Druckenmiller

2 Lots and 50' Easement – Road 84

Mr. Abbott advised the Commission that this is a request to subdivide a 6.41-acre parcel into 2 lots with access from a 50-foot easement; that on March 17, 2010 the Commission approved a 5.42-acre parcel and 6.41-acre parcel with access from a 50-foot easement; that the owner is proposing to subdivide the 6.41-acre parcel into 2 lots and extend the existing 50-foot easement to serve as access to the 2 lots; that if approved, this would make 3 lots with access from a 50-foot easement; that the request can be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 4 – 0.

Dennis W. Pierce
3 Lots and 50' Easement – Road 353

Mr. Abbott advised the Commission that this is a request to subdivide a 5.0-acre parcel into 3 lots with access from a 50-foot easement; that Lots 1 and 2 will contain 0.75-acre each and the residual lands will contain 3.50-acres; that the owner proposes to create the 50-foot easement over an existing driveway; that on October 28, 2010 the Commission approved a concept to create 2 lots and a 50-foot easement for this site; that the request can be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 4 – 0.

Wayne and Vicki Lee Givens
2 Parcels and 50' Easement – Road 483

Mr. Abbott advised the Commission that this is a request to create a 2.0-acre parcel with access from a 50-foot easement; that the owner proposes to create the 50-foot easement over an existing driveway; that the 2.0-acre parcel has an existing dwelling located on it; that the residual lands contain 21.08-acres; that DelDOT has issued a Letter of No Objection; that the request can be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as a concept. Motion carried 4 – 0.

Raymond Kovach
2 Lots – Road 530 and Oak Lane

Mr. Abbott advised the Commission that this is a request to subdivide a 2.0934-acre parcel into 2 lots; that Lot 1 will contain 1.3295-acres and has road frontage along Road 530; that Lot 2 will contain 0.7639-acres and has road frontage along Oak Lane; and that the Commission was previously provided a sketch drawing of the request. Motion carried 4 – 0.

The Executive Session was removed from the Agenda.

Meeting adjourned at 4:10 p.m.