



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF APRIL 22, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, April 22, 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 Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, 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.

Mr. Abbott advised the Commission that Items 2, 4, and 10 under Other Business have been removed from the agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the agenda as amended. Motion carried 4 – 0.

Mr. Smith requested that Item 1E be removed from the Consent Agenda and discussed separately and Mr. Gordy requested that Item 6 be removed from the Consent Agenda and discussed separately.

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

The Consent Agenda items include:

1. Time Extensions

a. CU #1731 – White Water Enterprises, LLC

This is a request for a one-year time extension. This conditional use for an office and shop for a water well business was approved on April 1, 2008. This is the first request for an extension. If an extension is approved, it shall be retroactive to the anniversary date of approval and approval will be valid until April 1, 2010.

b. Subdivision #2005 – 11 - - PNH, Harmon, LLC

Minutes

April 22, 2009

Page 2

This is a request for a one-year time extension. This application received preliminary approval on February 9, 2006. The Commission granted one-year time extensions on January 18, 2007 and February 20, 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 9, 2010. You may want to consider this being the last extension granted.

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

This is a request for a one-year time extension. This application received preliminary approval on April 27, 2006. The Commission granted one-year time extensions on June 20, 2007 and May 14, 2008. This is the third request for an extension. If an extension is granted, preliminary approval will be valid until April 27, 2010. You may want to consider this being the last extension granted.

d. Subdivision #2005 – 49 - - Gulfstream Land, LLC

This is a request for a one-year time extension. This application received preliminary approval on November 20, 2006. The Commission granted a one-year time extension on August 15, 2007. 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 if the extension is granted, preliminary approval will be valid until November 20, 2009.

e. Subdivision #2005 – 64 - - Palisades Land, LLC

This item was removed from the Consent Agenda.

f. Subdivision #2006 – 40 - - Reinert, Tirino and Thorp, LLC

This is a request for a one-year time extension. This application received preliminary approval on April 16, 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 if an extension is granted, preliminary approval will be valid until April 16, 2010.

2. Lynn J. and Linda T. Rogers

Lot on 50' Right of Way – Road 257

This is a request to create a 2.28-acre lot with access from an existing 50-foot private road (Silver Mist Run). This would be the third lot having access from the right of way. The Commission approved 2 lots and the 50-foot right of way in 2005. The request may 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. Attached is a sketch of the property.

3. Jamie Donaway

3 Lots and 50' Easement – Road 321

This is a request to subdivide a 5.0-acre parcel into 3 lots with access from a 50-foot easement. Parcel A would contain 0.79-acres, Parcel B 1.11-acres and Parcel C 3.09-acres. The owner proposes to create the 50-foot easement over an existing driveway between Parcels A and B. DelDOT has issued a Letter of No Objection. The request may 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. Attached is a sketch of the property.

4. Kelly L. and Reese G. Hales, Jr.
3 Lots and 50' Right of Way – Road 64

This is a request to create 3 lots with access from a 50-foot right of way. Lot 1 will contain 1.06-acres, Lot 2 1.87-acres and Lot 3 2.84-acres. The owner proposes to create the 50-foot right of way over an existing crusher run lane. The request may 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. Attached is a sketch of the property.

5. Ronald B. and Frances Johnson
2 Lots and 50' Easement – Road 66

This is a request to create 2 lots with access from a 50-foot easement. Lot 2 will contain 2.80-acres and Lot 3 will contain 1.22-acres. The owner proposes to create the 50-foot easement over an existing dirt 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, the remaining lands would not be able to be subdivided without variances. Attached is a sketch of the property.

6. Henry Seppi
3 Lots and 50' Right of Way – Road 431

This Item was removed from the Consent Agenda.

7. David A. and Kathy M. Ritter
3 Lots and 50' Right of Way – Road 312A

This is a request to create 3 lots with access from a 50-foot right of way. Each lot will contain 0.98-acre. The owner proposes to create the 50-foot right of way over an existing gravel 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 will require an application for a major subdivision. Attached is a sketch of the property.

8. Barry Morin

Minutes

April 22, 2009

Page 4

Lot on 50' Right of Way – Route 17

This is a request to create a 2.0-acre lot with access from an existing 50-foot right of way. The request can be approved as submitted or an application for a major subdivision can be required. Attached is a sketch of the property.

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

The Chairman referred back to Items 1E and 6, which were removed from the Consent Agenda.

1e. Subdivision #2005 – 64- - Palisades Land, LLC
Time Extension

This is a request for a one-year time extension. This application received preliminary approval on September 28, 2006. The Commission granted one-year time extensions on October 17, 2007 and August 20, 2008. This is the third request for an extension. If an extension is granted, it should be the last extension that the Commission will consider.

Mr. Smith questioned whether any agency approvals have been received and if there have been monies deposited into an escrow account for future sewer work.

Mr. Abbott advised the Commission that according to the applicant's attorney's letter, that a payment has been made to the County Engineering Department but that no agency approvals or correspondence has been received.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve a one-year time extension with the stipulation that this will be the last extension granted by the Commission. Motion carried 4 – 0.

6. Henry Seppi
3 Lots and 50' Right of Way – Road 431

This is a request to create 3 lots with access from a 50-foot right of way. Lot 1 and Lot 2 will each contain 1.0-acre and Lots 3 and 4 will contain 2.0-acres. Lots 1, 3, and 4 are proposed to have access from the 50-foot right of way. Lot 2 if approved by DelDOT will have access from Road 431. The residual lands will be made an extension to other lands owned by the applicant. The applicant proposes to create the 50-foot right of way over an existing gravel road. The request can be approved as submitted or an application for a major subdivision may be required.

Mr. Abbott advised the Commission that the staff has received complaints about this proposal including photographs of the site, that manufactured homes are on the site and that they would have to be removed or applications to the Board of Adjustment will be required to retain the manufactured homes on the lots.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to deny the request as submitted and require the applicant to go through the major subdivision process. Motion carried 4 – 0.

OTHER BUSINESS

1. Artisan's Bank CU #1716 Site Plan – Route 24

Mr. Abbott advised the Commission that this project was deferred at the March 18, 2009 meeting; that this is a preliminary site plan for a 2-story, 7,400 square foot bank located on 1.73-acres; that the Conditional Use for an office park was approved on January 16, 2007 and the Commission granted a time extensions on February 20, 2008 and January 14, 2009; 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 37 spaces are provided; that 1 loading space is required and provided; that 14 parking spaces are located 20-feet from the right of way of Route 24; that the zoning code discourages parking within the front yard setback under 115-166C. however parking within the front yard setback within a highway corridor overlay zone is permitted; that parking at the Delaware Eye Institute, which is in close proximity to this site is within 20-feet of the Route 24 right of way; that a landscaping plan has been provided; that the parking spaces along Route 24 will be screened by landscaping; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that DelDOT has issued a letter of no objection and has agreed to the right of way dedication; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Garth Jones, P.E. with Becker Morgan and Kevin McCormack with Artisan's Bank were present on behalf of this site plan and advised the Commission that the parking is in line with the Delaware Eye Center and that DelDOT has agreed to the right of way dedication and has issued a Letter of No Objection and that they have access to the Mall Road by the proposed service road.

Mr. Johnson advised the Commission that his concerns about the parking in the front yard setback have been addressed on the revised plan.

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 will be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

2. Breakwater MR/RPC Revised Record Plan – Road 268

This item was removed from the agenda on April 17, 2009.

Minutes

April 22, 2009

Page 6

3. Bridgeville Retail

Preliminary Commercial Site Plan – Route 404

Mr. Abbott advised the Commission that this is a preliminary site plan for a 12,180 square foot retail building located on 3.42-acres; that the site is zoned C-1; that the Commission previously granted preliminary site plan approval for a 59-room hotel for this site on April 19, 2007; that the setbacks meet the minimum requirements of the zoning code; that 61 parking spaces are required and 62 spaces are provided; that 18 spaces or portions of are located within the front yard setback and are subject to site plan review; that the previously approved preliminary plan was approved with parking in the front yard setback; that the adjoining sites have parking within the front yard setback; that Route 404 along the frontage of this site is being reconstructed and there is no direct access from this site to Route 404; that access will be from existing cross access easements (service road) already approved by DelDOT; that the Town of Bridgeville will provide central sewer and Tidewater Utilities will provide central water to the site; that a landscaping plan has been provided; 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 unanimously to approve the site plan as a preliminary with the stipulation that final approval will be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

4. Sussex West

CU #1817 Site Plan – Route 9

This item was removed from the Agenda on April 7, 2009.

5. Pemberton Subdivision

Buffer Waiver – Route 30

Mr. Abbott advised the Commission that this is a request to waive the 30-foot forested buffer requirement for a subdivision; that when the Pemberton Subdivision received preliminary and final approval, the adjoining parcels to the north and east where in agricultural use therefore requiring a 30-foot forested buffer; that since the final approval was granted, the adjoining parcels to the north and east were approved for a development to be known as Elizabethtown, which is a residential planned community; that the developers are requesting that the buffer requirement be abandoned since the adjoining parcels are now approved for development; and that the Commission was provided a sketch drawing showing where the buffer would be abandoned.

Preston Dyer a member of the ownership of the project was present on behalf of this request and advised the Commission that they are requesting a waiver from the forested buffer requirement since the adjoining parcels have been approved for development; that the waiver request is for landscaping/plantings only; that there is a 30-foot buffer surrounding the project which has been built to a 5-foot high berm; that the developers maintain the berm; that the berm has been planted with grass; that the restrictive

Minutes

April 22, 2009

Page 7

covenants do not prohibit property owners from planting trees; that the developers have provided additional landscaping throughout the project; that the berm was more expensive than tree plantings would be; and that the request for the waiver is from plantings only and that the berm will remain.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to grant a waiver from the tree plantings/landscaping only. The 5-foot high berm within the 30-foot buffer is to remain. Motion carried 4 – 0.

6. Forest Landing MR/RPC
Amended Condition

Mr. Abbott advised the Commission that this is a request to amend a condition of approval; that on February 27, 2003 this application was approved with conditions with one of the conditions being “Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first residential building permit. These amenities shall include a swimming pool, tot lot, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and street lighting.”; that this project was approved for 353 units; that as of March 11, 2009 6 homes have been built but none sold; that representatives of the developers are requesting that the condition be amended to read “Recreational facilities and amenities shall be constructed and open to use by residents of the development on or before the 175th building permit is issued. These amenities shall include a swimming pool, tot lot, and tennis courts. Sidewalks in front of any completed home on one side of the street, trees between all streets and sidewalks, and street lighting shall be completed in front of each home prior to that home’s occupancy or during winter months, by the following spring.”; that the 175th building permit would be 49% of the permits issued for the project; that the developers feel that this would allow the community to achieve the numbers to properly operate, maintain and support the amenities; and that since this condition originated at the Commission level, the Commission has the authority to amend the condition.

Dave Dombert of Natelli Communities was present on behalf of this request and advised the Commission that his company has recently bought into the project with the developer, Chesapeake Holdings, that they will be helping the developer build the project; that at this time, 6 homes have been built; that right of ways, sewer and storm water management basins are being or have been constructed; and that they feel that by changing the condition, the developers will be better able to market the project.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to amend the condition of approval to read as: “Recreational facilities and amenities shall be constructed and open to use by residents of the development on or before the 175th building permit is issued. These amenities shall include a swimming pool, tot lot and tennis courts. Sidewalks in front of any completed home on one side of the street, trees between all streets and sidewalks and street lighting shall be completed in front of each

Minutes

April 22, 2009

Page 8

home prior to that home's occupancy or during winter months, by the following spring." Motion carried 4 – 0.

7. Sunrise

CU #1639 – Determination

Mr. Abbott advised the Commission that this Conditional Use for 6 multi-family dwelling units was approved on July 25, 2006; that the Commission has granted one-year time extensions on August 23, 2007 and May 14, 2008; that the Commission granted final site plan approval on May 16, 2007; that the use needs to be substantially underway by July 25, 2009; that new ownership has taken over the project and they are requesting that the site work that has been done to date be considered substantially underway; and that the Commission has been provided with a detailed letter outlining the work that has been completed.

Peter Campbell of Pios Property Lots, LP was present on behalf of this request and advised the Commission that since purchasing the property, the developers have performed site work including sewer, base work, water distribution, and entrance improvements; and questioned if the Commission will consider the use substantially under construction; and that units will be constructed as soon as the real estate market improves.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the request and urged the developers to continue moving forward. Motion carried 4 – 0.

8. Subdivision #2006 – 39 - - Henry James Johnson

Revised Preliminary

Mr. Abbott advised the Commission that this application received preliminary approval for a 38-lot cluster subdivision on November 29, 2007; that the Commission granted a one-year time extension on September 11, 2008; that the engineer and developer are requesting a revised preliminary approval for a standard 35-lot subdivision; that this standard lot subdivision concept was presented in the applicant's Exhibit Booklet at the October 25, 2007 public hearing; that the street design is the same as the preliminary plan; that there was one person who spoke in opposition to this application at the public hearing; that the revised standard subdivision would allow for double-wide manufactured homes on 0.75-acre lots; that the staff is questioning if the Commission feels it is necessary for a new public hearing; and that the Commission was provided with a copy of the revised plan.

Ken Christenbury, P.E., Henry Jonhson and Jamie Sharp, Attorney, were present on behalf of this request and advised the Commission that the revised standard subdivision plan retains more forested areas; that there is a need for affordable housing in the area; that the revised plan has 3 fewer lots than the cluster plan; that the developer has talked to 2 adjoining property owners and they have no objections; that the area consists mainly of doublewides; and that if a new hearing is required, they request an expedited review.

Mr. Johnson stated that the revised plan and the cluster plan are 2 separate applications; that the standard subdivision plan allows less open space; that he feels that the cluster plan is a better option; and that the revised application should go back through the public hearing process.

Mr. Wheatley stated that revised plan is not a minor change; that the new design is completely different from the previous plan; and that the revised plan does not afford adjoining neighbors the opportunity to comment.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to deny the revised plan as submitted and that if the developer chooses to go through the public hearing process, the application will be considered on an expedited review. Motion carried 4 – 0.

9. Tom Morris

Lot and 50' Right of Way – Road 46

Mr. Abbott advised the Commission that this is a request to create a lot with access from a 50-foot right of way; that there appears to be wetlands on a majority of the site; and that this request should be deferred pending receipt of a detailed drawing performed by a surveyor showing the proposed lot location and a wetlands delineation.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action pending receipt of a detailed drawing performed by a surveyor showing all wetlands and existing conditions. Motion carried 4 – 0.

10. Bay City Manufactured Home Community

Corrective Survey

This item was removed from the Agenda on April 6, 2009.

11. King Farm Industrial Park

CU #1705 Final Site Plan – Road 321

Mr. Abbott advised the Commission that this is the final site plan for an industrial park complex; that the Commission granted preliminary site plan approval on May 14, 2008 and granted a one-year time extension on December 17, 2008; that the use needs to be substantially underway by October 2, 2009; that the final record plan meets the requirements of the zoning code; and that all agency approvals have been received.

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

ADDITIONAL BUSINESS

Minutes

April 22, 2009

Page 10

Mr. Lank advised the Commission that a workshop with the Planning and Zoning Commission and County Council is scheduled for May 12, 2009 at noon in the West Complex Building.

Mr. Abbott provided the Commission with Exhibit Books for the April 30, 2009 meeting.

Mr. Smith reminded the Commission that he and Mr. Johnson will not be at the April 30, 2009 meeting and that on April 3, 2009 he attended a meeting of the Delaware Stormwater Advisory Committee.

Mr. Johnson advised the Commission that he would like to see Cluster Subdivisions as a discussion item on a future special meeting agenda.

Mr. Kautz provided the Commission a copy of Protecting Water Quality booklet.

Meeting adjourned at 4:21 p.m.