



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF FEBRUARY 18, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, February 18, 2009 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Mr. Johnson requested that item #7 on the Consent Agenda be removed from the Consent Agenda and be discussed as a separate item.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Consent Agenda as amended. Motion carried 5 – 0.

The Consent Agenda included:

1. Subdivision #2005 – 72 – Baywood, LLC
Time Extension

This is a request for a one-year time extension. This application received preliminary approval for 587 lots on January 18, 2007 and the Commission granted a one-year time extension on February 20, 2008. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until January 18, 2010.

2. Subdivision #2006 – 53 – JE & TG, LLC
Time Extension

This is a request for a one-year time extension. This application received preliminary approval for 12 lots on February 28, 2008. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until February 28, 2010.

Minutes

February 18, 2009

Page 2

3. Debbie Whaley

Lot on 50' Right of Way – Road 493

This is a request to create a 1.0-acre lot with access from a 50-foot right of way. The owner proposes to create the 50-foot right of way over an existing lane known as Lankford Lane. The aerial photograph shows the existing lane. The proposed lot is for the applicant's son. The request can be approved as submitted or an application for a major subdivision can be required.

4. Danny Clark and Heather Wilkerson

Lot and 50' Easement – Road 61

This is a request to create a 1.0-acre lot with access from a 50-foot easement. The applicant proposes to create the 50-foot easement over an existing driveway. The residual lands will contain 1.01-acres and also have access from the 50-foot easement. The aerial photograph shows an existing driveway where the proposed easement will be located. The request can be approved as submitted or an application for a major subdivision can be required.

5. Stephen J. and Anne E. Kelly

Lot and 50' Easement – Road 427

This is a request to create a 1.20-acre parcel with access from a 50-foot easement. The residual lands will contain 46.0-acres. Both parcels will have access from the 50-foot easement. The owner proposes to create the 50-foot easement over an existing drive known as Black Lab Lane. The aerial photograph shows the land and the survey does also. The request can be approved as submitted or an application for a major subdivision can be required.

6. Calvin Musser

2 Lots – Route 24 and White Pines Lane

This is a request to subdivide a 2.50-acre parcel into 2 lots. Lot 1 will have access from an existing 50-foot right of way known as White Pines Lane. Lot 2, which has an existing dwelling located on it will have access from Route 24. If approved as a concept, the applicant shall be required to verify that he has proof to access White Pines Lane. The applicant's property line extends to the centerline of White Pines Lane.

7. James A. Welu

3 Lots and 50' Easement – Road 233

This item was removed from the Consent Agenda and was discussed as a separate item at the conclusion of the Consent Agenda.

8. R.J. Kauffman, Jr.

Minutes

February 18, 2009

Page 3

3 Lots and 50' Right of Way – Road 353

This is a request to subdivide a 9.436-acre parcel into 3 lots with access from a 50-foot right of way. Lot 1 will contain 1.30-acres, Lot 2 2.60-acres and the residual lands 4.85-acres. Lot 2 has an existing steel frame building located on it. The applicant proposes to create the 50-foot right of way over an existing stone driveway. The request can be approved as submitted or an application for a major subdivision can be required. 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.

9. Cashar Shockley

Parcel and 50' Right of Way – Road 388

This is a request to subdivide a 2.50-acre lot out of a 6.84-acre parcel. A 50-foot right of way will serve as access to the residual land which contains 4.34-acres. The owner proposes to create the 50-foot right of way over an existing farm lane. The aerial photograph shows the lane. The request can be approved as submitted or an application for a major subdivision can be required.

10. William Shockley

Lot and 50' Easement – Road 375

This is a request to create a 0.75-acre lot with access from a 50-foot easement. The owner proposes to extend an existing 50-foot easement to serve as access to the lot. The request can be approved as submitted or an application for a major subdivision can be required.

11. Philip V. and Phyllis R. Livingston

3 Lots and 50' Easement – Road 490

This is a request to subdivide a 5.95-acre parcel into 3 lots with access from a 50-foot easement. Lots 1 and 2 will contain 1.0-acre each and the residual lands will contain 3.95-acres. The owner proposes to create the 50-foot easement over an existing 10-foot gravel driveway. DelDOT has issued a Letter of No Objection. The request can be approved as submitted or an application for a major subdivision can be required. 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.

Mr. Abbott advised the Commission that staff has verified that each of the subdivisions on the consent agenda have access via an existing driveway of lane.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the items on the Consent Agenda as circulated. Motion carried 5 – 0.

The Chairman referred back to item #7 on the Consent Agenda.

7. James Welu

3 Lots and 50' Easement – Road 233

This is a request to subdivide a 6.16-acre parcel into 3 lots with access from a 50-foot easement. Lot 1 will contain 1.06-acres, Lot 2 1.11-acres and Lot 3 1.58-acres. 2 open space areas will be retained. These areas contain 1.47-acres which is all wetlands and 0.94-acres. The owner proposes to create the 50-foot easement over a cleared area. There are no wetlands located on the individual lots. The request can be approved as submitted, or an application for a major subdivision can be required. If the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Mark Davidson of Design Consultants Group, LLC was present on behalf of this request and advised the Commission that the wetlands on the site are “404” wetlands; that the wetland area will be dedicated to a Conservation Easement; that the owner is working with DNREC to establish the conservation easement; that there is a 30-foot no clear zone from the wetlands and an additional 20-foot setback from the no clear zone which establishes a 50-foot buffer from the wetlands; that the small open space area will be for on-site septic systems; that the owner has received 3 approved site evaluations for this area; that the wetland areas will be marked with carsonite markers; that the owner wants to retain as many trees as possible on the site; that the conservation easement is a voluntary program; and that the lots are outside of the flood plain.

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

OTHER BUSINESS

1. Memorial Volunteer Fire Company
CU #1818 Site Plan – Road 224

Mr. Abbott advised the Commission that this is a site plan for a 2-story, 9,826 square foot fire substation; that the conditional use was approved on January 13, 2009 with 2 conditions; that the site plan is the same as what was reviewed at the public hearing; that the setbacks meet the requirements of the zoning code; that 16 parking spaces are proposed; that 1 space and a portion of another space are located within the front yard setback and is subject to site plan review; that on-site septic and water are proposed; that the conditions of approval were for lighting not shining on neighboring properties and site plan review; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

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

2. Subdivision #2005 – 42 – Woodridge Subdivision

Amended Condition

Mr. Abbott advised the Commission that this is a request to amend a condition of approval; that final approval for 188 lots was granted on December 17, 2008; that condition of approval 9 states “Amenities, including a clubhouse and swimming pool, shall be constructed and open to use by the residents of the development within 2 years of the issuance of the first residential building permit.”; that the developer has sent a letter requesting that the condition be amended to read “Amenities, including a clubhouse and swimming pool, shall be constructed and open to use by residents of the development before the 50th building permit will be issued for the development.”; and that the developer has advised that given the current state of the housing market, he’s concerned that two years will not be enough time to sell units to support construction of the amenities.

The Commission noted that there have been a few of these types of requests for revised conditions recently; that they have concerns for people buying into developments with expectations; that this project has not commenced construction yet; that the Commission may want to consider time frames for future applications; that the time frames usually originate with the representatives of the applications and questioned if building permits or certificates of compliance are easier to track.

Mr. Lank advised the Commission that building permits are easier to track.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to revise Condition of Approval 9 to read “amenities, including a clubhouse and swimming pool, shall be constructed and open to use by residents of the development before the 50th building permit will be issued for the development” and with the stipulation that a revised record plan be recorded with this condition stated on the revised record plan. Motion carried 5 – 0.

3. Villages of Five Points MR/RPC

Lot 122 Revised Setbacks

Mr. Abbott advised the Commission that this is a request to revise the side yard setback for Lot 122 to 8.5-feet; that when this application went through the public hearing process, testimony was given that the side yard setbacks would be 5-feet; that when the record plan was approved and recorded, the side yard setbacks were shown at 10-feet; that the engineer is requesting that this lot only be permitted an 8.5-foot side yard setback; that since this project is a residential planned community, the Commission has the authority to amend setback requirements; and that all of the other lots will have a 10-foot side yard setback as shown on the approved plan.

Matthew Peterson of Element was present on behalf of this request and advised the Commission that the 8.5-foot side yard setback request is for Lot 122 only.

Minutes

February 18, 2009

Page 6

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted. Motion carried 5 – 0.

4. Breakwater MR/RPC

Revised Plan – Road 268

Mr. Gordy advised the Commission that he would not be participating in the discussion of this item.

Mr. Abbott advised the Commission that this is a revised site plan for 185-unit residential planned community; that the developers are requesting revisions to the previously approved plan; that the first revision is for a front and rear yard aggregate of 30-feet from the previously approved 40-feet; that 5-foot side yard setbacks are requested for the multi-family (duplex and triplex) units; that the second revision is to the parking requirements; that 236 parking spaces are required based on the current code that the duplexes and triplexes require 152 spaces and 152 are provided; that this includes an attached garage for each unit; that the multi-family townhouses require 84 spaces and 84 spaces are provided; that this includes an attached garage for the 3 and 4 bedroom units and a 2-car garage for the 5 bedroom units; and that since the project is a residential planned community, the Commission may amend height, area and bulk requirements.

Jessica Nichols, P.E. with Meridian Architects and Engineers and Ben Gordy of Ocean Atlantic Agency were present on behalf of this request and advised the Commission that the revisions are based on a change of design for the architecture of the proposed homes; that parking calculations have been revised based on the current code; that additional off-street parking has been added; and that future owners would probably be made aware that they would not be able to remodel garages for living space.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, with Mr. Gordy not participating, to defer action for further consideration. Motion carried 4 – 0 – 1.

5. CU #1115 – Thomas and Debbie Paine

Interpretation of Classic Vehicles

Mr. Abbott advised the Commission that this conditional use for The Restoration of Classic Vehicles with Related Storage and Sales was approved on June 6, 1995; that the owners have sent a letter requesting that “classic cars” be removed from the conditional use; that they stated that “classic cars” are continuing to come up in years and new parts are being used on classic cars; and that the applicants feel that this would provide better customer service.

Mr. Robertson advised the Commission that the title to the Ordinance couldn't be changed without going through another public hearing process.

Minutes

February 18, 2009

Page 7

There was a consensus of the Commission to take no action since to change the title will require an amended Conditional Use application.

6. Discussion of Possible Ordinances

The Commission discussed 4 possible ordinances, which relate to Conditional Use Approval, Subdivision Approval, Staff Approved Subdivisions and Street Design Standards.

Mr. Robertson will make revisions to the proposed ordinances based upon the discussions and revised possible ordinances will be submitted for review at a later date.

Meeting adjourned at 4:25 p.m.