



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE SPECIAL MEETING OF JULY 16, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, July 16, 2008 in the County Council Chambers, 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. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, Mr. Rodney Smith with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Mr. Lank advised the Commission that item 9 under Other Business 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 5 – 0.

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

The Consent Agenda included:

Subdivision #2006 – 6 - - application of Jeff Stoneberger to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 18.742 acres into 24 lots (Cluster Subdivision), located north of Route One, 500 feet southwest of Road 14E.

This is the final record plan for a 24-lot cluster subdivision. The minimum lot size is 0.50-acre. The Commission granted preliminary approval on May 16, 2007 for 24 lots and granted a one-year time extension on April 18, 2008. The final record plan is the same as the preliminary plan and complies with the subdivision and zoning codes and the conditions of the preliminary approval. All agency approvals have been received.

#### Time Extensions

a. CU #1675 – Colonial East, Ltd.

This is a request for a one-year time extension. This conditional use for an expansion to an existing manufactured home park was approved on June 12, 2007. This is the first

request for an extension and if an extension is granted, it shall be retroactive to the anniversary date of approval and will be valid until June 12, 2009.

b. CU #1724 – North Milton Group, II

This is a request for a one-year time extension. This conditional use for a regional sewer treatment plant was approved on July 31, 2007. The Commission granted preliminary site plan approval on January 17, 2008. This is the first request for an extension and if an extension is granted, approval will be valid until July 31, 2009.

c. Subdivision #2004 – 41 - - William B. Warrington

This is a request for a one-year time extension. The Commission granted preliminary approval on August 11, 2005 and granted one-year time extensions on August 16, 2006 and September 19, 2007. This is the third request for an extension. If an extension is granted, preliminary approval will be valid until August 11, 2009. No additional correspondence has been received since the last extension was granted and this should be the last extension that the Commission grants.

d. Subdivision #2005 – 21 - - Albert J. Bierman

This is a request for a one-year time extension. The Commission granted preliminary approval on August 16, 2006 and granted a one-year time extension on February 20, 2008. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until August 16, 2009.

e. Subdivision #2005 – 52 - - Underhill Properties, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on July 27, 2006 and granted a one-year time extension on August 15, 2007. This is the second request for an extension and if an extension is granted, preliminary approval will be valid until July 17, 2009.

f. Subdivision #2007 – 19 - - Ameri Star Homes

This is a request for a one-year time extension. The Commission granted preliminary approval on July 26, 2007. This is the first request for an extension and if an extension is granted, preliminary approval will be valid until July 26, 2009.

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

Subdivision #2006 – 58 - - application of WRIGHT H. PARKER to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar Creek

Hundred, Sussex County, by dividing 20.09 acres into 19 lots, and a waiver from the forested buffer requirements, located north of Road 38, 1,700 feet east of Road 225.

The Chairman referred back to this application, which has been deferred since March 5, 2008.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 58 for Wright H. Parker, 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 is less than the density permitted by the existing AR-1 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.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems.
7. This approval is subject to the following conditions:
  - A. There shall be no more than 17 lots within the subdivision.
  - B. The applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The stormwater 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. An area for a school bus stop shall be established if desired by the local school district. 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 stormwater management areas and erosion and sedimentation control facilities.
  - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
  - H. 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.

- I. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
- J. A system of street lighting shall be established.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Burton abstaining, to approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

Subdivision #2006 – 68 - - application of DOVE ESTATES, L.L.C. to consider the Subdivision of land in an AR-1, Agricultural Residential District and a GR, General Residential District in Nanticoke Hundred, Sussex County, by dividing 73.20 acres into 111 lots, located south of Road 526A and west of Road 525.

The Chairman referred back to this application, which has been deferred since May 22, 2008.

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

Subdivision #2006 – 69 - - application of CLEARLAKE PROPERTIES, L.L.C. to consider the Subdivision of land in an AR-1, Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 86.00 acres into 134 lots (Cluster Subdivision) and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north and south of Route 54, 3,050 feet east of Road 504.

The Chairman referred back to this application, which has been deferred since June 12, 2008.

Mr. Gordy stated that he would move that the Commission grant preliminary approval for Subdivision #2006 – 69 for Clearlake Properties, L.L.C. based upon the record and for the following reasons:

- 1. The applicant is seeking approval of a subdivision within the AR-1 zone. The applicant is seeking clustered lots with a minimum area of 20,000 square feet. The average lot size is 25,000 square feet.
- 2. A subdivision on this site will not have an adverse impact on the neighboring properties or community. It is in an area near existing strip subdivisions, developing residential planned communities, and single-family subdivisions.
- 3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
- 4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
- 5. The design addresses the requirements of Section 99-9C of the Code.

6. The subdivision will have no more than 123 lots on 86 acres. This results in a density that is less than the maximum density permitted in the AR-1 zone. It is also a reduction in the number of lots originally proposed.
7. The subdivision will be served by central water and sewer.
8. This preliminary approval is subject to the following conditions:
  - A. There shall be no more than 123 lots within the subdivision.
  - B. The applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The stormwater 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.
  - 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 stormwater management areas and erosion and sedimentation control facilities.
  - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
  - H. 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 the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
  - I. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
  - J. No wetlands shall be included within any lots. The wetlands notice shall be included within the Restrictive Covenants for the project.
  - K. A system of street lighting shall be established.
  - L. Sidewalks shall be located on one side of all streets in the subdivision.
  - M. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.

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 5 – 0.

Subdivision #2006 – 71 - - application of THOMAS E. AND CHARLENE A. JONES to consider the Subdivision of land in an AR-1, Agricultural Residential District in

Broadkill Hundred, Sussex County, by dividing 34.09 acres into 2 lots, located at the southwest corner of Emma Land and Route 30, 1,001 feet north of Road 252.

The Chairman referred back to this application, which has been deferred since June 26, 2008.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 71 for Thomas E. and Charlene A. Jones, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
3. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
4. The proposed subdivision will not adversely affect traffic on area roadways.
5. This recommendation is subject to the following conditions:
  - A. There shall be no more than 2 lots within the subdivision.
  - B. All entrances shall comply with all of DelDOT's requirements.
  - C. The applicant is responsible for the maintenance of the road, Emma Drive. The lot being subdivided is to have its entrance on Emma Drive and not the State road.
  - D. 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.

CZ #1622 - - application of GARY F. FARMER, DVM to amend the Comprehensive Zoning Map from an AR-1, Agricultural Residential District to a CR-1, Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying north of Route 26, 2,820 feet northeasterly of Road 382 (Route 20), to be located on 2.54 acres, more or less.

The Chairman referred back to this application, which has been deferred since June 12, 2008.

Mr. Smith stated that he would move that the Commission recommend approval of CZ #1622 for Gary F. Farmer, DVM, based upon the record and for the following reasons:

1. The site is located on Route 26, a primary roadway in the County.
2. The site is in the future annexation area of Dagsboro where recent and future residential development produces a demand for commercial services.

3. This rezoning will not have an adverse impact on the neighboring properties or community.
4. The rezoning will be in character with the surrounding area and uses. Some of those existing uses are mini-storage, automotive salvage, plumbing contracting and warehousing.
5. The site has been used by the Applicant as a veterinary hospital for over thirty years. The Applicant stated that the use will not change in the immediate future.
6. The rezoning meets the general purpose of the Zoning Ordinance by promoting the orderly growth, convenience and welfare of Sussex County.

Mr. Johnson stated that he is concerned about spot zoning and that a precedent could be set; that the use was previously approved for the site a veterinary clinic and questions the need to rezone the property; and that the site, prior to the approval of the veterinary clinic in 1994, was utilized as a doctor's office.

Mr. Burton stated that he had the same concerns.

Motion by Mr. Smith, seconded by Mr. Gordy to approve the rezoning. Motion was denied 2 – 3.

The Chairman asked for a roll call vote: Mr. Smith: Yea, Mr. Gordy: Yea, Mr. Johnson: Nay, Mr. Burton: Nay and Mr. Wheatley: Nay.

CU #1736 - - application of MATTHEW AND KAREN WEIDMANN to consider the Conditional Use of land in an AR-1, Agricultural Residential District to expand Conditional Use #1068 to include towing service and storage of vehicles and boats to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.01 acres, more or less, lying southeast of Road 277 (Robinsonville Road), 227 feet southwest of Road 275 (Plantations Road).

The Chairman referred back to this application, which has been deferred since June 12, 2008.

Mr. Johnson stated that he would move that the Commission recommend approval of CU #1736 for Matthew and Karen Weidmann to expand CU #1068 to include towing service and limited storage of vehicles based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.
2. The site has been used as an auto repair garage under CU #1068. Towing service is a reasonable accessory use to the permitted auto repair service.
3. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.

4. The Applicant is an AAA authorized towing contractor. There is a need for this type of service and the location provides centralized access to Route One and other area roadways in this area of Sussex County.
5. This recommendation for approval is subject to the following conditions and stipulations:
  - a. All towing and service vehicles shall be parked to the rear of the property behind the buildings.
  - b. No more than 5 vehicles being serviced and/or awaiting pick-up are to be parked in the front of the garage/shop building, on the asphalt parking area. No vehicles are to be parked on the grassy area. No towed vehicles shall be left on the property for more than 48 hours, unless they are being serviced.
  - c. The site shall not be used as an impound lot or vehicle storage lot.
  - d. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
  - e. Towing service shall be permitted at all times.
  - f. The site plan shall be subject to approval of the Planning and Zoning Commission. It shall show the location of all parking, including 5 paved parking spaces in front of the buildings and the rear parking areas for towing service and personnel vehicles, and any other vehicles awaiting service. It shall also include a landscape plan showing fences and screening vegetation.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

CU #1738 - - application of BAYWOOD, L.L.C. to consider the Conditional Use of land in an AR-1, Agricultural Residential District for an equestrian center to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 12.0 acres, more or less, lying 450 feet northeast of Banks Road (Road 298) and approximately 600 feet southeast of Green Road (Road 298-A).

The Chairman referred back to this application, which has been deferred since June 26, 2008.

Mr. Gordy stated that he was not present at the public hearings and therefore would not be voting on this application.

Mr. Johnson stated that he would move that the Commission recommend approval of CU #1738 for Baywood, L.L.C. for an equestrian center, based upon the record and for the following reasons:

1. The proposed Conditional Use has been supported by the Department of Agriculture because it promotes the growth of agricultural uses within Sussex



County and there is a demand for first class private and public equine facilities in Sussex County.

2. The proposed Conditional Use will have no significant impact upon traffic. Any potential traffic impact is mitigated by a reduction in the number of lots in the surrounding residential development, as well.
3. The proposed use will be an amenity to the surrounding residential developments and will also be open to the public. As such, it will be a benefit to the surrounding neighbors and the residents of Sussex County.
4. With the conditions placed upon the application, it will not have an adverse impact on neighboring or adjacent properties.
5. This recommendation for approval is subject to the following conditions:
  - a. There shall be no more than 48 stalls permitted within the facility.
  - b. The facility shall be used primarily as an equestrian center with limited other social activities.
  - c. Any retail sales on the premises shall be limited to items reasonably related to the equestrian use of the premises or horseback riding.
  - d. Any daily food service shall be limited to snack sales. There shall not be a full time bar or restaurant on the premises.
  - e. Full service food or alcohol service and sales shall only be permitted for group functions or events. These types of events shall include, but not necessarily be limited to equestrian shows, rentals, community activities, etc.
  - f. A landscape plan showing all proposed landscaping, buffers, etc. shall be submitted as part of the Final Site Plan review process.
  - g. 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 with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0 with Mr. Gordy abstaining since he was not present during the public hearing.

Subdivision #2006 – 70 - - application PAF, LLC c/o PAUL KRUGER to consider the Subdivision of land in an AR-1, Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 21.22 acres into 14 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 321, 900 feet north of U.S. Route 113.

The Chairman referred back to this application, which has been deferred since June 26, 2008.

Mr. Gordy stated that he was not present at the public hearings and therefore would not be voting on this application.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 70 for PAF, LLC c/o PAUL KRUGER, 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 is less than the density permitted by the existing AR-1 zoning.
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. However, the applicant should continue working with the Town of Georgetown regarding a possible connection to Town water and sewer.
6. This approval is subject to the following conditions:
  - a. There shall be no more than 14 lots within the subdivision.
  - b. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  - c. The stormwater 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.
  - 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 stormwater management areas and erosion and sedimentation control facilities.
  - g. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
  - h. 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. Native species and not Leyland Cypress shall be used, with all plantings being a minimum of 6 feet in height.
  - i. A system of street lighting shall be established.
  - j. Sidewalks shall be located on one side of all streets in the subdivision.

- k. As part of the Agency comments required for Final Site Plan approval, the applicant shall consult with the Department of Corrections regarding any security issues that can be eliminated or minimized through the design of the project as a result of its close proximity to the Sussex Correctional Institution.

Motion by Mr. Johnson, seconded by Mr. Burton and carried with 4 votes to approve this application as a preliminary for the reasons and with the conditions stated. Motion carried 4 – 0 with Mr. Gordy abstaining since he was not present during the public hearing.

## OTHER BUSINESS

### 1. Millville Volunteer Fire Company, Inc. CU #1692 Revised Site Plan – Road 54

Mr. Abbott advised the Commission that this is a revised site plan for the addition of a one-story, 6,584 square foot fire department substation; that the conditional use was approved on August 1, 2006 with no conditions of approval; that the fire company is currently using an existing one-story metal building that will be demolished; that the fire company currently houses 2 pumpers, an utility truck and a tractor trailer tanker at this site with 15 to 20 members assigned to the site; that the existing building needs to be replaced; that the proposed building will contain 4 engine bays, a small residential style kitchen, a lounge, radio room, 4 small multi-purpose rooms and restrooms; that the fire department feels that the upgrade will allow them to continue to meet the needs of a growing community; that the site is zoned MR, Medium Density Residential, that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that DelDOT has issued a Letter of No Objection; that the staff is questioning if another public hearing is required; and that if the revised site plan is approved as submitted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the revised 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.

### 2. Bethany Cedars CU #1752 Site Plan – Road 358

Mr. Abbott advised the Commission that this is a site plan for 16 multi-family units located on 4.10-acres; that the site is zoned GR, General Residential and the conditional use was approved on December 18, 2007 with 13 conditions; that the conditions of approval are referenced on the site plan; that 2, 5-unit buildings and a 6-unit building are proposed; that 2 gazebos and a tot lot are proposed; that sidewalks are provided along at least one side of all streets; that the setbacks meet the requirements of the zoning code; that 48 parking spaces are required and provided; that central sewer will be provided by Sussex County and central water will be provided by Sussex Shores Water Company;

that the required landscaping plan has been submitted; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Johnson 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.

### 3. Saketumi Commercial Site Plan Preliminary Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 1-story, 9,999 square foot retail building located on 38,534 square feet; that the site is zoned C-1, General Commercial; that DelDOT has issued a Letter of No Objection for the entrance location; that the setbacks meet the requirements of the zoning code; that 53 parking spaces are required and provided; that 10 spaces are within the front yard setback and are subject to site plan review; that a fence or screening is required along the rear property line to shield the parking from the adjacent residential uses; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the final site plan needs to show the landscaping plan; 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 stipulations that final site plan approval shall be subject to the staff receiving all agency approvals and that the final site plan show the required fencing or screening to the rear of the site and a landscape plan be submitted with the final site plan. Motion carried 5 – 0.

### 4. Sandpiper Commercial Preliminary Commercial Site Plan – Route One

Mr. Gordy stated that he would not be participating in the review of this project.

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 3-story, mixed use building and a 2-story retail and office building located on 1.99-acres; that the site is zoned C-1, General Commercial; that DelDOT has issued a Letter of No Objection for the entrance location; that access to the site is from a right in only from Route One and from cross access easements from the adjoining parcels; that building 1 contains 9,107 square feet of gross leasable area on the first floor, 9,294 square feet on the second floor and 6 apartments on the third floor; that building 2 contains 5,398 square feet of gross leasable area on the first floor and 5,184 square feet on the second floor; that the building setbacks meet the minimum requirements of the zoning code; that 187 parking spaces are required and 188 are provided; that there is a shared parking agreement with the adjoining parcel; that 49 spaces are within the front yard setback and are subject to site plan review; that a proposed fence is provided along the adjoining residential parcel; that central sewer will be provided by Sussex County and central water

will be provided by Tidewater Utilities; that the final site plan needs to show the required landscaping along Route One; 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 4 votes to none to approve the site plan as a preliminary with the stipulations that final approval shall be subject to the staff receiving all agency approval and a landscape plan be submitted with the final site plan. Motion carried 4 – 0 – 1. Mr. Gordy did not participate.

#### 5. Truitt Property Phase II

##### Preliminary Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a retail store; that the site is zoned C-1, General Commercial; that DelDOT has issued a Letter of No Objection for the entrance location; that access to the site is from Guthrie Road which is the same for Phase 1; that a 1-story, 5,500 square foot building is proposed; that the setbacks meet the minimum requirements of the zoning code; that 31 parking spaces are required and 32 are provided for this phase; that the parking is within the front yard setback and is subject to site plan review; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the required landscape plan has been submitted; 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. Smith 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.

#### 6. Bay Forest MR/RPC

##### Amended Master Plan and Phase 2 Preliminary Site Plan – Road 347

Mr. Abbott advised the Commission that this is a preliminary record plan for Phase 2; that this phase contains 35 detached single-family condominiums, 50 attached multi-family units within 15 buildings and 80 single-family lots; that the proposed detached single-family condominiums have been reduced by 6 units from the previously approved master plan; that these types of units have been made larger and the reduction will be relocated to another phase; that the building groups for these units will not exceed 165 feet in length and will maintain a 40 foot building envelope separation; that the proposed setbacks will be 20 feet from the back of the roadway curbing and 10 feet from the right of ways with 20 foot rear yards adjacent to open space; that the setbacks from the single-family lots will be 10 feet from all lot lines which is the same for phase 1; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that preliminary approval could be considered; that if preliminary approval is granted, the master plan needs to be approved as revised to reflect the revisions to phase 2; and that final site plan approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals since this project is a residential planned community.

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

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

Reconsideration of Conditions of Approval 15, 16 & 17

Mr. Abbott advised the Commission that this request was deferred at the June 18, 2008 special meeting; that the applicants are requesting to delete or modify conditions of approval 15, 16 and 17; that the applicants are requesting that condition of approval 15 be deleted; that the applicants are requesting that condition of approval 16 be modified to read “the net development area shall be reduced by the acreage of the 2 parcels separated from the rest of the project by Deep Branch Road and Peterkins Road”; and that condition of approval 17 be modified to read “the applicant shall submit a revised preliminary site plan with a maximum number of lots not to exceed 298. The revised preliminary site plan shall also show the 30’ buffer around the entire project and the 50’ wetlands buffer.”

Mr. Johnson provided the Commission with a written statement for their review and discussion.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to amend Condition 15 to read, “Consequently lots are recommended to be configured so that they do not abut one another.” Request to delete condition 15 was denied. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to deny the request to modify Condition 16. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to modify Condition 17 by eliminating the phrase “the elimination of back to back lots”. Motion carried 5 – 0.

8. Subdivision #2006 – 61 - - MLK Partners

Reconsideration of Condition of Approval 11

Mr. Abbott advised the Commission that this is a request to delete a condition of the preliminary approval for the Millstone Subdivision; that the Commission granted preliminary approval on May 14, 2008 with 13 conditions; that the applicants are requesting that the Commission delete condition 11 that reads “Sidewalks shall be located on both sides of all streets within the Subdivision”; that the developers sent a letter explaining their request; and that the Commission was provided a copy of the letter.

It was the consensus of the Commission that the request is for financial reasons only and deleting the condition will not provide for the safe travel of pedestrians within the subdivision.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Gordy not voting, to deny the request. Motion carried 4 – 0 – 1.

9. Subdivision #2006 – 43 - - Summer Hill Development, L.L.C.  
Reconsideration of Denial

This item was removed from the Agenda on July 15, 2008 at the Attorney's request.

10. Subdivision #2005 – 71 - - Delaware Land Associates  
Wetlands Jurisdictional Determination Request

Mr. Abbott advised the Commission that this is a request to not be required to obtain a jurisdictional determination for a wetlands delineation from the Army Corps of Engineers in order to obtain final record plan approval; and that the engineers submitted a letter explaining the request.

Ken Christenbury, P.E., James Fuqua, Attorney, and Jim McCully, Wetlands Specialist, advised the Commission that the Corps of Engineers is not required to issue a jurisdictional determination if wetlands are not being impacted; that the zoning code only requires a signature from a qualified specialists, and it may take months before the Corp would even issue a determination.

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

11. Subdivision #2006 – 62 - - Joseph Black  
Wetlands Jurisdictional Determination Request

Mr. Abbott advised the Commission that this is a request to not be required to obtain a jurisdictional determination for a wetlands delineation from the Army Corps of Engineers in order to obtain final record plan approval; and that the engineers submitted a letter explaining the request.

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

Mr. Abbott advised the Commission that he has provided the Commission with written comments for the next 9 items and does not have any additional information on these requests.

12. Gail Fleming  
2 Lots – Lawton Road and Sisters Lane

The Commission reviewed a request to subdivide a 3.2805-acre parcel into 2 lots with access off of an existing 50-foot right of way known as Lawton Road. Lot a will contain

0.8138-acres and the residual land will contain 2.4667-acres. DelDOT has issued a Letter of No Objection.

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

13. Drew D. Ward

2 Parcels and 50' Easement – Road 333

The Commission reviewed a request to subdivide a 4.8880-acre parcel into 2 lots and create a 50-foot easement to serve as access. Lot 1 will contain 1.8880-acres and the residual land will contain 3.0000-acres. The 3.0000-acre parcel has an existing dwelling located on it. The owner proposes to create the 50-foot easement over an existing gravel driveway. The easement will serve as access to both parcels. DelDOT has issued a Letter of No Objection.

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

14. David A. Shevock

3 Parcels and 50' Right of Way – Road 265

The Commission reviewed a request to subdivide a 28.31-acre parcel into 3 lots and create a 50-foot right of way to serve as access to the lots. Lot 1 will contain 3.25-acres, Lot 2 will contain 2.47-acres and the residual lands will contain 22.59-acres. The owner proposes to create the 50-foot right of way over an existing 12-foot private road.

Motion by Mr. Johnson, seconded by Mr. Burton 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.

15. BBM Ventures, L.L.C.

Parcel and 50' Right of Way – Road 567A

The Commission reviewed a request to subdivide a 22.6114-acre parcel into 4 parcels and create a 50-foot right of way to serve as access to Lots 2 and 3 and the residual lands. Lots 1, 2 and 3 are all 0.75-acres and have 150-feet of road frontage along Road 567A. The residual lands contain 20.33-acres and will be accessed by the 50-foot right of way. DelDOT has issued a Letter of No Objection.

Motion by Mr. Gordy, 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.

16. Sue Rogers and Laura and Amanda Brittingham



3 Parcels and 50' Right of Way – Road 467

The Commission reviewed a request to subdivide a 4.458-acre tract into 3 lots and create a 50-foot right of way to serve as access for the 3 lots. 2 of the lots will contain 1.0-acre and the residual land will contain 2.45-acres.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Gordy not participating, 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 4 – 0 – 1.

17. John Williamson

2 Parcels and 50' Right of Way – Road 533

The Commission reviewed a request to create a 0.75-acre lot with access from a 50-foot right of way out of an 11.57-acre parcel. The 50-foot right of way exists. If the request were approved, there would be 2 parcels having access from the right of way.

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

18. Alphonso K., Sr. and Linda P. Miller

2 Lots and 50' Easement – Road 275A

The Commission reviewed a request to subdivide a 1.51-acre parcel into 2 lots and create a 50-foot easement. Lot 1A will contain 0.75-acre and Lot 1 will contain 0.76-acre. The owner proposes to create the 50-foot easement over an existing stone driveway.

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

19. Bonnie Hensley

2 Parcels on 50' Right of Way – Road 62

The Commission reviewed a request to create a 4.70-acre parcel and a 4.980-acre parcel with access from a 50-foot right of way. The owner proposes to widen an existing 20-foot road to 50-feet to serve as access to the 2 parcels.

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

20. William and Donna Zinszer

2 Parcels and 50' Easement – Road 364

The Commission reviewed a request to create a 1.0-acre lot with access from a 50-foot easement out of a 37.24-acre tract. The owner proposes to create the easement over an

existing driveway. The 1.0-acre lot has an existing dwelling located on it as does the residual lands.

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

#### ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Wednesday, August 20, 2008 at 3:00 p.m. for old and other business items.

Mr. Lank provided the Commission a copy of a proposed open space draft ordinance that the County Council will discuss at a future meeting.

Meeting adjourned at 5:25 p.m.