



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF MARCH 18, 2009

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

The meeting was called to order at 3:00 p.m. with Vice-Chairman Gordy presiding. The following members of the Commission were present: Mr. I.G. Burton, III, Mr. Ben Gordy, Mr. Michael Johnson and Mr. Rodney Smith along 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. Smith, seconded by Mr. Johnson and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

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

The Consent Agenda included:

1. Time Extensions

a. CU #1679 – Herker Property Maintenance Co.

This is a request for a one-year time extension. The conditional use for an office and warehouse was approved on March 27, 2007. The Commission granted a one-year time extension on November 12, 2008 retroactive to the anniversary date of approval. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, approval will be valid until March 27, 2010.

b. Subdivision #2005 – 12 - - Lacrosse Homes of Delaware, Inc.

This is a request for a one-year time extension. The Commission denied this 350-lot cluster subdivision on March 9, 2006. The County Council reversed the Commission's decision on April 3, 2007. The Commission granted a one-year time extension on March 29, 2008. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until April 3, 2010.

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c. Subdivision #2005 – 18 - - JKC, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval for this 133-lot cluster subdivision on February 23, 2006 and granted one-year time extensions on May 16, 2007 and March 19, 2008. This is the third 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 February 23, 2010.

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

This is a request for a one-year time extension. The Commission granted preliminary approval for this 21-lot cluster subdivision on February 20, 2008. This is the first 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 February 20, 2010.

e. Subdivision #2005 – 86 - - Dale Wheatley

This is a request for a one-year time extension. The Commission granted preliminary approval for this 34-lot cluster subdivision on February 27, 2007 and granted a one-year time extension on October 16, 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 February 22, 2010.

f. Subdivision #2005 – 95 - - Harlton Associates, L.P.

This is a request for a one-year time extension. The Commission granted preliminary approval for this 197-lot cluster subdivision on February 8, 2007 and 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 February 8, 2010.

g. Subdivision #2005 – 96 - - Arion Development

This is a request for a one-year time extension. The Commission granted preliminary approval for this 99-lot cluster subdivision on April 19, 2007 and granted a one-year time extension on January 17, 2008. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until April 19, 2010.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the items on the Consent Agenda. Motion carried 4 – 0.

Old Business

Subdivision #2005 – 94 - - application of SEACOAST INVESTMENTS, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro

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Hundred, Sussex County, by dividing 81.84 acres into 199 lots (Cluster Development), located east of U.S. Route 113, south of Road 325, and west of Road 326.

Mr. Abbott advised the Commission that this application for a 199-lot cluster subdivision has been deferred since January 11, 2007; that the application was the first under the Moderately Priced Housing Unit program; that the Commission deferred action so that the County Council could verify whether the application should have been accepted into program; that Bill Lecates, Director of Community Development and Housing advised the Council on June 12, 2007 that the application has been disqualified, but the applicant could reapply for the program; that the Commission has been provided copies of the Council's minutes from June 12, 2007 and a revised preliminary plan for 163 lots with a minimum square area of 7,500 square feet; that on the revised plan, the right of way has been reduced from 9.84-acres to 8.72-acres, the amount of wooded area to be cleared has been reduced from 6.12-acres to 4.29-acres and open space has been increased from 36.40-acres to 41.95-acres; that the Commission has been provided copies of the minutes from the previous meetings, that the applicant's attorney has advised that the revised plan is not in the moderately priced housing program; and that there were 14 people present in opposition to the original application.

Mr. Johnson advised the Commission that he has reviewed the revised plan; that it has been over two years since the application was heard; that it has been approximately 1 ½ years since the Council determined that the application did not meet the requirements of the moderately priced housing program; that he has concerns about the time lapse; that there was opposition to this application; that he feels that the revised plan should go back through the hearing process; that the revised plan should be reviewed through P.L.U.S.; that the application is a cluster subdivision; and that there has been changes to the area including a possible round about being installed by DelDOT.

Mr. Gordy agreed with Mr. Johnson due to the changes.

Jim Fuqua, Attorney, advised the Commission that the Council determined that the project could not be in the moderately priced housing program since the area was not in a growth zone; that the County has amended the Comprehensive Land Use Plan and the site is now located in a growth zone; that the developer has withdrawn from the moderately priced housing program due to the economic problems with the real estate market; that the number of units has been reduced; and that open space has been increased.

Bryan Hall of the Office of State Planning Coordination advised the Commission that the developer should submit a revised plan to their office and that they will determine whether the revised plan needs to go back through the P.L.U.S. process.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously that the application be required to go back through the P.L.U.S. process for an updated review and that the application will be scheduled for a rehearing on an expedited basis. Motion carried 4 – 0.

Other Business

1. Breakwater Estates MR/RPC
Revised Record Plan – Road 268

Mr. Gordy advised the Commission that he would not be participating in this discussion and turned the meeting over to Mr. Smith.

Mr. Abbott advised the Commission that this item was deferred at the February 18, 2009 meeting; that the revisions are for revised setbacks for the multi-family fee simple lots and revised parking rational for the multi-family sections; that the previous approved plan was for a 40-foot front and rear yard aggregate and a minimum side yard setback of 20-feet for the multi-family fee simple lots; that the revised plan is for a 30-foot front and rear yard aggregate and a minimum side yard setback of 5-feet for the multi-family fee simple lots; that this request is due to a change in architecture of the proposed buildings; that the 40-foot separation between buildings would be reduced to 10-feet; that 152 parking spaces are required and provided for the duplex/triplex buildings; that 84 parking spaces are required and provided for the multi-family units; that this rational is based on the current code; that the applicant's restrictive covenants prohibit enclosing garage areas to living space; and that since the project is a residential planned community, the Commission may modify the height, area and bulk requirements.

Mr. Johnson expressed concerns about the decrease in the number of parking spaces required on the current code; that more parking should be provided; that multi-family units need more parking; that the reduced setbacks should create more open space; that the units are larger; why the developers offer more parking than what was required on the original approved plan; and questioned if the State Fire Marshal has approved the revisions.

Mr. Robert Wheatley – Chairman joined the meeting.

Ben Gordy, Project Manager with Ocean Atlantic advised the Commission that the proposed parking revision is based on the current code; that the aggregate revisions would allow for larger homes; that 2 car garages have been reduced to 1 car garages; that additional parking has been added between buildings 18 and 24; that 5 foot setbacks are proposed for the duplexes and triplexes; that the maximum building height is 42 feet; that they have had discussions with the State Fire Marshal but have no formal approval; and that plans will be submitted to the Office of the State Fire Marshal.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, with Mr. Gordy not participating, to defer action and to allow the developers to submit comments from the Office of the State Fire Marshal and a detailed explanation on how the revised plan promotes design ingenuity within two weeks. Motion carried 4 – 0 –1.

2. Subdivision #2005 – 73 - - Landlock, LLC

Mr. Abbott advised the Commission that this is a request to amend condition of approval #9 that states “There shall be a 60-foot forested buffer from all of the adjacent property boundaries and the tax ditch that exists on the property.”; that the preliminary plan that was submitted for the hearing had a 50-foot and 60-foot forested buffer proposed; that the engineering firm is requesting that the condition of approval be revised to read, “That there will be a 50-foot wooded buffer from all adjacent boundary lines except the boundary line inclusive of the tax ditch, which will have a 60-foot existing vegetative buffer.”; that the subdivision is a cluster subdivision which requires a 20-foot forested buffer; and that the Commission previously received a copy of the engineer’s letter.

Mr. Johnson stated that the proposed buffer is greater than what is required.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request. The revised condition will read, “There will be a 50-foot wooded buffer from all adjacent boundary lines except the boundary line inclusive of the tax ditch, which will have a 60-foot existing vegetative buffer.” Motion carried 5 – 0.

3. Ingram Village GR/RPC

CZ #1666 – Preliminary Site Plan – Road 213

Mr. Abbott advised the Commission that this is a preliminary site plan for a 405-unit residential planned community; that the RPC was approved on October 14, 2008; that 397 units are proposed in the County’s jurisdiction and 6 units are proposed in the Town of Ellendale; that the 16 conditions of approval are referenced on the site plan; that there are 225 single-family lots in the county, 4 in the Town of Ellendale and 2 within both the county and town; that 172 multi-family units are proposed; that the setbacks for the single-family lots are 30 – feet front yard, and 10 – feet side and rear yards; that the setbacks for the multi-family units are 30 – feet front yard, 20 – feet side yard and 10 – feet rear yard; that the separation distance between the multi-family units range from 10 to 40 feet; that 40 feet is the standard but since this is a RPC, the Commission may amend the height, area and bulk requirements; that a preliminary landscape and lighting plan is provided; that this project is to be annexed into the Town of Ellendale once final approval is received; that preliminary approval could be granted; and that final approval shall be subject to the review and approval by the Commission upon receipt of all agency approvals.

Jim Willey, P.E. with George, Miles and Buhr, L.L.C. was present on behalf of this project and advised the Commission that a recreation area has been added; that a soccer field is provided along with a community center; that this area was green space on the plan submitted for the hearing; that the townhomes will be sprinklered and have fire walls; that the units have not been built; and that they have had discussions with the Office of the State Fire Marshal.

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

4. Blue Hen Organics, LLC

CU #1793 – Site Plan – Road 402A

Mr. Abbott advised the Commission that this is a site plan for a composting facility; that the Conditional Use was approved on February 17, 2009 with 13 conditions; that the conditions are referenced on the site plan; that the proposed improvements on the site include a 20' x 50' office with a scale, a 50' x 100' maintenance shop, a 60' x 130' equipment storage building, a 50' x 100' mixing building, 3 yard waste receipt and storage areas, a grinder area, 9 composting pads, 4 curing pads, a screening area, finished compost storage and mulch storage and a storm water management pond; that a 50' forested buffer on a 4' berm surrounds the site; that a landscape plan has been provided; and that all agency approvals have been received.

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

5. Artisan's Bank

Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story, 7,400 square foot bank located on 1.73 acres; that the site is zoned AR-1; that a conditional use (CU #1716) for an office park was approved on January 16, 2007; that the setbacks exceed the requirements of the zoning code; that each floor contains 3,700 square feet; that 37 parking spaces are required and 38 spaces are proposed; that 12 spaces are within the front yard setback and are subject to site plan review; that a landscaping plan has been provided; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Mr. Johnson expressed concerns about parking being located within the front yard setback due to possible future takings by DelDOT.

Garth Jones, P.E. with Becker Morgan was present and advised the Commission that there is no room to relocate the 12 parking spaces within the front yard setback due to the size of the proposed storm water management area and area that was dedicated to DelDOT for Route 24 improvements; and that underground storm water management would be cost prohibitive.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action. Motion carried 5 – 0.

6. Bay City Mobile Home Park

Corrective Survey – Route 22

This item was removed by the staff on March 3, 2009.

7. Neil C. and Joyce A. Brasure
3 Parcels and 50' Easement – Road 345

Mr. Abbott advised the Commission that this is a request to subdivide an 18.72-acre parcel into 3 parcels with access from an existing 50-foot easement; that the parcel is at the dead end of Road 345; that Lot 1 would contain 2.51-acres, Lot 2 2.59-acres and the residual lands 13.62-acres; that the existing 50-foot easement is located over an existing dirt farm road; that the request can be approved as submitted or an application for a major subdivision can be required; and that if approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

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

8. Timothy and Kimberly Elder
2 Lots and 50' Easement – Road 431

Mr. Abbott advised the Commission that this is a request to subdivide a 1.93-acre parcel into 2 lots with access from a 50-foot easement; that Lot 1 would contain 0.97-acre and Lot 2 0.96-acre; that the owner is proposing to relocate an existing driveway to the western boundary line and create a 50-foot easement to serve as access to the lots; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted or an application for a major subdivision can be required; and that if the request is approved as submitted, the parcels are not large enough for any further subdivision unless central sewer was available.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

9. Ellendale Community Civic Improvement Association, Inc.
Parcel and 50' Easement – Road 213

Mr. Abbott advised the Commission that this is a request to create a 2.81-acre parcel with access from a 50-foot easement; that the owner proposes to create the easement over an existing entrance; that the easement will serve as access to the proposed parcel and the residual 102.26-acres; and that the request can be approved as submitted or an application for a major subdivision can be required.

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

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10. Subdivision #2007 – 4 - - Lacrosse Homes of Delaware
Discussion

Mr. Abbott advised the Commission that the Commission denied this 82-lot standard subdivision on October 23, 2008; that the applicant's engineer appealed this decision to the County Council; that on February 10, 2009, the County Council sent this application back to the Commission with the direction that the Commission notify the applicant of any additional information or documents it is required to submit in order to allow the Commission to reconsider the preliminary plan and that following the submission of such additional information or documents; that the Commission be required to hold a public hearing on an expedited basis and that the Council's decision on the appeal is based on its finding that the Commission did not involve the proper interpretation and/or application of the Subdivision Ordinance; and that Mr. Lank previously sent a letter to you that was sent to the applicant's engineer explaining what should be addressed.

It was the consensus of the Commission that Mr. Lank's letter addresses what the applicants need to address should they decide to refile the application.

Meeting adjourned at 4:35 p.m.