



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 23, 2009

A regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 23, 2009 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. I.G. Burton, III, Mr. Ben Gordy, Mr. Rodney Smith, and Mr. Robert Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

It was noted that future Commissioner Marty Ross was also in attendance. Mr. Ross' term will begin August 1, 2009.

Mr. Lank advised the Commission that C/Z #1656 and Subdivision #2007 – 44 have been withdrawn.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of July 9, 2009 as amended. Motion carried 4 – 0.

Mr. Robertson explained how the public hearings are conducted.

PUBLIC HEARINGS

C/Z #1656 – application of **JOHN K. SMITH** 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 Little Creek Hundred, Sussex County, land lying west of U.S. Route 13, 850 feet south of Route 70, to be located on 22.60 acres, more or less.

This application was withdrawn on June 23, 2009.

Subdivision #2007 – 42 – application of **FENWICK COMMONS, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 13.35 acres into 27 lots, (Environmentally Sensitive

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Developing District Overlay Zone), located at the southwest corner of the intersection of Route 54 and Road 394.

Mr. Abbott advised the Commission that this application was filed December 18, 2007; that the Technical Advisory Committee review of February 28, 2008 is a part of the record; that the file contains a letter from Timothy Willard addressed to Mr. Robertson addressing the supporting statements, a revised preliminary plan addressing the Technical Advisory Committee comments and an Exhibit Booklet that was received on July 10, 2009.

Timothy Willard, Attorney, and Ken Christenbury, P.E. with Axiom Engineering were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is a cluster subdivision for 27 lots; that the proposed density is 2 lots per acre; that the site contains 40% open space; that the site is located in an Environmentally Sensitive Developing District Overlay Zone; that 4 lots per acre are permitted by the Code; that the scenic character has been preserved by maintaining existing woods and providing natural buffers; that the forest and wetlands are preserved in open space; that the wetlands will not be disturbed; that a 30-foot buffer is proposed around the perimeter of the site; that single family home are proposed; that all lots will have access from the subdivision streets; that the only wetlands on the site are located in the existing ditch; that the project will be served by the Fenwick Island Sanitary Sewer District and Artesian Water Company; that a homeowners' association will be established; that a standard subdivision on this site would only provide 14% open space; that the existing forested lands will not be disturbed; that there is a cemetery on the site that will be maintained and access will be provided to; that the cemetery is located in the open space; that no additional density is being sought; that the County Engineering Department has advised that sewer is available; that the requirements of Sections 99-9C and 115-25 of the Subdivision and Zoning Codes and referenced in the Exhibit Booklet and summarized the requirements; that there are approximately 5 acres of open space provided; that sidewalks and walking trails are proposed; that Tab #4 of the Exhibit Booklet contains a standard option subdivision plan for comparison; that Tabs #5 and #6 contain aerial maps and maps of the area; that the proposed use is permitted in the Environmentally Sensitive Developing District Overlay Zone' that the applicant has addressed the comments made by the Technical Advisory Committee; that the site is in a sewer planning study area; that the site must be annexed into the sewer district; that supporting statements have been provided; that in 2004 this site was the subject of a rezoning application; that the Commission recommended that the rezoning be denied and that the application was eventually withdrawn; that the Engineering Department has advised the Pump Station 31 has been completed and that Pump Station 30 is under design and construction should begin in the Spring of 2010; that cluster subdivisions require central sewer; that if the sewer is not in place, the development could not be built; that since the site is in the Fenwick Island Sanitary Sewer District Planning Area, the application may proceed; that no recreational amenities are proposed except for walking trails; that the forested lands will be preserved; that parking can be provided for the cemetery area; that the storm water management pond will be a wet pond; that a budget for the homeowners' association will be prepared; that the average lot size is 10,000

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square feet; that a bus stop can be provided if required; that the cluster design allows features to be preserved; that the agricultural use protection deed restriction will be included in the restrictive covenants; that street lights are proposed; that silt fencing will be installed along the forest boundary to prohibit disturbance; and submitted a copy of the State Route 54 sewer study, an e-mail from the Engineering Department and proposed Findings of Fact.

The Commission found that no parties appeared in support of this application.

Ellen Megee was present in opposition to this application and advised the Commission that there is no timeline frame for the availability of the sewer; that a sewer concept plan has not been done and that the site does not have a private sewer system; that the site has not been annexed into the sewer district; that the cemetery area needs to be cleaned up; that the forested area contains remnants of an old house; that the proposed plan will push central sewer onto others in the area; that planning and budgeting needs to be done; and that the application should be denied until sewer is available.

At the conclusion of the public hearings, the Commission discussed this application.

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

Subdivision #2007 – 43 – application of **COOL SPRING EQUITIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 45.05 acres into 67 lots, (Cluster Development), located east of Road 290, 520 feet south of Road 262.

Mr. Abbott advised the Commission that this application was filed December 18, 2007; that the Technical Advisory Committee review of February 28, 2008 is a part of the record and that the file contains comments from the PLUS meeting, and Exhibit Packet received July 13, 2009 contain the applicant's response to PLUS comments, proposed findings of fact and conditions of approval, comments addressing Sections 99-9C and 115-25, a revised preliminary plan, and letters in opposition from James Larsen, John Larsen and Ken Schiller and that these are all a part of the record.

Pret Dyer, a member of the applicant, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he would like to submit an Exhibit Booklet; that the Exhibit Booklet is the same as the previously submitted Exhibit Packet and apologized for not submitting the booklet earlier; that this application is for a 67 lot cluster subdivision on 45.05 acres; that the proposed density is 1.48 lots per acre; that the project is a low density development; that the site is located in a Development District based on the Comprehensive Land Use Plan; that according to the State's Strategies Map, the site is located in a Level 4; that the preliminary plan has been revised based on Technical Advisory Committee and PLUS comments; that based on these comments, lots have been taken out of the pond area and forested areas; that a wetlands delineation has been performed and submitted to the Corps of Engineers for

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approval; that open space has been increased; that 54% of the site is open space; that there will be no disturbance to the forested areas; that all lots abut open space and not one another; that the average lot size is 10,700 square feet; that an Environmental Assessment Phase 1 Study has been performed and that no endangered or threatened species was found; that no lots are located in the wetlands; that a 65-foot buffer from the wetlands is provided; that the developers will submit a Letter of Map Amendment to FEMA for the A Flood Zone; that there are no historical features on the site; that walking and jogging paths will be provided throughout the site; that sidewalks on one side of all streets are proposed; that the site is currently tilled farm land; that the required forested buffers will be provided; that a bus stop will be provided; that the agricultural use protection notice will be included in the restrictive covenants; that the project will be marketed to active adults and work-force housing; that a traffic impact study was not required; that there are other developments in the area such as Cool Springs Farm and Manor, Beaver Creek, Hunters Mill, and Carriage Greens; that Artesian will provide central water and sewer to the site; that a berm with landscaping will be provided; that the wetland areas will be monuments; that silt fencing will be installed along all buffer areas; that the homes will be in the \$225,000 to \$250,000 price range; that a nutrient loading and reduction plan will be required to be submitted to Sussex Conservation District; that DelDOT will require improvements at the entrance plan review; that walking paths will be provided behind each lot; that no other amenities are proposed; that homeowner association's do not want to maintain amenity areas; that the existing pond on the site will remain and be upgraded; that the existing pond will not be used for storm water management; that stick-built or modular homes are proposed; that double wide manufactured homes are not permitted; that recent market trends indicate that one-story ranchers with large garages are desired; summarized the items referencing Sections 99-9C and 115-25 of the Code; and submitted an aerial photograph of the area, proposed restrictive covenants, and a maintenance agreement with CPR Management.

The Commission found that no parties appeared in support of this application.

Jim McQue was present and advised the Commission that he is not necessarily opposed to the application but raised questions about the size of the berm; storm water management run-off concerns; and advised that the existing pond is approximately 6 to 8 feet deep.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further consideration and to allow Mr. Johnson time to review the record. Motion carried 4 – 0.

Subdivision #2007 – 44 – application of **SAMANDA PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 160.91 acres into 241 lots, (Cluster Development), located south of Road 64, 2,450 feet southeast of Road 455.

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This application was withdrawn on June 23, 2009.

Subdivision #2007 – 45 – application of **DEERFIELD MEADOWS, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 41.81 acres into 40 lots (Cluster Development), located south of Route 20, 1,850 feet east of Road 483.

Mr. Abbott advised the Commission that this application was filed on November 14, 2007; that the Technical Advisory Committee review of February 28, 2008 is a part of the record and that the file contains PLUS comments received April 8, 2008, PLUS' response to the applicants response to the PLU comments received June 3, 2008, an Exhibit Booklet and revised preliminary plan received June 19, 2009, and a letter from Mr. Robertson advising that the restrictive covenants format is acceptable received June 22, 2009 and that all are a part of the record.

Drew Ward and John Murray of Kercher Engineering, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is proposed as a low-density subdivision with restrictions for single-family, stick-built and modular homes; that the site is zoned AR-1 and GR and that there is a pending rezoning application for the GR to AR-1 portion of the site; that 40 lots are proposed on 40 acres; that over 30% of the site is open space; that the site is located on Concord Road; that the project is designed to provide housing for first time home buyers and the local work-force; that the items referenced in Section 99-9C are addressed in the Exhibit Booklet and summarized these items; that the ½ acre cluster option has been utilized in the design of this project; that there are 5.96 acres of forest lands, 1.85 acres of buffer and 4.8 acres of open space not including the forest and buffer areas; that street lights and a bus shelter are proposed; that the wetlands have been delineated and that there is a 100-foot buffer from the wetlands; that the forest lands will be put into a conservation easement; that there are approximately 7 other developments in the immediate area; that the site went through the PLUS process; that the site is in a Level 4 according to the State's Strategies Map for Spending; that according to the Comprehensive Land Use Plan, the site is in a developing area; that the proposed density is less than 1 lot per acre; that the area is a mixed residential area; that a standard AR-1 subdivision would yield 38 lots with little to no open space; that green technologies will be used in the design of the storm water management design; that 5-foot walking asphalt paths will be provided across each lot through an easement; that passive areas are located near lots 25 and 26; that recreational amenities will be left up to the homeowners' association due to maintenance costs; that all lots are a minimum of a ½ acre in size; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic; that there is 0.70-acres of wetlands on the site; that no lots are located in the wetlands; that the wetland area can be monumented; that a stub street has been provided for emergency vehicle turnarounds; that the request is for significantly fewer lots than the code allows; that the items in Section 99-9C have been favorably addressed; that a homeowners' association will be established for the maintenance of streets, storm water management areas, open space and buffer areas; that the project will

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have a positive effect on property values; and that the project meets all criteria of the subdivision code.

No parties appeared in support of or in opposition to this application.

Mr. Robertson reminded the Commission that the application couldn't be acted on since there is a pending rezoning application in the process.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action until the rezoning application is acted upon. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Mr. Wheatley advised the Commission that this is Mr. Gordy's last meeting and thanked him for 9 years of service as a Commissioner and Mr. Gordy received a round of applause and standing ovation.

Meeting adjourned at 7:50 p.m.