



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF AUGUST 18, 2010

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, August 18, 2010 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order to 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. I.G. Burton, III, Mr. Michael Johnson, Mr. Marty Ross, Mr. Rodney Smith, and Mr. Robert Wheatley along with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

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

Subdivision #2006 – 26 - - application of **GRAVEL HILL PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 204.47 acres into 276 lots (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Route 30, 200 feet north of Road 251.

This is the final record plan for a 265-lot cluster subdivision application. The Commission granted preliminary approval for 276 lots on August 23, 2007, a revised preliminary approval on November 14, 2007 and granted one-year time extensions on October 16, 2008 and September 17, 2009. The final record plan complies with the subdivision and zoning codes and the conditions of the preliminary approval. All agency approvals have been received.

Subdivision #2008 – 7 - - application of **BRUCE AND CARLA RICKARDS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 7.96 acres into 8 lots, located east of Road 465A, 463 feet south of Road 465.

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This is the final record plan for an 8-lot standard subdivision application. The Commission granted preliminary approval for 8 lots on October 8, 2009. The final record plan complies with the subdivision and zoning codes and the conditions of the preliminary approval. All agency approvals have been received.

Subdivision #2006 – 20 - - Stella J. Mitchell, Trustee
Grace Landing Subdivision – Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval, with conditions, on July 26, 2007 and granted one-year time extensions on August 20, 2008 and July 15, 2009. This is the third request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval shall be valid until July 26, 2011. If an extension is granted, it should be stipulated that this will be the last extension granted. The Commission was previously provided a copy of the written request.

Subdivision #2006 – 73 - - Anthony Sposato
Whispering Meadows Subdivision – Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval, with conditions, on August 20, 2008 and granted a one-year time extension on July 15, 2009. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until August 20, 2011. The Commission was previously provided a copy of the written request.

Subdivision #2007 – 8 - - Cornerstone Developers
Shepherd Walk Subdivision – Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval, with conditions, on December 17, 2008 and granted a one-year time extension on November 12, 2009. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until December 17, 2011. The Commission was previously provided a copy of the written 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.

OTHER BUSINESS

Baywood Garden Villas
Commercial and Multi-Family Preliminary Site Plan – Road 22

Mr. Abbott advised the Commission that this is a preliminary site plan for 354 multi-family dwelling units and a 52, 800 square foot shopping center; that the site is zoned C-1 and B-1 with a conditional use (CU #1797) for multi-family units in the B-1 district; that the B-1 site contains 19.794 acres; that 143 multi-family units are permitted and proposed

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in the B-1 area; that 10, 12-unit buildings and 1, 23-unit building are proposed for the B-1 site; that a swimming pool and clubhouse are also proposed for this area; that the 12-unit buildings appear to be approximately 65-feet by 120-feet; that the 23-unit building appears to be 100-feet by 165-feet; that 165 feet is the maximum building length permitted; that it appears that there is the minimum required 40-foot building separation between the buildings; that the building separations and dimensions need to be shown on the final site plan; that the C-1 site contains 5, 23-unit buildings, 2, 12-unit buildings and 4, 18-unit buildings over 4, 13,200 square foot commercial retail buildings; that the multi-family over retail buildings appears to be 80-feet by 165-feet; that the building dimensions and separation distances need to be shown on the final site plan; that the required parking and proposed parking for the multi-family units totals 602 spaces; that the required parking and proposed parking for the retail totals 264 spaces; that 866 spaces are required and provided; that the setbacks meet the requirements of the zoning code; that a landscaping plan has been provided; that Tidewater Utilities will provide central water and Inland Bays Preservation Company will be responsible for central sewer; that the final site plan needs to include a metes and bounds; that the 15 conditions of approval need to be referenced on the final site plan; that the site plan is suitable for preliminary approval; that final approval should be subject to the review and approval of the Commission upon receipt of all agency approvals and the required revisions; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned if separate actions need to be taken since the site plan is for an approved conditional use and B-1 and C-1 zoning districts.

Mr. Robertson advised the Commission that only one action is required since the project is being considered as one site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that the final site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals and that the final site plan shall include a metes and bounds and dimensions and setbacks for the multi-family dwelling structures. Motion carried 5 – 0.

Lewes Meineke Auto Care Center Revised Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised preliminary plan for a 6,240 square foot automotive repair facility and a 3,200 square foot storage building; that the previous plan approved by the Commission on April 14, 2010 was for a 4,600 square foot automotive repair facility and a 3,465 square foot storage building; that the revised plan requires 20 parking spaces and that 23 are proposed; that 1.5 spaces are located within the sixty-foot front yard setback and is subject to site plan review; that an easement has been provided for parking along the northern boundary of the site; that the adjoining parcel is also owned by the developer; that if a revised preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan and a letter from the

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engineer explaining the revisions and photographs of other commercial businesses in the immediate Route One area.

Mr. Robertson advised the Commission that a recorded easement for the parking location should be provided prior to final site plan approval being granted.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to approve the revised site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals and a copy of the recorded easement for the required parking spaces. Motion carried 5 – 0.

Five Points Square

Commercial Site Plan – Parcel D – Road 276

Mr. Abbott advised the Commission that this is a preliminary site plan for a 17-unit motor court/motel with a 440 square foot manager's office and a proposed 440 square foot retail area located on 0.8 acres; that the site is zoned C-1; that 13, 640 square foot units and 4, 320 square foot units are proposed; that most of the units have an 8-foot by 16-foot screened porch; that 31 parking spaces are required and proposed; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that access to the site is from an access easement off of Road 276; that the final site plan needs to include a note that there will be no cooking facilities within the units; that DelDOT has issued a Letter of No Objection; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned if the proposed use is a permitted use in the C-1 zoning district.

Motion by Mr. Johnson, seconded by Mr. Smith 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 and that the final site plan contain a note that no cooking facilities are permitted in the individual units. Motion carried 5 – 0.

Seaford Dairy Market

Commercial Site Plan – Road 535

Mr. Abbott advised the Commission that this is a request to convert an existing block one-story building into a pharmacy and ambulance service office; that the parcel is zoned C-1 and was formerly a convenience store; that the existing building is 40.6-feet by 84.7-feet; that the pharmacy will utilize 2,412 square feet and the ambulance service office will utilize 743 square feet; that 19 parking spaces are required and provided; that 5 spaces are within the front yard setback and are subject to site plan review; that a 12' drive through lane is proposed for the pharmacy; that existing septic and well will be utilized; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross 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.

The Johnson Associates, LLC
CU #1859 Site Plan – Road 38

Mr. Abbott advised the Commission that this is a site plan for business and professional offices, landscaping, retail and wholesale sales, indoor warehousing and storage, indoor vehicle, truck and equipment repair and indoor fabrication; that this conditional use was approved by the County Council on June 29, 2010 with 7 conditions; that the seven conditions are referenced on the final site plan; that final approval could be granted since all of the uses exist; and that the Commission was previously provided a copy of the site plan.

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

Roxana Volunteer Fire Company Substation #2
CU #873 Revised Site Plan – Route 54

Mr. Abbott advised the Commission that this is a revised site plan for a 1,100 square foot engine bay to an existing fire company substation; that the site is zoned AR-1; that this conditional use was approved on October 27, 1987; that the setbacks meet the requirements of the zoning code; that the staff is questioning if an amended conditional use application is required; that if a revised preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as a preliminary since the proposed use is a vital use and serves the public and with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Steve and Nancy Millman
3 Lots and 50' Easement – Route One

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot easement; that proposed parcel A will contain 32,709 square feet (0.7509 ac.), proposed parcel B will contain 39,260 square feet (0.9013 ac.) and proposed parcel C will contain 5.43 acres; that the owner is proposing to create the 50-foot easement over an existing gravel driveway to serve as access to the 3 lots; that the request may 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 will require

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an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept and with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

James Welu

3 Lots and 50' Easement – Road 226

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot easement; that proposed parcel A will contain 1.62 acres, proposed parcel B will contain 1.45 acres and proposed parcel C will contain 5.22 acres; that the owner proposes to create the 50-foot easement over an existing driveway to serve as access to the 3 lots; that DelDOT has issued a Letter of No Objection; that DNREC has granted septic approval for each lot; that the request may 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 sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept and with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

June T. and Mark Wolfe

3 Lots and 50' Easement – Route 30

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot easement; that proposed lot 1 will contain 36,325 square feet (0.834 acre) and there is an existing dwelling located on it, proposed lot 2 will contain 41,871 square feet (0.961 acre) and the remaining lands will contain 22.306 acres; that the owner proposes to create the 50-foot easement over an existing driveway; that the request may 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 sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept and with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Reginald and Judith Jackson

Lot on Existing 50' Easement – Road 311

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from an existing 50-foot recorded easement off of Road 311; that the remaining

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2.20 acres will be an extension to tax map 2-34-34-68; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a copy of survey for this request.

Mr. Lank advised the Commission that the easements were created approximately 40 plus years ago as a part of an estate.

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

James Welu

2 Lots and 50' Easement – Road 291

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot easement; that proposed lot 1 will contain 1.10 acres and proposed lot 2 will contain 1.00 acre; that the owner is proposing to extend an existing 50-foot easement to serve as access to the 2 lots; that DelDOT has issued a Letter of No Objection; that DNREC has granted septic approval for the 2 lots; that the request may 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 sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept and with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Randy E. and Laura L. Cox

2 Lots and 50' Easement – Road 494A

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot easement; that proposed lot A will contain 1.29 acres and proposed lot B will contain 3.54 acres; that the owner proposes to create the 50-foot easement over an existing driveway; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided 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. Motion carried 5 – 0.

Mark F. Gordy

Parcel and 50' Right of Way – Road 456

Mr. Abbott advised the Commission that this is a request to create a 23.46 acre parcel with access from a 50-foot easement; that the proposed parcel is a poultry farm; that the owner proposes to create the 50-foot right of way over an existing driveway; that the request may be approved as submitted, or an application for a major subdivision can be

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required; that if the request is approved as submitted, approval will be required from the Agricultural Lands Preservation Foundation since the site is located in an Agricultural Preservation District; and that the Commission was previously provided 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 prior to the subdivision being approved for recordation, the applicant shall provide verification that the Agricultural Lands Preservation Foundation has approved the subdivision. Motion carried 5 – 0.

Catherine V. Reynolds

2 Lots and 50' Right of Way – Road 561

Mr. Abbott advised the Commission that this is a request to create 2 parcels with access from a 50-foot right of way; that both parcels will be over 3 acres; that the owner proposes to extend an existing 50-foot right of way; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would make 3 lots having access from the right of way, and 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 sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the request as submitted as a concept and with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Subdivision #2008 – 16 – Alpaco V, LLC

Amended Condition of Preliminary Approval

Mr. Abbott advised the Commission that on June 17, 2010 the Commission granted preliminary approval, with conditions, for this subdivision; that condition of Approval A states "There shall be no more than 120 lots within the subdivision."; that the public hearing for this application was heard and presented on January 28, 2010; that the applicants presented a preliminary plan that was for 128 single family lots; that when the application was originally filed, 135 lots were proposed and 135 lots were advertised; that the engineer is requesting that the 120 lots be revised to 128 lots as presented; and that the Commission was previously provided a copy of the engineer's request.

Mr. Johnson advised the Commission that he reviewed the minutes of January 28, 2010 and the audio recording of the same meeting.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to amend the condition of approval to read "There shall be no more than 128 lots within the subdivision.". Motion carried 5 – 0.

Forest Landing MR/RPC

Amended Condition of Approval

Mr. Abbott advised the Commission that this is a request to modify condition of approval #1 for this MR/RPC that was approved on March 25, 2003; that the Commission was previously provided a copy of a letter for this request from the developer's engineer; that the total number of units will remain at 353; that the proposed revision is for 20 less townhouse condominiums, 12 more duplex condominiums and 8 more single family lots; and that the Commission has the authority to amend the condition of approval since it originated at the Commission level.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to amend the condition of approval to read "The maximum number of dwelling units shall not exceed 353. This shall be comprised of 100 townhouse condominiums, 196 duplex condominiums, and a combined total of 57 single family lots and single family detached condominiums. Each phase of development will include construction of each type of housing." Motion carried 5 – 0.

Mr. Robertson questioned if an amended ordinance is created when the Commission revises a condition of approval.

Mr. Lank advised the Commission that when conditions are amended, a letter is placed in the file.

Subdivision #2005 – 24 - - Cascade Properties, LLC
Captain's Way Subdivision – Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval, with conditions, on March 23, 2006 and granted on-year time extensions on June 20, 2007, April 16, 2008 and June 17, 2009; that when the last extension was granted, it was stipulated that that would be the last extension granted by the Commission; that this is the fourth request for an extension; that the engineering firm has provided documentation that they have been working with the required agencies; that should the Commission choose to grant another extension, it should be retroactive to the anniversary date of preliminary approval, and preliminary approval will be valid until March 23, 2011; and that the Commission was previously provided a copy of the request.

Mr. Burton questioned if there is any documentation that the applicant or engineer has been working with the required agencies for approval.

Mr. Abbott advised the Commission that the engineer has provided documentation that the plan has been submitted to all agencies for their approval.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant a one-year time extension, retroactive to the anniversary date of approval, since the engineer has demonstrated that they have been diligently working with the agencies for their approval. Motion carried 5 – 0.

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Subdivision #2005 – 91 - - Highland Development Corporation

Ferry Cove Subdivision – Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval, with conditions, on February 20, 2007 and granted one-year time extensions on November 14, 2007, October 16, 2008 and December 16, 2009; that this is the fourth request for an extension; that preliminary approval is currently valid until February 20, 2011; that if another extension is granted, preliminary approval would be valid until February 20, 2012; that DelDOT has sent a Letter of Objection against the request due to the site being close to the proposed Route 113 by-pass; and that the Commission was previously provided a copy of the request.

Richard Demmitt, developer, advised the Commission that he has provided a letter explaining what has been done to date; that one section of DelDOT has issued a Letter of No Objection and that another section tells him that the project won't be approved; that DelDOT has discussed purchasing the site; that he has spent a lot of money on engineering fees and various studies; that the County wanted to include the site in a sewer district; that the engineering department has held him up; and that he still intends to build the project.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to 1, with Mr. Smith opposed, to grant a one-year time extension since the unusual conditions have been beyond the applicant's control. Motion carried 4 – 1.

Subdivision #2005 – 61 - - Delmarva Woodlands Alliance 3, LLC

Deep Branch Crossing Subdivision – Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval, with conditions, on September 14, 2006 and granted one-year time extensions on September 17, 2007, November 12, 2008 and September 16, 2009; that this is the fourth request for an extension; that should the Commission choose to grant another extension, preliminary approval will be valid until September 14, 2011; and that the Commission was previously provided a copy of the request.

Mr. Johnson questioned if there is any documentation from agencies in the file; and stated that the engineer has advised that they have not done any work on the site due to the economy.

Mr. Abbott advised the Commission that the only correspondence in the file from any agency is the septic feasibility statement that was received in August 2006.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to deny the request due to a lack of evidence to seek agency approvals and that by the engineer's own admission, they have not sought any agency approvals and that the request does not meet the requirements of Section 99-33. Motion carried 5 – 0.

Meeting adjourned at 4:25 p.m.