



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF APRIL 14, 2010

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, April 14, 2010 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. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Marty Ross along with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that item 4.c. CU #1770 – Stockley Materials, L.L.C. on the Consent Agenda was removed on April 12, 2010 at the request of the applicant.

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

Mr. Burton requested that item 4. d. Subdivision #2005 – 13 – Lynn and Karen McColley be removed from the Consent Agenda and discussed at the end of the Consent Agenda.

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

The Consent Agenda included:

Subdivision #2005 – 62 - - application of **DREAM BUILDERS CONSTRUCTION, INC.** to consider the subdivision of land in an AR-1, Agricultural Residential Zoning District in Cedar Creek Hundred, Sussex County, by dividing 93.58 acres into 79 lots, located north of Road 224, 80 feet west of U.S. Route 113.

This is the final record plan for a 79-lot standard subdivision application. The Commission granted preliminary approval for 79 lots on August 24, 2006 and granted one-year time extensions on February 20, 2008 and September 16, 2009. The final record plan is the same as the preliminary plan. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

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Subdivision #2005 – 65 - - application of **REYNOLDS ROAD, L.L.C.** to consider the Subdivision of land in an AR-1, Agricultural Residential Zoning District in Broadkill Hundred, Sussex County, by dividing 47.55 acres into 95 lots (Cluster Development), located west of Reynolds Pond Road (Road 233), 2,278 feet north of Draper Road (Road 235).

This is the final record plan for a 41-lot cluster subdivision application. The Commission granted preliminary approval for 85 lots on October 18, 2006 and granted one-year time extensions on November 14, 2007 and December 17, 2008. The Commission granted a revised preliminary approval and one-year time extension for 41 lots on September 16, 2009. The final record plan is the same as the revised preliminary plan. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2006 – 52 - - application of **L.T. ASSOCIATES** to consider the Subdivision of land in an AR-1, Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, Sussex County, by dividing 119.14 acres into 242 lots (Environmentally Sensitive Developing District Overlay Zone), located southeast of Road 267, and south of Hawkseye and Wolfe Runne Subdivisions.

This is the final record plan for Phase 1 of the Senators Subdivision. Phase 1 contains 111 cluster lots. The Commission granted preliminary approval for 229 lots on March 27, 2008 and granted one-year time extensions on May 20, 2009 and March 17, 2010. The final record plan for Phase 1 is similar to the preliminary plan. The final record plan for Phase 1 complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received. The remaining phases can be submitted at a later date.

Time Extensions

a. C/U #1715 – Good Earth Market, L.L.C.

This is a request for a one-year time extension. This conditional use for an office, professional space, café restaurant and meeting space was granted on April 1, 2008. The Commission granted a one-year time extension on August 19, 2009. This is the second request for an extension and the last one that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until April 1, 2011. The Commission was previously provided a copy of the request.

b. C/U #1745 – Gray's Creative Touch

This is a request for a one-year time extension. This conditional use for a landscaping and garden center was granted on October 14, 2008. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and

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approval will be valid until October 14, 2010. The Commission was previously provided a copy of the request.

c. C/U #1770 – Stockley Materials, L.L.C.

This item was removed from the Consent Agenda on April 12, 2010 at the request of the applicant.

d. Subdivision #2005 – 13 - - Lynn and Karen McColley

This item was removed from the Consent Agenda.

e. Subdivision #2006 – 40 - - Reinert, Tirino, Thorp, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on April 16, 2008 and granted a one-year time extension on April 22, 2009. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until April 16, 2011. The Commission was previously provided a copy of the request.

f. Subdivision #2006 – 63 - - Deep Branch Road, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on May 14, 2008 and granted a one-year time extension on October 14, 2009. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until May 14, 2011. The Commission was previously provided a copy of the request.

g. Subdivision #2007 – 26 - - D.M. Properties of Bethel, Inc.

This is a request for a one-year time extension. The Commission granted preliminary approval on June 11, 2009. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until June 11, 2011. The Commission was previously provided a copy of the request.

h. Subdivision #2007 – 28 - - George G. Keen

This is a request for a one-year time extension. The Commission granted preliminary approval on March 26, 2009. 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 March 26, 2011. The Commission was previously provided a copy of the request.

Motion by Mr. Burton, seconded by Mr. Burton and carried unanimously to approve the items on the Consent Agenda as stipulated and noted. Motion carried 5 – 0.

Subdivision #2005 – 13 - - Lynn and Karen McColley

Mr. Burton advised the Commission that this is the fourth request for an extension; that all agency approvals have been received except for DelDOT; that the applicant is negotiating with DelDOT about improvements required for obtaining entrance approval; and that he feels that another year is too long of an extension.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant a 90-day time extension with the stipulation that this will be the last extension granted by the Commission. Preliminary approval is now valid until July 20, 2010. Motion carried 5 – 0.

OTHER BUSINESS

C/U #1817 – Colonial East, L.P.

a. Time Extension

b. Sussex West – Final Site Plan – Route 9 and Road 265

Mr. Abbott advised the Commission that this is a request for a one-year time extension and final site plan approval; that this conditional use for an expansion to an existing manufactured home park was granted on December 2, 2008; that this is the first request for an extension; that if an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until December 2, 2010; that the Commission granted preliminary site plan approval for 82 leased lots on June 17, 2009; that the final site plan is the same as the preliminary plan; that the final site plan complies with the conditions of the zoning code and the conditions of approval and all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of approval. Approval is now valid until December 2, 2010. Motion carried 5 – 0.

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

C/U #1799 – Delmarva Clergy United in Social Action, Inc.
Preliminary Site Plan – Philadelphia Drive

Mr. Abbott advised the Commission that this is a site plan for a dwelling; that the conditional use was approved on August 12, 2008 for a health development crisis center; that the Commission granted a one-year time extension on January 20, 2010; that the setbacks meet the requirements of the zoning code; that 13 parking spaces are proposed; that 5 spaces are within the front yard setback and are subject to site plan review; that the Commission denied this application due to a lack of record in support of the application; that the Council approved the use with the only condition being site plan approval by the Commission; that the staff has received all agency approvals except from the Office of the State Fire Marshal; that if preliminary approval is granted, final approval could be

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subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

Meineke Muffler Repair

Preliminary Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 4,600 square foot automotive repair shop and a 3,465 square foot storage building located on 40,271 square feet; that the parcel is zoned CR-1 and the rezoning was approved by the County Council on March 23, 2010; that the building setbacks meet the minimum requirements of the zoning code; that 18 parking spaces are required and 28 are proposed; that 6 White Pines, 5 Bradford Pears, 10 Shrubs and an existing tree are proposed for the required highway corridor overlay zone 20-foot landscaped buffer; that 22 plantings are proposed and provided; that 6 Bradford Pears are also proposed along the rear property line; that on-site septic and well; that the site is not located in a flood zone and that there are no wetlands on the site; 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 condition that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

S & E Gallo Family Limited Partnership

Preliminary Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary site plan for a 7,500 square foot retail building located on 27,750 square feet; that the site is zoned B-1, Neighborhood Business; that 5,000 square feet is dedicated to retail sales; that the building setbacks meet the minimum requirements of the zoning code; that 25 parking spaces are required and 32 spaces are provided; that 9 spaces are within the front yard setback and are subject to site plan review; that the interior drives are one way with a minimum width of 15 feet; that a 10-foot landscape buffer is provided along Route One; that the Board of Adjustment granted a 10-foot variance from the buffer requirements on February 22, 2010; that central sewer will be provided by Sussex County and central water will be provided by Artesian Water Company; that the final site plan needs to show the landscaping plan; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and a landscaping plan being submitted; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the condition that final site plan approval shall be subject

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to the staff receiving all agency approvals and a landscape plan being submitted with the final site plan. Motion carried 5 – 0.

Subdivision #2008 – 24 - - Greg and Charlotte Hastings
Hastings Heritage – Amended Condition

Mr. Abbott advised the Commission that this item was deferred at the March 17, 2010 special meeting to allow Mr. Robertson the opportunity to review the buffer ordinance; that this is a request to clarify the location of the 30-foot forested agricultural buffer; that when the original application was filed, a 30-foot forested buffer was required; that when this application was filed, the amended buffer ordinance was in effect, which calls for 20-foot buffers around the perimeter of the site; that the engineer is requesting that the buffer not be required along the drain field area and the area where the storm water management ponds are proposed; and that the Commission was previously provided a copy of the site and the engineers request.

Mr. Robertson advised the Commission that a 20-foot landscaped buffer is required around the perimeter of the site; and that the applicant has the right to request a waiver and that the Commission could grant a waiver as per the requirements of Section 99-33 of the Subdivision Code.

Mr. Johnson advised the Commission that the buffer should be required around the perimeter of the site due to past problems with buffers in other subdivisions.

Motion by Mr. Johnson to require the buffer around the perimeter of the site. The motion died for a lack of a second.

Motion by Mr. Smith, seconded by Mr. Ross and carried 4 votes to 1, with Mr. Johnson opposed, to require the 20-foot forested buffer around the perimeter of the site except for the area immediately adjacent to the existing drainfield on the eastern boundary of the site. Motion carried 4 – 1.

Seagrass Plantation MR/RPC
Amended Condition – Irons Lane

Mr. Abbott advised the Commission that this is a request to amend the condition of approval “recreational facilities, e.g., swimming pool, tennis courts, etc., shall be constructed and open to use by the residents within two years of the issuance of the first building permit” to read “the tennis court shall be constructed and open to use by the residents within 2 years of the issuance of the first building permit under the new owner of the property”; that this request was deferred on December 16, 2009 and the record was left open for receipt of letters of no objection from the property owners agreeing to the amended condition; that 6 lots out of 208 lots have been sold to individual property owners and 5 out of the 6 agree with the request; and that 1 owner doesn’t want the tennis courts built at all.

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Mr. Smith advised the Commission that he inspected the project and found that 4 structures exist, that it appears that there are three private residences occupied and 2 foundations existing; that the clubhouse and other amenities exist; and that the few property owners shouldn't be burden with maintenance costs at this time.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to amend the revised condition as submitted. Motion carried 5 – 0.

Janet V. and Edward P. Nichols, Sr.

Lot on 50' Easement – Road 602

Mr. Abbott advised the Commission that this is a request to create a 2.0-acre lot with access from a 50-foot easement; that the owner proposes to widen an existing 40-foot easement to 50-feet to serve as access to the proposed lot and the residual 18.0-acre parcel; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a copy of a sketch drawing of the request.

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 will require an application for a major subdivision. Motion carried 5 – 0.

Philadelphia Pentecostal Holiness Church

2 Lots and 50' Easement – Road 213

Mr. Abbott advised the Commission that this is a request to create a 6,341 square foot lot with access from a 50-foot easement; that the easement will serve as access to the proposed lot and the residual 2.8544-acre parcel; that if the Commission is favorable to the request, it should be as a concept only as a variance from the minimum lot size of 10,000 square feet would be required; that the site is zoned GR, General Residential and central sewer is available; and that the Commission was previously provided a copy of a portion of a survey of the request.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the request as a concept subject to variances being granted from the Board of Adjustment for the lot size and setbacks. Motion carried 5 – 0.

KGH Property Development, L.L.C.

4 Parcels and 50' Easement – Road 290

Mr. Abbott advised the Commission that this is a request to subdivide an 80.55-acre parcel into 4 parcels with access from a 50-foot easement; that Parcel A will contain 15.54-acres, Parcel B 15.00-acres, Parcel C 15.00-acres and the residual lands 35.02-acres; that this request would replace a preliminary approved plan for a 105-lot cluster subdivision application that the Commission approved on January 18, 2007 and granted time extensions on November 14, 2007 and December 17, 2008; that DelDOT has issued

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a Letter of No Objection for the entrance location; and that the Commission was previously provided a copy of survey of the request.

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

James Riddle

2 Lots and 50' Easement – Route 24

Mr. Abbott advised the Commission that this is a request to create 2, 0.75-acre minimum lots with access from a 50-foot easement as a concept; that the owner proposes to create the easement over an existing farm lane that serves as access to a poultry operation; that the 2 lots would be for the owner's sons; 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 submitted as a concept with the stipulation that final approval shall be subject to receipt of approved site evaluations from DNREC and with the Agricultural Use Protection deed restriction. Motion carried 5 – 0.

Ronald E. and Mary Ann Wyatt

Lot on 50' Easement – Road 474

Mr. Abbott advised the Commission that this is a request to create a 2.0-acre lot with access from a 50-foot easement; that the remaining lands contain 15.0-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. Smith, seconded by Mr. Ross and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Additional Business

The Commission discussed having Jennifer Volk of DNREC being present at the May special meeting for a presentation in regards to an EPA mandate. Mr. Smith will contact Ms. Volk.

Meeting adjourned at 4:05 p.m.