



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF MAY 20, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, May 20, 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. I.G. Burton, III, Mr. Ben Gordy, Mr. Michael Johnson, Mr. Rodney Smith and Mr. Robert Wheatley along with Mr. Vincent Robertson – Assistant County Attorney and Mr. Shane Abbott – Assistant Director.

Mr. Abbott advised the Commission that item 12 under Other Business has been removed so that Mr. Lank can participate in the discussion.

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

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

The Consent Agenda included:

1. Time Extensions

a. CU #1790 – Martha's Light, LLC

This is the first request for a one-year time extension. This Conditional Use for a Continuing Care Retirement Community was approved on June 3, 2008. If an extension is granted, approval will be valid until June 3, 2010.

b. Subdivision #2005 – 36 - - Betty D. Black

This is the third request for a one-year time extension. The Commission granted preliminary approval on May 11, 2006 and granted one-year time extensions on May 16, 2007 and June 18, 2008. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until May 11, 2010. The final record plan will be before the Commission on the June special meeting agenda as all agency approvals were just received (May 5, 2009).

c. Subdivision #2006 – 1 - - Thomas Head

This is the second request for a one-year time extension. The Commission granted preliminary approval on April 19, 2007 and granted a one-year time extension on March 19, 2008. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until April 19, 2010.

d. Subdivision #2006 – 51 - - Wolfe Properties, Inc.

This is the first request for a one-year time extension. The Commission granted preliminary approval on April 16, 2008. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until April 16, 2010.

e. Subdivision #2006 – 52 - - L.T. Associates

This is the first request for a one-year time extension. The Commission granted preliminary approval on March 27, 2008. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until March 27, 2010.

f. Subdivision #2006 – 54 - - Coolspring Realty Associates

This is the first request for a one-year time extension. The Commission granted preliminary approval on February 28, 2008. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until February 28, 2010. This application is also on the Consent Agenda, as a final but needs a time extension first.

2. Subdivision #2004 – 21 - - Springfield Self – Storage, L.P.
Final – Norwood Farms

This is the final record plan for a 33-lot cluster subdivision. The Commission granted preliminary approval for 34 lots on April 14, 2005 and granted one-year time extensions on March 1, 2006, May 24, 2007 and April 16, 2008. The final record plan meets the requirements of Chapters 99 and 115 and the conditions of preliminary approval. All agency approvals have been received. The final record plan was filed with the office prior to the expiration date of preliminary approval but this was the first available agenda it could be placed on.

3. Subdivision #2005 – 53 - - Polly and Mark Yoder, Jr.
Final – Mission Estates

This is the final record plan for a 25-lot standard subdivision. The Commission granted preliminary approval for 29 lots on August 16, 2006 and granted one-year time

Minutes

May 20, 2009

Page 3

extensions on October 17, 2007 and August 20, 2008. The final record plan meets the requirements of Chapters 99 and 115 and the conditions of preliminary approval. All agency approvals have been received.

4. Subdivision #2005 – 63 - - Dream Builders Construction, Inc.

Final – Orchard Point

This is the final record plan for a 251-lot standard subdivision. The Commission granted preliminary approval for 251 lots March 19, 2008. The engineers are requesting a one-year time 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 19, 2010. The final record plan meets the requirements of Chapters 99 and 115 and the conditions of the preliminary approval. All agency approvals have been received.

5. Subdivision #2006 – 8 - - Francis R. and Mary S. Hazzard

Final – Hazzard Country Estates

This is the final record plan for a 12-lot standard subdivision. The Commission granted preliminary approval for 12 lots on June 20, 2007 and granted a one-year time extension on September 17, 2008. The final record plan meets the requirements of Chapters 99 and 115 and the conditions of the preliminary approval. All agency approvals have been received.

6. Subdivision #2006 – 54 - - Coolspring Realty Associates, LLC

This is the final record plan for an 18-lot standard subdivision. The Commission granted preliminary approval for 18 lots on February 28, 2008 and granted a one-year time extension on May 20, 2009 (if approved). The final record plan meets the requirements of Chapters 99 and 115 and the conditions of the preliminary approval. All agency approvals have been received.

7. William H. Morgan

Lot and 50' Right of Way – Road 213

This is a request to create a 0.75-acre lot with access from a 50-foot easement. The owner proposes to create the 50-foot right of way over an existing dirt road across another property owned by the applicant. The request can be approved as submitted or an application for a major subdivision can be required.

8. Pusey Rentals

2 Lots and 50' Easement – U.S. Route 13

This is a request to subdivide a 12.51-acre parcel into 2 parcels with access from a 50-foot easement. Lot 1 will contain 4.42 acres. Lot 2 will contain 8.08 acres. The owner proposes to create the 50-foot easement over any existing driveway across Lot 1. The

Minutes

May 20, 2009

Page 4

request can be approved as submitted or an application for a major subdivision can be required.

9. K. Scott and Doris A. Morris

3 Lots and 50' Easement – Route 54

This is a request to subdivide a 6.05-acre parcel into 3 lots with access from a 50-foot easement. Lots 1 and 2 will contain 0.75-acre and the residual lands will contain 3.496-acre. The owner proposes to create the 50-foot easement over an existing paved and 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.

10. Henry J. Johnson

Lot – Washington Street

This is a request to create a 1.43-acre lot with access from Washington Street. DeIDOT has issued a Letter of No Objection. The Commission approved 3 lots off of Washington Street back in 1999. The residual land has frontage along Route 30.

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

OLD BUSINESS

C/Z #1639 - - application of **TODD BARIGLIO** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the southwest corner of Cedar Grove Road (Road 283) and Plantation Road (Road 275), to be located on 4.711 acres, more or less.

The Chairman referred back to this application, which has been deferred since April 16, 2009.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1639 for Todd Bariglio seeking a Change of Zone from AR-1 to B-1 based on the record made at the public hearing and for the following reasons:

1. The orderly growth of the County does not justify creating the requested B-1 zoned property and the permitted uses available under that zoning classification, especially given the location of the property along this particular area of Plantations Road.
2. While Plantations Road has some limited Conditional Use and business related activities, none are in this vicinity. Mr. Johnson does not believe that the application is consistent with the character of the surrounding property.

3. Approval of this application lead to increased traffic and trucking activity in this area. This will lead to increased noise to neighboring property owners and residents.
4. The applicant has not demonstrated a need for this type of additional B-1 zoning in the area, especially when there are ample properties or units that are available along Route One and the Route 24 corridor that are already zoned for commercial or business uses.
5. While Mr. Johnson commends the Applicant for proposing to use LEED green technology, this recommendation is based on land use concerns, not a proposed building or site plan issues that would come later after the Zoning Change. Once a zoning change occurs, the property could be put to any use allowed in B-1, whether green or not.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to 1, with Mr. Wheatley opposed, to forward this application to the County Council with the recommendation that it be denied for the reasons stated. Motion carried 4 – 1.

C/Z #1641 - - application of **THOMAS E. FRANK** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying west of Muddy Neck Road (Road 361) and northwest of Parker House Road (Road 362), to be located on 3.93 acres, more or less.

The Chairman referred back to this application, which has been deferred since April 30, 2009.

Mr. Smith advised the Commission that he would not be participating in this application.

Mr. Burton stated that he would move that the Commission recommend denial of C/Z #1641 for Thomas E. Frank, seeking a Change of Zone from AR-1 to B-1 based on the record made at the public hearing and for the following reasons:

1. The orderly growth of the County does not justify creating the requested B-1 zoned property and the permitted uses available under that zoning classification in the residential area where the property is located.
2. The Applicant has not expressed a clear need for the change in zone in this location, and there are other nearby areas along Route 26 where commercial or business zoning exists or would be more appropriate.
3. Mr. Burton does not believe that the application is consistent with the character of the surrounding property, which is entirely residential.
4. Approval of this application could lead to increased traffic and trucking activity on the property and in the vicinity of it.
5. While the Applicant has proposed several conditions limiting the uses for the property, Sussex County has no way of enforcing such conditions as part of a rezoning. The need for such proposed conditions also suggests that a rezoning to B-1 is not an appropriate use for this site.

Motion by Mr. Burton, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not voting, to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated. Motion carried 4 – 0 – 1.

C/U #1778 - - application of **TIMOTHY ELDER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for antiques, gifts and produce and barbeque sales to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.0 acres, more or less, lying on the westerly side of Double Bridges Road (Road 363), 700 feet south of Muddy Neck Road (Road 361).

Mr. Smith advised the Commission that he would not be participating in this discussion.

The Chairman referred back to this application, which has deferred since April 30, 2009.

Mr. Burton stated that he would move that the Commission recommend a denial of C/U #1778 for Timothy Elder based upon the record and for the following reasons:

1. The Applicant has not demonstrated a need for the Conditional Use, particularly in this area.
2. The proposed uses are not consistent with the surrounding residential uses and the wildlife refuge that is in close proximity.
3. It is unclear from the application and the applicant's testimony to the Commission what the actual intended uses of the property will be. This lack of clarity makes it difficult to determine what the applicant will actually do with the property or to establish meaningful conditions to protect the neighboring and adjacent community.
4. The range of potential uses proposed by the applicant is not consistent with the property's location on Double Bridges Road, which is also an alternative evacuation route.
5. Mr. Burton is not satisfied from the applicant's presentation that the proposed Conditional Use will benefit the health, safety, convenience or welfare of Sussex County residents.

Motion by Mr. Burton, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not voting, to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated. Motion carried 4 – 0 – 1.

Subdivision #2007 – 29 - - application of **SPRING BREEZE ASSOCIATION** to consider the Subdivision of land in an AR-1 Agricultural residential District in Indian River Hundred, Sussex County, by dividing 113.93 acres into 167 lots (Cluster Development), located south of Road 280-B, 1,985 feet west of Road 288.

The Chairman referred back to this application, which has been deferred since April 30, 2009.

Minutes

May 20, 2009

Page 7

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Subdivision #2007 – 30 - - application of **TIMOTHY RAMEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 33.72 acres into 29 lots, located south of Road 472, 1,600 feet east of Road 62.

The Chairman referred back to this application, which has been deferred since April 30, 2009.

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

Subdivision #2007 – 31 - - application of **SUSSEX VENTURES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 28 acres into 28 lots (Cluster Development), located north of Road 485A, and east of U.S. Route 13.

The Chairman referred back to this application, which has been deferred since April 30, 2009.

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

OTHER BUSINESS

1. Hunters Walk

Preliminary Commercial Site Plan – Road 268

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 12,000 square foot professional office located on 2.30-acres; that the parcel is zoned CR-1; that the setbacks exceed the minimum requirements of the zoning code; that 53 parking spaces are provided; that the site plan needs to show how much of the building is for actual office space; that 1 loading space is required and provided; that a bus stop is also provided; that central sewer will be provided by Sussex County and Tidewater will provide central water; that the property is not in a flood zone and there are no wetlands located on the site; that a 50-foot buffer from wetlands on the adjoining site is provided; that an area for landscaping is shown however a landscaping plan was not provided; that a landscaping plan needs to be provided with the final site plan; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and a landscaping plan being submitted.

Gary Cuppels with ECI advised the Commission that sidewalks connect the commercial site to the residential site and that there are 49 parking spaces plus 4 handicapped spaces for a total of 53 spaces.

Motion by Mr. Johnson, seconded by Mr. Gordy 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 and receipt of a landscaping plan. Motion carried 5 – 0.

2. Hunters Walk MR/RPC

CZ #1624 Preliminary Site Plan – Road 268

Mr. Abbott advised the Commission that this is a preliminary site plan for a 144 multi-family units located on 44.3 acres; that the rezoning was approved on March 24, 2009; that the 16 conditions of approval are noted on the site plan; that 6, 18-unit buildings and 3, 12-unit buildings are proposed; that the building lengths and building separations need to be shown on the final site plan; that a landscaping plan is also required with the final site plan; that the amenities include a tennis court, multi-purpose court, pool and community center; that 314 parking spaces are provided; that Sussex County will provide central sewer and Tidewater will provide central water; that there is a 50-foot buffer from the wetlands; that the staff is questioning if you think the locations of the sidewalks meet the intent of the ordinance for sidewalks on both sides of all streets; and that since this project is a residential planned community, only preliminary consideration can be given.

Gary Cuppels with ECI advised the Commission that sidewalks will be provided on both sides of all streets; that pedestrian connectivity is provided to the adjoining golf course; and that additional parking will be provided near the golf course for residents of the development.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulations that final site plan approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals, that sidewalks be provided along both sides of all streets, that additional parking be provided near the golf course for the residents of the development, and that a landscaping plan be submitted with the final site plan. Motion carried 5 – 0.

3. Riverside Plaza Parcel A

Preliminary Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary commercial site for a one-story, 14,564 Square foot retail building located on 2.07-acres; that the parcel is zoned B-1; that the building setbacks exceed the minimum requirements of the zoning code; that 73 parking spaces are required and provided; that a portion of 16 spaces are within the front yard setback and are subject to site plan review; that the parking is approximately 44 feet from the right of way line of Route 24; that Sussex County will provide central sewer and Tidewater will provide central water; that DelDOT has issued a Letter of No Objection for the entrance location that ingress/egress to the site is from a service road off of Route 24; that there is no direct access to Route 24; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy 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 5 – 0.

4. Riverside Plaza Parcel B
Preliminary Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a one-story, 9,230 square foot retail building located on 1.65-acres; that the parcel is zoned B-1; that the building setbacks exceed the minimum requirements of the zoning code; that 47 parking spaces are required and 67 are proposed; that a portion of 13 spaces are within the front yard setback and are subject to site plan review; that these spaces are 45 feet from the right of way line of Route 24; that Sussex County will provide central sewer and Tidewater will provide central water; that DelDOT has issued a Letter of No Objection for the entrance location; that ingress/egress to the site is from a service road off of Route 24; that there is no direct access to Route 24; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton 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 5 – 0.

5. Service Energy, LLC
CU #1160 Revised Site Plan – Route 36

Mr. Abbott advised the Commission that this is a request to add seven additional 11-foot by 90-foot underground bulk gas storage tanks; that the Conditional Use for propane storage tanks was approved on August 6, 1996; that there are currently 5 above ground tanks on the site; that the only condition of approval was that the site plan is subject to Planning and Zoning Commission approval; that the proposed location meets the setback requirements; that The staff is questioning if an amended conditional use application is required since the use is the same; and that the tanks will be underground and there was not a limit on the number of tanks permitted.

Mr. Johnson stated that it has been 13 years since the application was heard.

Mr. Abbott reviewed the minutes of the public hearing of July 11, 1996 and advised the Commission that there were 2 people who raised questions and spoke in opposition.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action for further consideration and to place this item on the Agenda for the June 17, 2009 special meeting. Motion carried 5 – 0.

6. Ingram Village GR/RPC

Amended Condition

Mr. Abbott advised the Commission that this is a request to amend condition of approval 10, which requires a 50-foot wide bermed and vegetated buffer along the railroad; that this condition originated at the Commission and the Commission may amend the condition; that the developers are requesting a 41-foot bermed and vegetated buffer; and that the Town of Ellendale and DNREC supports the amended conditions.

Jim Willey, P.E. with GMB advised the Commission that the closest dwelling will be approximately 72 feet from the railroad; that the buffer was shown on the preliminary plan at 41 feet and that the berm and landscaping will be the same.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to amend the condition as submitted. The berm and buffer will be 41-feet in width. Motion carried 5 – 0.

7. Subdivision #2007 – 21 – Laurence S. Cordrey, Rev. Trust
Amended Condition

Mr. Abbott advised the Commission that this is a request to amend a condition of approval in that the street must be constructed in accordance with Sussex County street design requirements; that the subdivision contains 7 lots; that for subdivisions of 4 lots or less, crusher-run is permitted; that for subdivisions more than 4 lots, bituminous surface is required; that the applicant's engineers are requesting to improve the street with 10' crusher run over an approved subgrade; and that typically a waiver is requested in the public hearing notice (i.e. street design requirements and forested buffer strips).

Mr. Johnson stated that he does not recall granting any waivers for any subdivisions more than 4 lots; and that the County should not regress to dirt roads.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to deny this request. Motion carried 5 – 0.

8. Truitt Property
Landscape Buffer Waiver – Route One

Mr. Abbott advised the Commission that this is a request for a waiver from the 20-foot landscape buffer requirements; and that the developer is requesting a waiver to plant trees/shrubs in the front but outside of the 20-foot landscape buffer.

The Commission discussed this request and does not feel that there is any hardship.

Mr. Johnson advised the Commission that he visited the site and that there were displays in the front yard, questioned if this is legal; and stated that the buffer would not obstruct traffic.

Minutes

May 20, 2009

Page 11

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to deny the request and require the developer to install the landscape buffer as shown on the approved site plan. Motion carried 5 – 0.

9. Dean Sherman

CU #1531 Additional Time – Route 5

Mr. Abbott advised the Commission that this is a request for additional time to complete a borrow pit; that this conditional use was approved on April 20, 2004; that condition of approval #1 states “The excavation and operation of the borrow pit shall be limited to 24 months. If necessary, the Applicant shall be allowed a reasonable amount of additional time to complete reclamation activities subject to the approval of the Director.”; that on September 30, 2008, Mr. Lank granted an extension until April 20, 2009; that the applicant is requesting an additional extension; that Mr. Lank felt that the Commission should act upon the request; and that the condition of approval originated at the County Council.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to refer this request to the County Council. Motion carried 5 – 0.

10. Angola Estates GR/RPC

Revised Buildable Area – Lot 21

Mr. Abbott advised the Commission that this is a request to enlarge the buildable area for Lot 21 within Angola Estates; that Angola Estates is a GR/RPC, which contains manufactured homes; that when the residential planned community was approved, it was approved with a buildable area concept; and that the developers are requesting to add approximately 385 square feet to the buildable area for Lot 21.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve the revised buildable area for Lot 21. Motion carried 5 – 0.

11. Beaver Creek, LLC

50’ Easement and Parcel – Route 5

Mr. Abbott advised the Commission that this is a request to create a 50-foot easement to serve as access to residual lands (approximately 80-acres); that the easement would be created over a 9.615-acre parcel; that at this time, the parcels will be separate parcels; and that in the future, the 80-acre parcel will be conveyed as an extension to adjoining parcels owned by the applicant.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the parcel and 50-foot easement as a concept. Motion carried 5 – 0.

12. Cluster Ordinance

Discussion

This item was removed from the Agenda at the beginning of the meeting.

Meeting adjourned at 4:05 p.m.