



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 20, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 20, 2012 in the County Council Chambers, County Administrative Office Building, in 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. Robert Wheatley, Mr. Michael Johnson, Mr. I.G. Burton, III, Mr. Martin Ross and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the Minutes of September 6, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the Minutes of September 13, 2012 as amended. Motion carried 5 – 0.

OLD BUSINESS

CZ #1719 – application of **CASTAWAYS BETHANY LLC** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to an AR-1 Agricultural Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.00 acres, more or less, on two (2) parcels, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) (part of Tax Map I.D. 1-34-9.00-21.00/24.00).

Mr. Abbott advised the Commission that the record for this application was left open for receipt of PLUS comments from the Office of State Planning Coordination and the applicant's response to the PLUS comments; that once the applicants respond to the PLUS comments, the Office of State Planning Coordination considers the file complete and does not issue a final letter; that this was confirmed with the Office of State Planning Coordination on September 14, 2012; that a DelDOT Letter of No Objection is not typically required until the site plan review and approval process; that each member has received a copy of the PLUS comments and the applicant's response; and that the 14 day period for written comments will close at the end of business on October 5, 2012.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action and to leave the record open for 14 days for written comments. Motion carried 5 – 0.

CZ #1720 – application of **CASTAWAYS BETHANY LLC** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.02 acres, more or less, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) (part of Tax Map I.D. 1-34-9.00-21.00).

Mr. Abbott advised the Commission that the record for this application was left open for receipt of PLUS comments from the Office of State Planning Coordination and the applicant's response to the PLUS comments; that once the applicants respond to the PLUS comments, the Office of State Planning Coordination considers the file complete and does not issue a final letter; that this was confirmed with the Office of State Planning Coordination on September 14, 2012; that a DelDOT Letter of No Objection is not typically required until the site plan review and approval process; that each member has received a copy of the PLUS comments and the applicant's response; and that the 14 day period for written comments will close at the end of business on October 5, 2012.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action and to leave the record open for 14 days for written comments. Motion carried 5 – 0.

CU #1944 – application of **CASTAWAYS BETHANY LLC** to consider the Conditional Use of land in an C-1 General Commercial District, CR-1 Commercial Residential District, a MR Medium Density Residential District and an AR-1 Agricultural Residential District for multi-family dwelling structures, a campground, and an outdoor amusement place, where permitted as conditional uses, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 38.53 acres, more or less, lying east of Cedar Neck Road (Road 357) and across from Sandy Cove Road (Road 358) (Tax Map I.D. 1-34-9.00-21.00 and 24.00).

Mr. Abbott advised the Commission that the record for this application was left open for receipt of PLUS comments from the Office of State Planning Coordination and the applicant's response to the PLUS comments; that once the applicants respond to the PLUS comments, the Office of State Planning Coordination considers the file complete and does not issue a final letter; that this was confirmed with the Office of State Planning Coordination on September 14, 2012; that a DelDOT Letter of No Objection is not typically required until the site plan review and approval process; that each member has received a copy of the PLUS comments and the applicant's response; and that the 14 day period for written comments will close at the end of business on October 5, 2012.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action and to leave the record open for 14 days for written comments. Motion carried 5 – 0.

PUBLIC HEARINGS

CU #1945 – application of **ALFONSO MATOS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a small storage facility, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 14,964 square feet, more or less, lying southwest of Route 20 (Concord Road) 392 feet southeast of Haven Drive, the entry into Broad Acres Subdivision, approximately 1.0 mile east of U.S. Route 13 (Tax Map I.D. 1-32-2.00-133.00).

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated May 7, 2012, referencing that a traffic impact study was not recommended, and that the current Level of Service “C” of Route 20 will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated September 17, 2012, referencing that the soils on site are mapped as Henlopen – Rosedale – Urban and Runclint loamy sand; that with respect to erosion and sedimentation control, the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that the soils are Prime and other Important Farmlands; that no storm flood hazard area or tax ditch is affected; and it is not likely that it will be necessary for any on-site or off-site drainage improvements.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided written comments dated September 11, 2012 advising that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the site is located in the Blades Project Planning Area #1; that it is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

Alfonso and Miguel Matos were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they agree with the intent of the application; that they are proposing a small storage facility for boxes of clothing that will be shipped to the Dominican Republic; that no new buildings are proposed; that there will not be any retail conducted at the site; that the clothing items will be delivered by truck; that the boxes are loaded then shipped from the site; that there will be an office for paper work and preparing items for customs; that there are two entrances to the site, one from Route 20 and one from Cassell Lane; that there is a church, convenience store and package store in close proximity to the site; that no one resides on the site; that there is a need for clothing in “3rd world countries”; that this use is prominent in New York City; that they have owned the property for 9 years; that the existing buildings will be remodeled and there will be an addition connecting the front and rear buildings; that the old cars and boats on the site will be removed; that they would like to have a sign on the property; that the hours of operation will be from 8:00 a.m. to 6:00 p.m. Monday through Friday; that there would be 3 employees at the site at this time; that there may be a need for more employees in the future; that there is a septic system on the site; and that the site was previously used as a grocery store and as a tire business.

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

Michael Cotton, Christy Mulford King and Ruth Mulford, area residents, were present in opposition to this application and advised the Commission that they applaud the applicant's intentions but this is not a suitable site due to the size of the parcel; that it appears that the garage has been used as a hobby garage; that if the use is approved, it will depreciate property values; that the tractor trailers will not be able to enter and exit the site due to the lot size; that there are more suitable sites in the area for this use; that the area is predominately residential; that the property should be cleaned up; that the site was an old fish market approximately 35 years ago; that the site is in disrepair; that the adjacent church is located on a large parcel; that other commercial uses in the area are approximately $\frac{3}{4}$ mile away; that they have safety concerns for children in the area; that Route 20 has a posted speed limit of 35 miles per hour; and that the proposed use will have negative impacts on the area.

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0. Mr. Burton was absent.

CZ #1721 – application of **CAPTAIN'S WAY DEVELOPMENT LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a GR/RPC General Residential District/Residential Planned Community to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 154.90 acres, more or less, lying north of Route 16, south of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road) (Tax Map I.D. 2-35-5.00-5.00 and 2-35-13.00-2.00).

The Commission found that on September 7, 2012, the applicants submitted an Exhibit Book that contains the following: a map of Area Mobile Homes, the recorded Final Subdivision Plan recorded in Plot Book 157 Page 15, Sussex County Planning and Zoning final record plan approval letter dated January 31, 2011, Department of Agriculture approval letter dated June 30, 2005, Office of the State Fire Marshal approval letter dated July 7, 2010, DelDOT No Objection to record letter dated September 22, 2010, DelDOT entrance plan approval letter dated September 22, 2010, Office of Drinking Water approval letter dated May 10, 2010, Sussex County Engineering Department super elevated road plan approval letter dated June 11, 2008, Sussex County Engineering Department approval letter dated December 14, 2010, Sussex Conservation District approval letter dated May 11, 2012, Qualifications of Pennoni Associates, Inc., Qualifications of Mark Davidson and Douglas Barry, Sussex County Planning and Zoning Rezoning Application, Rezoning Plans, DelDOT Support Facilities Report dated January 12, 2012, Sussex County Service Level Evaluation Request form, DelDOT Traffic Impact Study dated February 6, 2006, Final Traffic Impact Study, PLUS Application, PLUS Review February 22, 2012, PLUS Review Comments March 12, 2012, response to 99-9C. and response to 99-9C. updated.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided written comments dated September 11, 2012, advising that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the

site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the project proposes to develop using a central community wastewater system handled by Tidewater Environmental Services, Inc.; that they recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility; that in addition, they recommend they have a wastewater utility provider prior to approving the project; that the proposed project is located outside of the Environmentally Sensitive Developing Area or growth area where Sussex County expects to provide sewer service; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications; that review and approval of the treatment and disposal system by the Sussex County Engineering Department is also required and plan review fees may apply; that if Sussex County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owner's expense; that if Sussex County ever provides sewer service and the project does not have a CPCN, it is required that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owner's expense; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided written comments in the form of a memorandum referencing that the soils mapped on site are Fallsington sandy loam, Fort Mott loamy sand, Hurlock sandy loam, Longmarsh and Indiantown soils, Mullica mucky sandy loam, Rosedale loamy sand and Woodstown sandy loam; that with respect to erosion and sedimentation control, the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that the farmland ratings of the Soils are Prime and other Important Farmlands; that a storm flood hazard area could be affected depending on the construction limits and that low lying areas are subject to flooding; that a tax ditch is affected since there is a tax ditch that runs down the middle of the property, that there is the potential to have impacts on the tax ditch; that it is not likely that any off-site drainage improvements will be required; and that it would be necessary for on-site drainage improvements.

The Commission found that a letter in opposition was received from Kyle Smith and a letter was received from John Herbert along with 27 other signatures in opposition to this application and that the letters are a part of the record.

Pret Dyer and Scott Dailey of Captain's Way Development, LLC and Mark Davidson of Pennoni Associates Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed application is for a GR/RPC; that the site contains 154.9 acres; that the site is currently an approved recorded 301-lot cluster subdivision; that by rezoning the property, the applicants will have an opportunity to provide affordable housing for work force residents; that the aerial photograph in the Exhibit Booklet depicts manufactured housing located in the area; that the area is a mixture of single and double wide manufactured homes; that a rezoning to GR is appropriate due to the number of manufactured homes in the area; that the site is surrounded by manufactured housing; that Route 16 is a major east and west collector road; that Route 16 provides access to both Delaware Route One and U.S. Route 113; that the approved record plan has an area for a DART bus pick up; that

an residential planned community encourages a means for a superior living environment; that if requested and approved, residential planned communities are permitted 1 acre of commercial use for every 100 lots; that they are requesting a 3 acre area for commercial use; that the commercial area would be for a sales office for manufactured housing, a possible convenience store to serve the residents and services marketed to the community; that public transportation is available in the area; that the items referenced in Section 99-9C of the subdivision code have been addressed and are referenced in the Exhibit Booklet; that they currently have approval to construct a 301-lot cluster subdivision; that there are not any tax ditches on the site; that there is not any revisions to the proposed plan from the recorded plan except for the commercial area; that manufactured home parks generate less traffic than residential developments; that DelDOT did not require a traffic impact study for the rezoning; that the minimum lot size is 7,500 square feet; that the developers are requesting a 12-foot front yard setback, 10-foot side yard setback and a 5-foot rear yard setback for the single-wide homes and a 25-foot front yard setback, a 5-foot side yard setback and a 10-foot rear yard setback for the double wide homes; that this application was reviewed by PLUS and the applicant's response to the PLUS comments are noted in the Exhibit Booklet; that the Comprehensive Land Use Plan recognizes the cost of stick-built homes; that these homes grow in value; that there is a strong market for work force housing in the County; that manufactured homes are permitted on 0.75-acre lots in the County; that manufactured housing is a means of affordable housing; that these are quality homes that provide for low to moderate income families; that the Plan encourages affordable housing; that the homes must comply with federal law for building standards; that the project will provide open space; that potential owners would have the option of owning their home on rented land or they could lease the ground and the unit on the site; submitted a breakdown of stick-built homes compared to manufactured housing; submitted proposed findings of fact; that the project will not alter the character of the area; that there is a minimum 100-foot buffer from most of the adjoin properties; that there is a plan to convey a 26 acre tract to the Nature Conservancy or State; that the project will not have any negative impacts to adjoining properties; that there is a gas station in the area; that there will not be any disturbance to the wetlands; that there is a 60-foot buffer from the wetlands; that 2 bridge crossing are proposed; that density is not being increased; that the market will dictate the absorption rate of the project; that the design meets the objectives of the County's moderately priced housing program; that the DART bus stop is located on the west side of the entrance to the project; that the approved amenities package for the recorded plan will be the same for this project; that the proposed conservation easement is the buffer area around the perimeter of the project and contains approximately 26 acres; that sidewalks on one side of all streets will be provided; that a pump station is proposed near the clubhouse and sewage will be pumped to the Town of Milton; that Tidewater Environmental Services holds a CPCN for the area; that the agricultural use protection notice will be provided in the leases; that a majority of the lots abut open space; and that the homes will have to meet setback requirements to comply with the Office of the State Fire Marshal regulations.

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

John Herbert, a resident of Orchard Road, was present in opposition to this application and advised the Commission that there are too many unanswered questions; raised questions about what is permitted in the commercial area; that there are not that many manufactured homes in the

area; that the area is predominately agricultural and protected lands; that the project is out of character with the area; that New Market Village was created prior to zoning and that there are currently 39 vacant lots in that park; that lot rent keeps escalating; that there are no jobs in a 10 mile radius that the average salary is \$42,000; that a 26 acre buffer is not preservation of land; that the project will cause increases to traffic and crime; that fire and police protection is not adequate; that there are no manufacturers of manufactured homes in Delaware; that the project will not increase jobs; that the developers should sell the property to the State; and that he could be a negotiator between the applicant and the State.

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0. Mr. Burton was absent.

OTHER BUSINESS

Gloria Daniels
Lot on 50' Right of Way – Route 30

Mr. Abbott advised the Commission that this is a request to create a 2.0-acre lot with access from an existing 50-foot right of way; that if the request is approved, this would be the third parcel having access from the right of way; that the request may be approved as submitted, or an application for a major subdivision can be required; 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. Johnson, 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 4 – 0. Mr. Burton was absent.

Everett and Marlene Warfel
Lot on 65' Easement – Route 16

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from an existing 65-foot easement; that if the request is approved, this would be the second parcel having access from the easement; and that the request may be approved as submitted, or an application for a major subdivision can be required.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0. Mr. Burton was absent.

EXECUTIVE SESSION

Pending Litigation pursuant to 29 Del. C. § 10004 (b)

At 8:15 p.m., a Motion was made by Mr. Johnson, seconded by Mr. Smith, to recess the Regular Meeting and go into Executive Session (for the purpose of discussing pending litigation). Motion carried 4 – 0. Mr. Burton was absent.

At 8:17 p.m., an Executive Session of the Sussex County Planning and Zoning Commission was held in the Council Caucus Room for the purpose of discussing pending litigation. The Executive Session was recessed at approximately 8:26 p.m.

At 8:28 p.m., a Motion was made by Mr. Johnson, seconded by Mr. Smith and carried unanimously to come out of Executive Session and to reconvene the Regular Meeting. Motion carried 4 – 0. Mr. Burton was absent.

Meeting adjourned at 8:30 p.m.