



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF JUNE 16, 2010

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, June 16, 2010 in the County 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 with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

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

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

The Consent Agenda included:

1. CU #1775 – East Market, L.L.C.
Time Extension

This is a request for a one-year time extension. This conditional use for 70 multi-family dwelling units was approved on July 29, 2008. The Commission granted preliminary site plan approval on December 17, 2008 and granted a one-year time extension on June 17, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. The Commission was previously provided a copy of the request.

2. Subdivision #2006 – 70 - - PAF, L.L.C.
Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval for 14 lots on July 16, 2008 and granted a one-year time extension on June 17, 2009. This is the second request for an extension. The Commission was previously a copy of the request.

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

Old Business

Subdivision #2008 – 16 - - application of **ALPACO V, L.L.C.** to consider the Subdivision of land in a GR General Residential District in Indian River Hundred, Sussex County, by dividing 57.00 acres into 135 lots, located 1,050 feet west of the intersection of Route 24 and Road 299.

This 128-lot standard subdivision application was deferred on January 28, 2010 and the record was left open for receipt of the applicant's response to the PLUS comments and the State's final comments and verification that the applicant has access to the Steele Development Corporation lands. On February 25, 2010 the staff sent the Commission the State's final comments. On April 29, 2010 the applicant provided a copy of a deed between Steele Development Corporation and the Department of Transportation verifying that the applicant has access to the Steele Development Corporation lands and that on March 2, 2010 DelDOT issued a Letter of No Objection for the entrance location.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2008 – 16 for Alpaco V, L.L.C., based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The property is currently zoned GR General Residential, which permits medium density residential use, including mobile homes. The proposed subdivision density is less than the density permitted by the existing GR zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The subdivision is consistent with other developments in the area that have a mixture of housing types including mobile homes, double wide homes and stick-built homes.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. The project will be served by County Sewer and Central Water.
7. This approval is subject to the following conditions:
 - A. There shall be no more than 120 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.

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- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- G. A 30 foot forested Agricultural Buffer shall be included around the perimeter of the project. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- H. No wetlands shall be included within any lots.
- I. A system of street lighting shall be established.
- J. Sidewalks shall be located on both sides of all streets in the Subdivision.
- K. The subdivision shall be served by County Sewer in accordance with all County Engineering Department requirements.
- L. Prior to the issuance of the 40th residential permit, the developer shall construct all of the recreational amenities. The amenities shall include a tot lot, picnic tables, and paved multi-sport court.
- M. As stated by the Applicant, there shall be 50 foot wide Forested buffers between the wetlands and the residential lot lines.
- N. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a preliminary for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2008 – 25 - - application of **UNDERHILL PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 8.78 acres into 14 lots, (Environmentally Sensitive Development District Overlay Zone) expansion to a 138 lot Environmentally Sensitive Development District Overlay Zone (#2005 – 52), located 500 feet east of Road 279 and 700 feet north of Road 279A.

This 13-lot expansion cluster subdivision was deferred on May 27, 2010 for further consideration by the Commission. Sussex County will provide central sewer to the project.

Mr. Johnson stated that he would move that the Commission grant preliminary approval for Subdivision #2008 – 25 on behalf of Underhill Properties, L.L.C., based upon the record made at the Public Hearing and for the following reasons:

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1. This is a small 13 lot expansion of Subdivision #2005 – 52 that has already received Preliminary Site Plan approval. At the time preliminary approval was granted, the Applicants referenced the possibility that these additional lots may be brought into it in the future.
2. The additional lots that are the subject of this application are integrated into the existing subdivision and will have no adverse effect on neighboring properties, traffic or the community.
3. The Applicant has complied with the requirements of Section 99-9C of the Subdivision Code.
4. This preliminary approval is subject to all of the conditions imposed upon the preliminary approval of Subdivision #2005 – 52.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a preliminary for the reasons and with the condition stated. Motion carried 5 – 0.

Other Business

1. CZ #1694 – CMF Bayside, L.L.C.
Condition Clarification – Route 54

Mr. Abbott advised the Commission that this application was recommended for approval and approved by the County Council on April 13, 2010 with a condition that states “The site plan for Parcel H shall show an additional pedestrian and vehicular connection to and from Founders Avenue within Americana Bayside MR-RPC.”; that the minutes of the February 25, 2010 meeting indicates that the applicants stated that there would be a pedestrian connection to Founders Avenue and not a vehicular connection; that the pedestrian and vehicular connection was proposed to be from the site to Americana Parkway; and that the Commission was previously provided a copy of the attorney’s letter explaining the request.

Mr. Smith advised the Commission that he has reviewed the minutes of the February 25, 2010 meeting and that it was not his intention to require a vehicular connection from the Parcel H site to Founders Avenue only a pedestrian connection.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to amend the condition to read “The site plan for Parcel H shall show a pedestrian connection to and from Founders Avenue and a pedestrian and vehicular to and from Americana Parkway with Americana Bayside MR/RPC”. Motion carried 5 – 0.

2. Bethany Bay AR-1/RPC
Revised Master Plan – Road 350

Mr. Abbott advised the Commission that this is a request to revise the master plan for Sections 1.1, 1.3 and 1.5 of the Bethany Bay residential planned community; that the revised plan is for the final 97 units to be built; that 8 units are being added to Section

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1.1; that 8 units are being removed from Section 1.3; that 1 unit is being removed from the golf clubhouse area and being relocated to Section 1.5; that the revised unit count stands at 68 units for Section 1.3, 1 unit for Section 1.5, 12 units for Section 3.1 and 16 units for Section 1.1 for a total of 97 units that are permitted by the approved Ordinance; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; that 2 e-mails have been received in support of the revisions and 129 e-mails have been received in opposition; and that the Commission needs to determine if the revisions are substantial enough to require a new public hearing.

Mr. Robertson advised the Commission that the revised site plan is subject to Sections 115-218 through 115-220 of the Zoning Ordinance and that the Commission has the authority to require a new public hearing if the Commission determines whether the proposed revisions are substantially altered from what was previously approved.

Mr. Wheatley advised the Commission that he feels that a new hearing should be held since the proposed revisions are different than what was originally approved and that there appears to be many owners/residents who have concerns about the revisions.

Mr. Johnson advised the Commission that he would like to review what was originally approved compared to the proposed revisions; that property owners reviewed a plan before they purchased their property and have concerns about the proposed revisions; and that he would not be comfortable approving a plan without a public hearing.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to require the revised site plan to be subject to a public hearing. Motion carried 5 – 0.

3. CU #1713 – Keith Smith

- a. Time Extension
- b. Preliminary Site Plan – Route 54

Mr. Abbott advised the Commission that these items were deferred at the May 19, 2010 special meeting; that this is a 2-part request for this agenda item; that the first request is for a one-year time extension; that the conditional use for storage buildings was approved on April 1, 2008; that the Commission granted a one-year time extension on November 12, 2009 retroactive to the anniversary date of approval; that this is the second request for an extension and the last the Commission has the authority to grant; that if an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until April 1, 2011; that the second request is for preliminary site plan approval for commercial storage buildings; that all buildings currently exist; that there are four 30' by 40' buildings, a 10' by 20' shed, a 24' by 27' building and a 22' by 30' building with a 10' by 20' carport; that the conditional use was approved with 11 conditions and the conditions of approval are referenced on the site plan; that a landscaping plan has been submitted with the final site plan showing vegetative buffers along all adjacent properties and screening for the centralized dumpster location; that if the Commission is favorable towards the site plan, preliminary approval could be granted with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals.

Mr. Ross questioned if the applicant could use a different planting than the proposed Leyland Cypress trees as they have been taken off the recommendation list provided by the Department of Agriculture since they are easily damaged, topple over and even die. Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to grant a one-year time extension retroactive to the anniversary date of approval. Approval is now valid until April 1, 2011. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a preliminary with the stipulations that the owner contact the Department of Agriculture for suggestions and recommendations of approved native species for the proposed landscape buffer and that final approval shall be subject to the staff receiving all agency approvals and subject to a revised landscape plan. Motion carried 5 – 0.

4. Henry James Johnson
3 Lots and 50' Right of Way – Route 30

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a proposed 50-foot right of way; that the proposed lots would contain 2.06-acres, 2.23-acres and 2.35-acres; that the owner proposes to create the right of way over an existing dirt road noted on the survey; that the aerial photograph (February 28, 2007) does not show a dirt road; that the request can be approved as submitted or an application for a major subdivision can be required; that 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; and that the Commission was previously provided a copy of a sketch drawing of the request.

Mr. Johnson questioned if the site has been inspected to determine whether there is a road, land or entrance at the proposed right of way location.

Mr. Abbott advised the Commission that the site has not been inspected.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action so that the site can be inspected by the staff. Motion carried 5 – 0.

5. Glenn Cave
2 Parcels and 50' Right of Ways – Road 431

Mr. Abbott advised the Commission that this is a request to create 2 parcels with access from 50-foot right of ways; that Parcel B would contain 9.68-acres and Parcel C 12.09-acres; that the aerial photograph (February 28, 2007) does not show an existing road, driveway, etc. where the proposed 50-foot right of ways will be located; that the request should be denied as submitted and the applicant should be required to go through the major subdivision process or apply for a variance from the Board of Adjustment; and that the Commission was previously provided a copy of a sketch drawing of the request.

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Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to deny the request as submitted. Motion carried 5 – 0.

6. Deonarine and Sabatrie Singh

3 Lots and 50' Easement – Road 434

Mr. Abbott advised the Commission that this is a request to subdivide a 7.54-acre parcel into 3 lots with access from a 50-foot easement; that Lot 1 will contain 1.37-acres and has an existing dwelling and accessory structures located on it; that Lot 2 will contain 1.0-acre and the residual lands will contain 5.17-acres; that the owner proposes to create the 50-foot easement over an existing entrance; that the request can be approved as submitted or an application for a major subdivision can be required; that 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; and that the Commission was previously provided a copy of 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 any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

7. Charles Brittingham

2 Lots and 50' Right of Way – Road 525

Mr. Abbott advised the Commission that this is a request to subdivide a 2.55-acre lot into 2 lots with access from a 50-foot right of way; that each lot will contain 1.27-acres; that the owner proposes to create the 50-foot right of way over an existing driveway; 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 copy of a sketch drawing of the request.

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

8. Arthur Downes

3 Lots and 50' Easement – Road 592

Mr. Abbott advised the Commission that this is a request to subdivide a 15.0 + acre parcel into 3 lots with access from a 50-foot easement; that Lots 1 and 2 will contain 5.0-acres and the residual land will contain 5.14-acres; that there is an existing dwelling and accessory buildings located on the residual lands; that the owner proposes to create the easement over an existing driveway; that the request can be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision; and that the Commission was previously provided a copy of a sketch drawing of the request.

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

Meeting adjourned at 3:40 p.m.