



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF JUNE 17, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, June 17, 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 were present: Mr. Ben Gordy, Mr. Michael Johnson, Mr. Rodney Smith and Mr. Robert Wheatley, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that Item #6 on the Consent Agenda has 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.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to remove Item #10 from the Consent Agenda move it to the first item under Other Business.

CONSENT AGENDA

Subdivision #2005 – 36 - - application of **BETTY D. BLACK** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 11.03 acres into 11 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 319, 1,560 feet south of Road 242.

This is the final record plan for a 9-lot standard subdivision. The Commission granted preliminary approval for 11 lots on May 11, 2006 and granted one-year time extensions on May 16, 2007, June 18, 2008 and May 20, 2009. The final record plan has been reduced by 2 lots. The final record plan meets the requirements of the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2005 – 40 - - application of **PAUL S. AND DORIS T. BARRON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 21.88 acres into 22 lots, located east of Road 465A, 381 feet north of Route 24.

This is the final record plan for a 21-lot standard subdivision. The Commission granted preliminary approval for 22 lots on May 25, 2006 and granted one-year time extensions on September 19, 2007 and June 18, 2008. The final record plan has been reduced by 1 lot. The final record plan meets the requirements of the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2006 – 14 - - application of **GRAY PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 40.03 acres into 40 lots, located east of Road 461, 1,050 feet south of Route 24.

This is the final record plan for a 38-lot standard subdivision. The Commission granted preliminary approval for 38 lots on June 20, 2007 and granted a one-year time extension on August 20, 2008. The final record plan meets the requirements of the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

4. Time Extensions

a. CU #1681 – W. Edward Metz

This is a request for a one-year time extension. This conditional use for a campground and boat and RV storage was approved on June 5, 2007. The Commission granted a one-year time extension on June 18, 2008. This is the second request for an extension and the last one that the Commission may grant. If the extension is granted, it shall be retroactive to the anniversary date of approval and will be valid until June 5, 2010.

b. CU #1775 – East Market, LLC

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. This is the first request for a time extension.

c. Subdivision #2005 – 21 - - Bierman Family, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on August 16, 2006 and granted one-year time extensions on February 20, 2008 and July 16, 2008. This is the third request for an extension.

d. Subdivision #2005 – 24 - - Cascade Properties, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on March 23, 2006 and granted one-year time extensions on June 20, 2007 and April 16, 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.

e. Subdivision #2006 – 31 - - South Shore Builders, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on November 14, 2007 and a revised preliminary approval on May 14, 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 November 14, 2009.

f. Subdivision #2006 – 48 - - Doug Corey

This is a request for a one-year time extension. The Commission granted preliminary approval 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.

g. Subdivision #2006 – 61 - - MLK Partners

This is a request for a one-year time extension. The Commission granted preliminary approval on May 14, 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 May 14, 2010.

h. Subdivision #2006 – 70 - - PAF, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on July 16, 2008. This is the first request for an extension.

i. Subdivision #2007 – 10 - - Rita Lynn, Inc.

This is a request for a one-year time extension. The Commission granted preliminary approval on October 8, 2008. This is the first request for an extension.

5. Barbara Ann Bean

This is a request to create 2 lots with access from a 50-foot easement. The owner proposes to create the 50-foot easement over an existing driveway. Lot 1 will contain 0.90-acres and Lot 2 will contain 0.82-acres. Lot 1 has an existing manufactured home on it and will need a special use exception from the Board of Adjustment to retain a manufactured home on less than 10-acres. Lot 2 has an existing 1-story frame dwelling located on it.

6. John and Beverly Starr

Lot and 50' Easement – Route 5

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

7. Deborah and Charles Long, Jr.
2 Lots and 50' Right of Way – Road 74

This is a request to create a lot with access from a 50-foot right of way. The owner proposes to subdivide a 0.77 acre lot out of a 5.36 acre parcel. The owner proposes to create the right of way over an existing driveway to serve as access to the 0.77-acre parcel and the residual 4.59 acres.

8. Howard C. Darby
2 Parcels and 50' Easement – Road 494

This is a request to extend an existing 50-foot easement and subdivide a 33.36 acre parcel into 2 parcels. Tract 1 will contain 4.498 acres and the residual land will contain 28.86 acres. The Commission approved the existing easement in 2008. DelDOT has issued a Letter of No Objection.

9. William Webster
2 Parcels and 50' Right of Way – Road 510

This is a request to create a 3.0 acre lot with access from a 50-foot right of way. The owner proposes to create the 50-foot right of way over an existing dirt road. The right of way will serve as access to the 3.0-acre lot and the residual 42.66-acre parcel.

10. KEB Properties, LLC
3 Lots and 50' Easement – Road 68

This item was removed from the Consent Agenda and moved to the first item under Other Business for discussion.

11. Vereta P. and Waynesley P. Simon, Sr.
2 Lots and 50' Easement – Road 296

This is a request to subdivide a 1.57 acre lot into 2 lots and create a 50-foot easement to serve as access to the lots. Lot 1 will contain 32,670 square feet and the residual lands will contain 35,805 square feet. The owner proposes to create the easement over an existing driveway. The adjoining owner is allowing the owner 25-feet to make the easement 50-feet in width and has agreed to this on the record plan.

12. Caleb Figueroa
2 Parcels and 50' Easement – Road 547

This is a request to create a 1.50 acre lot with access from a 50-foot easement. The owner proposes to create the 50-foot easement over an existing paved driveway. The 50-foot easement will serve as access to the proposed lot and the residual land.

OLD BUSINESS

Subdivision #2006 – 50 - - application of **TRAP INVESTMENTS, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 57.80 acres into 49 lots, located south of Road 449, 3,100 feet east of Road 463.

The Chairman referred back to this application, which has been deferred since December 20, 2007.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 50 for Trap Investments, LLC, 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 proposed subdivision density, with 49 lots on 57.80 acres, is less than the density permitted by the existing AR-1 zoning. This is also a reduction from the 66 lots originally proposed.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for individual on-site septic systems.
6. This approval is subject to the following conditions:
 - A. There shall be no more than 49 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, 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 DeIDOT'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.
 - 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 shown along boundaries bordering on any land used primarily for any agricultural purpose. 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. 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.
- I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0.

OTHER BUSINESS

KEB Properties, LLC
3 Lots and 50' Easement – Road 68

Chairman Wheatley advised the Commission that he would not be participating in the discussion of this item and turned the meeting over to Vice-Chairman Gordy.

Mr. Abbott advised the Commission that this is a request to subdivide a 20.85 acre tract into 3 lots with access from a 50-foot easement; that the owner proposes to create the 50-foot easement over an existing paved driveway; and 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.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 3 votes to none, with Mr. Wheatley not participating, to approve the request as submitted with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 3 – 0 – 1.

Vice Chairman Gordy turned the meeting back over to Chairman Wheatley.

1. Appel – Tucker – Reynolds V.F.W. Post No.2931
CU #1835 Site Plan – Road 607

Mr. Abbott advised the Commission that this is a site plan for a private club; that the conditional use was approved on June 16, 2009; that the site plan is the same as what was presented during the public hearing; that the site plan meets the conditions of approval and the requirements of the zoning code; that the conditions of approval are referenced on the site plan; that on-site septic and well are proposed; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

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

2. Service Energy, LLC

CU #1160 Revised Site Plan – Route 36

Mr. Abbott advised the Commission that this item was deferred at the May 20, 2009 special meeting to allow the Commission an opportunity to visit the site; that this is a request to add 7, 11' x 90' underground bulk gas storage tanks; that the conditional use was approved on August 6, 1996; that there are currently 5 above ground storage tanks on the site; that the only condition imposed was that site plan approval shall be subject to the Commission's review; that the approved ordinance or application did not specify a specific number of tanks permitted; that the staff provided the Commission a copy of the minutes of the July 11, 1996 meeting; and that the staff is questioning if the site plan can be approved as revised or if the Commission feels that an amended application be filed.

Mr. Johnson stated that he feels the same as last month in that a new hearing should be required; that he reviewed the minutes from July 11, 1996 and that there was opposition to the application; and that even though there is no limit on the number of tanks, the applicant requested 5 tanks at the public hearing.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action so that Mr. Burton may participate in this discussion. Motion carried 4 – 0.

3. Breakwater MR/RPC

Revised Record Plan – Road 268

Mr. Abbott advised the Commission that this item was last deferred at the March 18, 2009 meeting pending comments from the Office of the State Fire Marshal; that the intent of the revised plan is to revise the setbacks for the multi-family fee simple lots and revise the parking rational; that the approved site plan currently has a 40-foot front and rear yard aggregate with minimum side yards of 20 feet; that the developers are requesting to revise the front and rear yard to a 30-foot aggregate with minimum 5-foot side yard setbacks; that the approved plan references 441 parking spaces provided; that the revised plan references 207 parking spaces for the fee simple multi-family lots; that this is based on the parking requirements that currently exist; that since this project is a residential planned community, the Commission may modify the setbacks; that the Office of the State Fire Marshal has approved the revised plan; and that the Commission was provided a copy of the applicant's response on how they feel that the revised plan is a better design than the recorded plan.

Mr. Johnson advised the Commission that he has visited the site numerous times; that the developers are changing from 2 car garages to 1-car garages; and that the developers are proposing blocks of off-street parking that will enhance the development.

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Motion by Mr. Johnson, seconded by Mr. Smith and carried 3 votes to none, with Mr. Gordy not voting, to approve the revised site plan as submitted with the stipulation that the developers ensure that the parking spaces are 20-feet in depth. Motion carried 3 – 0 – 1.

4. Colonial East, L.P.

CU #1817 – Site Plan – Route 9 and Road 265

Mr. Abbott advised the Commission that this is a preliminary site plan for an 82-lot expansion to an existing manufactured home park; that this conditional use was approved on December 2, 2008 with 13 conditions; that the site plan was reviewed by the Technical Advisory Committee on June 5, 2009; that the only agencies that responded were Sussex County Engineering, Office of the State Fire Marshal, Natural Resources Conservation Service and Division of Public Health; that the 82 lots will be built in 4 phases; that Phase 1 contains 25 lots, Phase 2 50 lots, Phase 3 6 lots and Phase 4 1 lot; that the average number of units per year cannot exceed 25; that Phase 1 will be completed by 2010, Phase 2 by 2011, Phase 3 by 2012 and Phase 4 by 2013; that the minimum lot area proposed is 7,500 square feet; that 5,000 is the minimum required; that central water will be provided by Tidewater Utilities and central sewer will be provided by Sussex County; that a landscaping plan needs to be submitted with the final site plan and the final site plan needs to reference the 13 conditions of approval; and that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals per condition of approval #8.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve the site plan as a preliminary with the stipulations that final approval shall be subject to the review and approval of the Commission per conditional of approval #8, that a landscape plan be submitted with the final site plan as required, and that the 13 conditions of approval be referenced on the final site plan. Motion carried 4 – 0.

5. Bay City Manufactured Home Community

Corrective Survey – Route 23

Mr. Abbott advised the Commission that this is the final corrective survey for a manufactured home park; and that the Commission granted conceptual approval on November 12, 2008 with the stipulation that all lot corners be monumented and numbered by a permanent marker.

Mr. Lank advised the Commission that on March 6, 2008 a moratorium was imposed on this manufactured home park by the County Administrator; that on October 16, 2008 the Commission reviewed corrective surveys for the park and a review report prepared by Mr. Lank; that on October 16, 2008 the Commission deferred action for further consideration; that on November 12, 2008 the Commission granted as noted in Mr. Abbott's comments; that on March 11, 2009 Mr. Lank wrote a letter to Coast Survey, Inc. and Bay City Limited Partnership in reference to his review of the re-survey with monumentation and questioning changes in some of the lots and the monumentation; that on March 30, 2009 Mr. Lank received revised re-surveys and a response and explanation

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from Coast Survey, Inc.; that on April 8, 2009 the re-survey was removed from the April 22, 2009 agenda to allow the tenants the opportunity to review the re-survey; that on May 16, 2009 Mr. Lank met with some of the tenants to explain the process and advised the tenants that if they had any concerns they should advise by letter, preferably a week to 10 days prior to the June 17, 2009 Commission meeting.

Mr. Lank submitted a packet of correspondence to the Commission which included drainage correspondence by David Baker, Mr. Lank and James Griffin – County Attorney; March 11, 2009, March 30, 2009 and April 8, 2009 letters previously referenced; a copy of the minutes for November 12, 2008; copies of letters and attachments from Dan Wien, dated May 29, 2009, June 11, 2009 and June 15, 2009; a copy of a letter with attachments from Steve and Pat Weyl, dated June 15, 2009 with two over letters; and letters from Shirley A. Detwiler, Norma Nash and Bobbie Hemmerich.

There was a consensus of the Commission that Mr. Burton should be participating in the discussion and review of this project, and that the Commission should take time to study and review the information provided.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

6. Cluster Ordinance

Discussion

Mr. Abbott advised the Commission that this item was deferred at the May 20, 2009 so that Mr. Lank could participate.

There was a consensus of the Commission that the full Commission participate in this discussion.

The Commission took no action and this item will be placed on a future agenda.

Meeting adjourned at 3:46 p.m.