



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF AUGUST 19, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, August 19, 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 of the Commission were present: Mr. I.G. Burton, III, Mr. Michael B. Johnson, Mr. Martin Ross, Mr. Rodney Smith and Mr. Robert C. Wheatley along with Mr. Richard Berl – Assistant County Attorney, Mr. Lawrence B. Lank – Director and Mr. C. 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 #2005 – 59 - - application of **LANDLOCK, LLC** to consider the Subdivision of land in a MR, Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 40.72 acres into 149 lots, (Environmentally Sensitive Developing District Overlay Zone), located southeast of Road 351, 1,800 feet northeast of Road 349.

This is the final record plan for a 139-lot Environmentally Sensitive Developing District Overlay Zone application. The Commission granted preliminary approval for 141 lots on August 16, 2006 and granted one-year time extensions on July 18, 2007 and 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.

Subdivision #2005 – 96 - - application of **ARION DEVELOPMENT** to consider the Subdivision of land in an AR-1, Agricultural Residential District and GR, General Residential District in Little Creek Hundred, Sussex County, by dividing 86.43 acres into 99 lots, located north of Road 462, 1,995 feet east of Road 461.

This is the final record plan for a 99-lot cluster subdivision. The Commission granted preliminary approval for 99 lots on April 19, 2007 and granted one-year time extensions

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on January 17, 2008 and March 18, 2009. 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 – 48 - - application of **DOUG COREY** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 26.85 acres into 25 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northwest corner of the intersection of Route 404 and Road 42.

This is the final record plan for 25-lot standard subdivision. The Commission granted preliminary approval for 25 lots on February 20, 2008 and granted a one-year time extension on June 17, 2009. 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.

Time Extensions

a. CU #1624 – Design Consultants Group, LLC

This is a request for a one-year time extension. This conditional use for 64 multi-family dwelling units was approved on November 11, 2005. The Commission granted preliminary site plan approval on November 30, 2005 and granted a one-year time extension on September 17, 2008. This is the second request for an extension and the last one that the Commission has the authority to grant. If an extension is granted, approval will be valid until November 11, 2010.

b. CU #1686 – Malone Enterprises, LLC

This is a request for a one-year time extension. This conditional use for 41 multi-family dwelling units was approved on July 24, 2007. The Commission granted a one-year time extension on April 16, 2008 and granted preliminary site plan approval on January 14, 2009. This is the second request for an extension and the last one that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until July 24, 2010.

c. CU #1715 – Good Earth Market, LLC

This is a request for a one-year time extension. This conditional use for an office, professional space, café restaurant and meeting space was approved on April 1, 2008. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until April 1, 2010.

d. CU #1725 – Harry Isaacs, Jr.

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This is a request for a one-year time extension. This conditional use for spray irrigation was approved on July 31, 2007. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until July 31, 2010. You may want to consider this as the last extension since it has been 2 years since the approval and the staff has no record of any request for a previous extension.

e. Subdivision #2004 – 55 – J. Michael Warring

This is a request for a one-year time extension. The Commission granted preliminary approval on October 18, 2006 and granted one-year time extensions on November 14, 2007 and August 20, 2008. This is the third request for an extension and you may want to consider it being the last one that will be granted. If an extension is granted, preliminary approval will be valid until October 18, 2010.

f. Subdivision #2005 – 30 – Salvatore Cangiano

This is a request for a one-year time extension. The Commission granted preliminary approval on July 6, 2006 and granted one-year time extensions on July 18, 2007 and June 18, 2008. This is the third request for an extension and you may want to consider it being the last one that will be granted. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until July 6, 2010.

g. Subdivision #2005 – 54 – Baywood, 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 October 17, 2007 and August 20, 2008. This is the third request for an extension and you may want to consider it being the last one that will be granted. If an extension is granted, it will be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until August 16, 2010.

h. Subdivision #2006 – 9 – RW Durham and Associates

This is a request for a one-year time extension. The Commission granted preliminary approval on June 20, 2007 and granted a one-year time extension on June 18, 2008. This is the second 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 June 20, 2010.

i. Subdivision #2006 – 17 – Sawmill Associates, Inc.

This is a request for a one-year time extension. The Commission granted preliminary approval on June 27, 2006 and granted one-year time extensions on July 18, 2007 and August 20, 2008. This application received an expedited review. This is the third request for an extension and you may want to consider it being the last one that will be granted. If

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an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until June 27, 2010.

j. Subdivision #2006 – 55 – Alvannah R. Davis

This is a request for a one-year time extension. The Commission granted preliminary approval on September 17, 2008. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until September 17, 2010.

k. Subdivision #2006 – 58 – Wright H. Parker

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. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until July 16, 2010.

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

OLD BUSINESS

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.

The Chairman referred back to this application, which was deferred on July 23, 2009 to allow Mr. Johnson time to review the record.

Mr. Johnson advised the Commission that he has had an opportunity to review the file and review the tape of the public hearing and is therefore prepared to vote but however as has been the customary practice of this Commission when a commissioner is not present at the public hearing, the Commission defers to another member to make an actual motion.

Mr. Smith advised the Commission that as a seated member at the public hearing, he would move that the Commission grant preliminary approval of Subdivision #2007 – 43 for Cool Spring Equities, LLC, based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.

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4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
5. Additionally, Mr. Smith is satisfied that this project is a superior design under the subdivision ordinance. It is a superior design because it preserves open space and the existing woodlands on the site. In addition, the Applicant has proposed extensive buffers from the non-tidal wetlands. These design elements are achieved while maintaining an overall density of 1.5 units per acres and that is lower than the maximum density that is allowed in the AR-1 zone.
6. The design favorably addresses the requirements of Section 99-9C of the Code.
7. The subdivision will be served by central water and sewer.
8. This preliminary approval is subject to the following:
 - A. There shall be no more than 67 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - 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. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lots.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located on one side of all streets in the subdivision.
 - L. As stated by the Applicant, there shall be a walking path throughout the subdivision along the rear of all of the lots.
 - M. The subdivision shall be served by an off-site central sewer and water system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
 - N. All silt fencing shall be located to the interior side of all buffer areas.
 - O. A location for a picnic area, tot lot and supporting benches shall be shown on the Final Site Plan.

- P. The berm/landscape feature shall be grassed at a minimum and any additional plantings at the applicant's choice shall be shown on the Final Site Plan.
- Q. 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.
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Burton and carried votes to none, with Mr. Ross not participating, to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

OTHER BUSINESS

Jim and Carla Clark
CU #1779 Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for a spa; that the conditional use was approved on June 2, 2009 with 7 conditions; that the site plan is similar to what was submitted for the hearing; that 4 parking spaces are in the front yard setback and 7 spaces are located in the rear yard; that ingress to the site is on the southern lot and egress is on the northern parcel also owned by the applicant; that the final site plan needs to show the location of any dumpsters and that a hand-drawn landscaping plan along with photographs have been submitted for the landscaping that has been done; and that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton 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 5 – 0.

Shaffer Warehouses
Preliminary Commercial Site Plan – Route 26

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for 2 warehouses; that the site is zoned C-1 and CR-1 and contains 1.945 acres; that Building 1 contains 9,000 square feet and building 2 contains 7,150 square feet; that the setbacks meet the requirements of the zoning code; that the building restriction line on the west side of the site needs to be revised to 20-feet on the final site plan; that 4,500 square feet is dedicated office space; that 23 parking spaces are required and 27 are provided; 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.

Motion by Mr. Ross, 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

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receiving all agency approvals and the side yard setback restriction line being revised.
Motion carried 5 – 0.

Royal Farms RF #141

CU #1773 – Site Plan – U.S. Route 113 and Route 16

Mr. Abbott advised the Commission that this is a preliminary and final site plan for a 5,786 square foot convenience store with 11 gas pumps and a 1,408 square foot car wash located on 4.05 acres; that the site is zoned AR-1 and the conditional use was approved on May 5, 2009 with 6 conditions; that the setbacks meet the requirements of the zoning code; that 56 parking spaces are proposed; that 22 spaces are within the front yard setback along Route 16 and are subject to site plan review; that the conditions of approval are listed on the site plan; that on-site water and central sewer are proposed; that there are no wetlands on the site; and that all agency approvals have been received.

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.

Richard Greer

Lot and 50' Right of Way – Road 319

Mr. Abbott advised the Commission that this is a request to create a minimum 0.75-acre lot with access from a 50-foot right of way; that the owner proposes to create the right of way over an existing driveway; that the proposed lot has an existing dwelling located on it and there is a manufactured home on the residual lands; and that the request can be approved as submitted, or an application for a major subdivision can be required.

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

Dawn Hudson

2 Lots and 50' Easement – Road 479

Mr. Abbott advised the Commission that this is a request to subdivide a 2.50-acre parcel into 2 lots and create a 50-foot easement to serve as access to the lots; that Lot 1 will contain 1.50-acres and Lot 2 will contain 1.00-acre; that the owner proposes to create the 50-foot easement over an existing driveway; and that the request can be approved as submitted, or an application for a major subdivision can be required.

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

David and Darlene Kefauver

Lot on 50' Right of Way – U.S. Route 13

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Mr. Abbott advised the Commission that this is a request to create a minimum 0.75-acre lot with access from an existing 50-foot right of way; that this would be the third lot having access from the 50-foot right of way; 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 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.

Coastal Towing, Inc.

CU #1097 – Expansion of Use – Road 283

Mr. Abbott advised the Commission that this is a request to expand an approved conditional use for automotive repair and towing service to permit vehicle sales; that the conditional use was approved on January 10, 1995; and that the Commission was provided a copy of a letter from the owner explaining the request.

David Hutt, Attorney, and Bob Boler were present on behalf of this request and advised the Commission that Mr. Moore sells vehicles that customers cannot pay for; that he is only permitted to sell five vehicles per year based on Division of Motor Vehicle regulations without a dealer's license; and that nothing would change on the site.

Mr. Berl advised the Commission that the request should be required to go back through an amended conditional use application since the requested use was not a part of the original request.

Mr. Johnson advised the Commission that he visited the site; and that if the use were approved, another towing company in the area would probably come back in requesting an amendment to their approved use; and that if the owner files another application, the application should not be expedited.

Mr. Hutt advised the Commission that Mr. Moore probably sells 8 to 10 vehicles per year.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to deny the request and require the applicant to file an amended conditional use application. Motion carried 5 – 0.

Pemberton Homeowners' Association

Appeal of Forested Buffer Waiver – Route 30

Mr. Abbott advised the Commission that on April 22, 2009 the Commission granted a waiver from the planting/landscaping requirements for the 30-foot forested buffer within the Pemberton subdivision; that the residents of this development are appealing the

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Commission's decision and are requesting reconsideration; and that the Commission was provide copies of letters and e-mails explaining this request.

Pret Dyer was present and advised the Commission that the berm was not included on the original plan; that the developers have agreed to install tree plantings in the buffer; that 4.75 trees per 100 linear feet will be provided; that trees will be planted along lots 11-21 and that 73 trees will be planted.

Jack Cooper and Beverly Cooper, residents of Pemberton Subdivision, advised the Commission that the berm is actually 2 to 3 feet in height and not 5 feet; that weeds are growing on top of the berm; that 23 residents in the development want trees planted; that Elizabethtown will probably never be built due to the economy; that there should be at least 15 trees planted every 100 linear feet based on the new ordinance; that the trees planted in the berm could blown over; that trees have been planted at the entrance; that trees have not been planted along Dakota Reach; and questioned when the buffer will be planted.

Mr. Dyer advised the Commission that he has had discussions with the Ad-Hoc group about reducing fees for maintenance; that the buffer areas are part of the common area and that the residents and developers are responsible for the maintenance at this time; that the project has not been turned over to the residents yet; that additional plantings have been provided; and that the buffer will be planted by October 31, 2009.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to permit the developer to plant 73 trees with a minimum height of 30 inches at planting with 4.75 trees per 100 linear feet and that the plantings be completed by October 31, 2009. Motion carried 5 – 0.

Horse Family, LLC and David G. Horse & Sons, Inc.
CU #1271 – Update – Route 9

Mr. Abbott advised the Commission that this conditional use for a borrow pit was approved on May 25, 1999; that one of the conditions of approval states that every 5 years, the P & Z Office shall inspect the site and request written comments from all appropriate State Agencies so that the Commission can review comments to verify compliance with all then-existing regulations; that the Commission was provided with a copy of a letter from the Water Supply Section of DNREC; and that there is no reclamation at this time since the pit is still being excavated in the limits of Phase 1.

There was a consensus of the Commission that no action is required.

Meeting adjourned at 4:20 p.m.