



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF OCTOBER 14, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, October 14, 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 Johnson, Mr. Marty Ross, Mr. Rodney Smith and Mr. Robert Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott- Assistant Director.

Mr. Abbott advised the Commission that Item #4 under Other Business was removed from the Agenda on October 2, 2009 and that Item #9 under Other Business should be revised to 2 lots.

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

Mr. Smith advised the Commission that he would not be participating for the items on the Consent Agenda.

Mr. Johnson requested that Items #1 and #3 be removed from the Consent Agenda and discussed separately.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the Consent Agenda as amended. Motion carried 4 – 0.

The Consent Agenda included:

Subdivision #2004 – 39 - - application of **SENECA HARBOR JOINT VENTURE** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 234 acres into 400 lots (Cluster Development), located at the northeast corner of the intersection of Road 306 and Road 305.

This item was removed from the Consent Agenda.

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Subdivision #2005 – 11 - - application of **PNH HARMON, L.L.C.** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 125.91 acres into 178 lots (Cluster Development), located south of Road 297 (Mount Joy Road), 1,680 feet east of Road 305.

This is the final record plan for a 178-lot cluster subdivision. The Commission granted preliminary approval for 178 lots on February 9, 2006 and granted one-year time extensions on January 18, 2007, February 20, 2008 and April 22, 2009. The record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2005 – 73 - - application of **LANDLOCK, L.L.C.** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 132.96 acres into 213 lots (Cluster Development), located north of Route 9, 950 feet east of Route 30.

This item was removed from the Consent Agenda.

Time Extensions

a. C/U #1723 – John Willey, c/o Peninsula Oil

This is a request for a one-year time extension. This conditional use for a mini-storage facility was approved on March 11, 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 March 11, 2010.

b. C/U #1759 – Bridle Ridge Properties, LLC

This is a request for a one-year time extension. This conditional use for multi-family dwelling structures was approved on August 2, 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 August 5, 2010.

c. C/U #1781 – Rodney W. Smith

This is a request for a one-year time extension. This conditional use for multi-family dwelling structures was approved on October 28, 2008. This is the first request for an extension. If an extension is granted, approval will be valid until October 28, 2010.

d. Subdivision #2005 – 60 – Mandrin Homes

This is a request for a one-year time extension. The Commission granted preliminary approval on October 17, 2007 and granted a one-year time extension on September 17, 2008. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until October 17, 2010.

e. Subdivision #2006 – 63 – Deep Branch Road, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on May 14, 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 May 14, 2010.

f. Subdivision #2006 – 75 – Tull Group, LLC

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, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until September 17, 2010.

g. Subdivision #2007 – 5 – David Edwards

This is a request for a one-year time extension. The Commission granted preliminary approval on September 25, 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 September 25, 2010.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the items on the Consent Agenda as noted. Motion carried 4 – 0.

The Chairman referred back to the two applications that were removed from the Consent Agenda.

Subdivision #2004 – 39 - - application of **SENECA HARBOR JOINT VENTURE** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 234 acres into 400 lots (Cluster Development), located at the northeast corner of the intersection of Road 306 and Road 305.

This is the final record plan for Phase 1 of a 400-lot cluster subdivision. The Commission granted preliminary approval for 400 lots on September 8, 2005 and granted one-year time extensions on August 16, 2006, July 18, 2007 and September 17, 2008. Phase 1 contains 50 lots and the amenity area. The record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received except for Sussex County Engineering. The Engineering Department has written a letter advising that the plan is acceptable however final approval cannot be granted until the regional wastewater treatment disposal system is in place. Final record plan approval could be granted with the stipulation that a notice to proceed with the construction will not be issued for this project until the specified regional wastewater treatment facility is substantially under construction or another treatment and disposal facility has been approved by DNREC to service this project.

Mr. Johnson questioned when the five-year sun-setting period would begin because the treatment facility may not be built and when the record plan has to be recorded.

Mr. Robertson advised the Commission that the five-year sun-setting period would begin the day the final record plan is recorded and that the record plan has to be recorded within sixty days of the final approval.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve Phase 1 as a final with the stipulation that a notice to proceed with the construction will not be issued for this project until the specified regional wastewater facility is substantially under construction or another treatment and disposal facility has been approved by DNREC to service this project. Motion carried 4 – 0.

Subdivision #2005 – 73 - - application of **LANDLOCK, L.L.C.** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 132.96 acres into 213 lots (Cluster Development), located north of Route 9, 950 feet east of Route 30.

This is the final record plan for a 213-lot cluster subdivision. The Commission granted preliminary approval for 213 lots on November 20, 2006 and granted one-year time extensions on November 14, 2007 and October 16, 2008. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received except Sussex County Engineering. The Engineering Department has written a letter advising that the plan is acceptable, however final approval cannot be granted until the regional wastewater treatment disposal facility is in place. Final approval could be granted with the stipulation that a notice to proceed with construction will not be issued for this project until the specified regional wastewater facility is substantially under construction or another treatment and disposal facility has been approved by DNREC to service this project.

Mr. Johnson questioned when the five-year sun-setting period would begin because the treatment facility may not be built and when the record plan has to be recorded.

Mr. Robertson advised the Commission that the five-year sun-setting period would begin the day the final record plan is recorded and that the final record plan has to be recorded within sixty days of the final approval.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final with the stipulation that a notice to proceed with construction will not be issued for this project until the specified regional wastewater facility is substantially under construction or another treatment and disposal facility has been approved by DNREC to service this project. Motion carried 4 – 0.

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C/U #1785 - - application of **DAVID J. AND ERIN E. DEKOWSKY** to consider the Conditional Use of land in an AR-1, Agricultural Residential District for multi-family dwelling structures (12 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 15.16 acres, more or less, lying east of Mastif Way, a private road, 800 feet north of the intersection of Sound Church Road (Road 394A) and Sand Cove Road (Road 394).

The Chairman referred back to this application, which has been deferred since August 13, 2009.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1785 for David and Erin Dekowsky, based upon the record and for the following reasons:

1. The project is located within an Environmentally Sensitive Developing Area, a development district, as per the June 2008 Comprehensive Plan Update.
2. The project is in character with the surrounding area being bordered on 3 sides by land zoned MR/RPC.
3. The project is located with a Sussex County Sanitary Sewer District.
4. A traffic impact study was not required and the effect on area roadways will be minimal.
5. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The maximum number of townhouse units shall not exceed six (6).
 - B. The property and project will be served by public water from a licensed public utility company with public sewer service by Sussex County meeting all County Engineering Standards.
 - C. As stated by the applicants, approximately 85% of the natural wooded area on the property will be preserved.
 - D. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT standards and determinations.
 - E. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.
 - F. Storm water management, erosion and sedimentation control systems shall be constructed in accordance with State and County requirements using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - G. The Applicant shall form a condominium association to be responsible for the maintenance of streets, roadways, buffers, storm water management areas and community areas. The condominium documents shall note if the ornamental pond area is filled and the filling of the pond shall be disclosed to any buyers by deed restriction.
 - H. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

- I. One sign, lighted or not by the applicant's choice, shall serve the project. The sign is not to exceed 32 square feet per side.
- J. Prior to final site plan approval, the applicant shall inform the Office of Planning and Zoning and the Planning and Zoning Commission as to the status of the 85% natural wooded area to be preserved. This condition is for the purpose of an update to the stated objective of the applicant to place approximately 12 acres in deed restriction, a conservation easement or under the administration of the Sussex County Land Trust.
- K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals.

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

C/Z #1687 – application of **RICK BANNING** to amend the Comprehensive Zoning Map from an AR-1, Agricultural Residential District to a MR, Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Plantation Road (Road 275), 710 feet southeast of Shady Road (Road 276), to be located on 18.33 acres, more or less.

The Chairman referred back to this application, which has been deferred since August 27, 2009.

Mr. Johnson advised the Commission that the Commission has received the signed rental program agreement between the applicant and the County and that he would like more time to review the agreement.

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

C/U #1845 – application of **RICK BANNING** to consider the Conditional Use of land in a MR, Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.33 acres, more or less, lying northeast of Plantation Road (Road 275), 710 feet southeast of Shady Road (Road 276).

The Chairman referred back to this application, which has been deferred since August 27, 2009.

Mr. Johnson advised the Commission that the Commission has received the signed rental program agreement between the applicant and the County and that he would like more time to review the agreement.

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

C/Z #1690 – application of **L.T. ASSOCIATES, L.L.C.** 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 Lewes and Rehoboth Hundred, Sussex County, land lying at the southeast corner of Road 268 (Kings Highway) and Road 267 (Gills Neck Road), to be located on 45.77 acres, more or less. Chairman Wheatley expressed thanks to the Commission members for their work and consideration into this application.

Mr. Johnson stated that he would move that the Commission recommend a denial of C/Z #1690 for L.T. Associates, L.L.C., based upon the information contained in the record and for the following reasons:

1. Mr. Johnson does not believe that the Application is consistent with the character of the surrounding property. While there are some limited commercial zoning and uses in the area along King's Highway, they are very small in comparison to the size and scope of what has been proposed under the application, and most of the commercial uses in the area are either limited Conditional Uses, or small B-1 or small C-1 Zones.
2. There has been a lot of attention given to the Comprehensive Plan, and the applicant has argued that the Plan supports or promotes the change in zone to CR-1. But, the Plan states that the existing AR-1 Zoning is just as appropriate. A change in zone is not "by-right" and the Comprehensive Plan does not mandate a change to CR-1 for this property.
3. The purpose to the CR-1 district is to provide sufficient space in appropriate locations for a wide variety of Commercial and miscellaneous service activities generally serving a wide area and located along major thoroughfares where a general mixture of service activities now exist. This application is not consistent with the stated purpose of the CR-1 District, since:
 - a.) This location is not appropriate for a "wide variety" of commercial and miscellaneous service activities. Although the applicant has proposed a specific site plan with somewhat limited uses, if this application was approved, the developer could legally do any of the 20 or so permitted uses allowed in the District. Not all of those uses are compatible with this site and the neighboring and adjacent properties and uses, including the new High School and newly approved, but not yet built, residential projects.
 - b.) This location does not serve a wide area as referenced in the Purpose of the CR-1 District. It is not located on a roadway that serves a wide area, since King's Highway serves primarily the destinations of Lewes, the State Park and the ferry and does not serve traffic coming or going from a wide area of Sussex County.
 - c.) There is not currently a general mixture of service activities along Kings Highway or Gilles Neck Road, adjacent to this property.
4. While there are some regional or large scale shopping centers or Commercially-zoned properties in the Environmentally Sensitive Developing Area, most, if not

- all of these are either smaller than what has been proposed by the Applicant, pre-dated the establishment of the Environmentally Sensitive Developing Area overlay or are along more appropriate major thoroughfares where a true mix of service and commercial uses already exist and are more easily accessible. For the sake of comparison, the opposition presented data that Rehoboth Mall is only 250,000 square feet, Lighthouse Plaza is 210,000 square feet and Pelican Square is 140,000 square feet. At 320,000 square feet, this project would be even larger than those existing commercial projects, and they are in a much more appropriate location along Route One on property that was already zoned for commercial use.
5. The County's Comprehensive Plan promotes intergovernmental coordination with local municipalities and specifically references large development applications. On this application, The Lewes City Council and Board of Public Works both officially expressed strong concerns and objections to the project and requested that it be denied.
 6. Mr. Johnson is not satisfied that there is a need for rezoning the property to CR-1 or the square footage of commercial space that could possibly be constructed if the re-zoning occurred, particularly in this area.
 7. There has been strong public opposition to the project, focusing mainly on the additional traffic that would be generated by it and the cumulative impact of the existing projects along Gills Neck Road that have been approved or applied for but not yet completed. These concerns are legitimate and self evident given the existing traffic conditions along Kings Highway without this project. Another concern expressed by the public is the proximity of the proposed commercial center nearly across the street from the new Cape Henlopen High School. A new project of this size and scale is not well suited to such a location for safety reasons, and because it will not be compatible with the traffic generated by the high school and its athletic, educational and community activities and uses. For these reasons, the proposed project is not compatible with the existing roadways in the area and does not promote safe vehicular traffic on neighboring roads.
 8. The proposed project does not meet the purpose of the Zoning Ordinance, since it does not promote the orderly growth of the County. It would establish a large-scale regional, destination shopping center where no similar commercial uses of the same size and scale exist. 320,000 square feet of commercial space, with the necessary parking and other impervious areas, is not a logical transition from neighboring and adjacent uses, especially in this Environmentally Sensitive Area, which already has limitations on safe pedestrian and vehicular travel.

Motion by Mr. Johnson, seconded by Mr. Smith and carried 3 votes to 2 votes, to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated. Vote by Roll Call: Mr. Ross nay, Mr. Smith yea, Mr. Johnson yea, Mr. Burton yea and Mr. Wheatley nay. Motion carried 3 – 2.

C/U #1848 – application of **TODD BARIGLIO** to consider the Conditional Use of land in an AR-1, Agricultural Residential District for business and professional offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred,

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Sussex County, containing 4.711 acres, more or less, lying at the southwest corner of Cedar Grove Road (Road 283) and Plantation Road.

The Chairman referred back to this application, which has been deferred since September 24, 2009.

Mr. Johnson advised the Commission that he was not present during the public hearing; that he has reviewed the public hearing record and file; and that he will participate in this discussion but that he will not make a motion.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1848 for Todd Bariglio for business and professional offices based on the record and for the following reasons:

1. The site is within a development district according to the County Land Use Plan.
2. This application is limited to professional or business offices including doctor's offices. This location is appropriate for such use, given the close proximity to the Beebe Health Campus.
3. The project, as a conditional use with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
4. The use has a public or semi-public character and is desirable for the general convenience and welfare of the area and County.
5. The Applicant will build the project and obtain LEED certification for the buildings to be constructed on the site.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The offices shall be limited to business or professional offices. The offices may be used for professional services such as law offices, medical offices, accountant offices, engineering offices, and similar professions. The project shall not be occupied by General Contractors, Contractors, retail operations, or other uses inconsistent with the residential nature of the neighboring properties.
 - B. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
 - C. The project shall be served by central water and sewer.
 - D. The use shall comply with all DelDOT regulations and requirements.
 - E. The applicant shall provide for the perpetual maintenance, repair and replacement, if necessary, of interior drives, parking, buffers, storm water management facilities and other common areas.
 - F. Hours of operation shall be limited to 7:00 a.m. until 8:00 p.m. Monday through Friday and 8:00 a.m. until 5:00 p.m. on Saturdays.
 - G. One lighted sign, not to exceed 32 square feet per side shall be permitted.
 - H. The site plan shall be redesigned so that there is no parking within the front or side yard setbacks.

- I. The site plan shall provide a location for future vehicular and pedestrian interconnectivity to adjacent properties.
- J. The final site plan shall be subject to the approval of the Planning and Zoning Commission.

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

Subdivision #2007 – 39 - - application of **JESSE FREDERICK CONAWAY AND EVERETT T. CONAWAY** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 105.14 acres into 84 lots (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 78, 150 feet east of Road 490A.

The Chairman referred back to this application, which has been deferred since July 9, 2009.

Mr. Ross advised the Commission that he would not be participating in this discussion since he was not a member of the Commission when the application was heard.

Mr. Smith stated that he would move that the Commission deny preliminary approval for Subdivision #2007 – 39 for Jesse Frederick Conaway and Everett T. Conaway based on the record and for the following reasons:

1. This subdivision along with Subdivision #2007 – 40 has been designed as essentially one project, with amenities, storm water management, and streets serving both combined for a total of 124 lots.
2. Subdivision #2007 – 39 and #2007 – 40 are clearly integrated into one design, and it appears that the only reason they were separated was to avoid the DNREC “regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems” which requires a community central system if there are more than 100 lots. By separating this 124-lot subdivision into 2 separate projects, the applicant avoids having to use a community sewer system.
3. 124 new septic systems are not appropriate for this area of the County along the Nanticoke River and watershed. Such systems do not provide the same level of treatment for the wastewater disposal as a central or community wastewater system operated by a licensed wastewater operator.
4. These projects are under separate ownership. If either of these projects fails to receive Final Site Plan approval, or does not get constructed for some reason, the remaining project could not be built as planned. Subdivision #2007 – 39 by itself does not satisfy the requirements of Subdivision and Zoning Ordinances or protect the orderly growth of the County.
5. Subdivision #2007 – 39 does not satisfy many of the considerations set out in Section 99-9C of the Code. For example, this subdivision, by itself is not

- integrated into the existing landscape and terrain. There is also not an adequate provision for sewage disposal, since the entire development should be a community sewer under DNREC regulations. All of the proposed individual-lot septic systems will have a greater adverse effect on area waterways than a treated community system would. Also, the Subdivision by itself and with all of the septic systems is not compatible with other area land uses.
6. The Applicant's Engineer has stated that the storm water management system, including ponds, infiltration basins and street swales would be developed through this application and Subdivision #2007 – 40 as one project. The applicant has not shown that either subdivision, by itself, has provisions for adequate storm water management.
 7. This application was submitted as a cluster subdivision, which must provide for a total environment and design, which are superior to a standard subdivision. Mr. Smith is not satisfied that Subdivision #2007 – 39 represents a total environment and design that is superior to a standard subdivision. The avoidance of the DNREC community sewer system requirements by itself does not satisfy the superior design requirement. The applicant has also said that this project could have been developed as a standard subdivision with 120, ¾ acre lots, but DNREC would have required central sewer, which would have been superior to what was proposed. And, Mr. Smith cannot consider this to be a superior "total environment", when in reality this application does not represent the total project.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny this application for the reasons stated. Motion carried 4 – 0.

Subdivision #2007 – 40 application of **JESSE FREDERICK CONAWAY AND EVERETT T. CONAWAY** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 55.06 acres into 40 lots (Cluster Development), located south of Road 78, 150 feet east of Road 490A.

The Chairman referred back to this application, which has been deferred since July 9, 2009.

Mr. Ross advised the Commission that he would not be participating in this discussion since he was not a member of the Commission when the application was heard.

Mr. Smith stated that he would move that the Commission deny preliminary approval for Subdivision #2007 – 40 for Jesse Frederick Conaway and Everett T. Conaway based on the record and for the following reasons:

1. This subdivision along with Subdivision #2007 – 39 has been designed as essentially one project, with amenities, storm water management and streets serving both combined for a total of 124 lots.
2. Subdivision #2007 – 39 and #2007 – 40 are clearly one integrated design and it appears that the only reason they were separated was to avoid the DNREC

- “Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems” which requires a community central system if there are more than 100 lots. By separating this 124-lot subdivision into 2 separate projects, the applicant avoids having to use a community sewage system.
3. 124 new septic systems are not appropriate for this area of the County along the Nanticoke River and watershed. Such systems do not provide the same level of treatment for wastewater disposal as a central or community wastewater system operated by a licensed wastewater operator.
 4. These projects are under separate ownership. If either of these projects fails to receive Final Site Plan approval, or does not get constructed for some reason, the remaining project could not be built as planned. Subdivision #2007 – 40, by itself, does not satisfy the requirements of the Subdivision and Zoning Ordinances or protect the orderly growth of the County.
 5. Standing alone, Subdivision #2007 – 40 does not satisfy many of the considerations set out in Section 99-9C of the Code. For instance, this subdivision by itself is not integrated into the existing landscape and terrain. It would require grade changes for a storm water management plan based on both projects being built, which may not occur. There is not an adequate provision for sewage disposal, since the entire development should be a community sewer under DNREC regulations. All of the proposed individual-lot septic systems will have a greater adverse effect on area waterways than a treated community system would. Also, the subdivision by itself and with all of the septic systems is not compatible with other land uses.
 6. The Applicant’s Engineer has stated that the storm water management system, including ponds, infiltration basins and street swales would be developed as though this application and Subdivision #2007 – 39 are one project. The Applicant has not shown that either Subdivision, by itself, has provisions for adequate storm water management.
 7. There is no provision for access to the subdivision by itself. The only means of access is through Subdivision #2007 – 39, which may or may not be built. This also does not satisfy the requirement for the provision for safe vehicular and pedestrian movement within the site and to adjacent ways.
 8. This application was submitted as a cluster subdivision, which must provide for a total environment and design, which are superior to a standard subdivision. Mr. Smith is not satisfied that #2007 – 40 represents a total environment and design that is superior to a standard subdivision. The avoidance of the DNREC community sewer system requirements by itself does not satisfy the superior design requirement. The project also relies on roadways and amenities that are off-site. The applicant has also said that this project could have been developed as a standard subdivision with 120 ³/₄ acre lots, but DNREC would have required central sewer, which would have been superior to what was proposed. And, Mr. Smith cannot consider this to be a superior “total environment” when in reality this application itself does not represent the total project.

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Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny this application for the reasons stated. Motion carried 4 – 0.

Subdivision #2008 – 5 - - application of **MATTHEW BRITTINGHAM** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 55.20 acres into 110 lots (Environmentally Sensitive Development District Overlay Zone and Cluster Development), located west of Road 384, 1,650 feet north of Route 20.

The Chairman referred back to this application, which has been deferred since September 24, 2009.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2008 – 5 for Matthew Brittingham based upon the record made and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing District Overlay Zone and the AR-1 zone. The Applicant is seeking lots with a minimum area of 7,500 square feet.
2. A subdivision on the 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.
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 110 lots on 55.2 acres and 22.2 acres of open space is provided.
7. The subdivision will be served by central water and will be part of a Sussex County Sewer District.
8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 110 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. As proposed by the Applicant, sidewalks shall be located on both sides of all streets in the Subdivision.
- L. The location of mail stations shall be coordinated with the United States Postal Service if deemed necessary.
- M. The construction entrance shall be by the main entrance off of Road 384 and shall be away from neighboring properties and shall be noted on the Final Site Plan.
- N. The subdivision shall be served by a Sussex County Sewer District designed in accordance with Sussex County Engineering Department and DNREC specifications.
- O. The subdivision shall be served by central water provided by a licensed public utility company.
- P. The developer shall construct all of the recreational amenities prior to the issuance of the 50th residential building permit.
- 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. Johnson and carried unanimously to approve the application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

OTHER BUSINESS

1. BDP Investments, LLC

Preliminary Commercial Site Plan – Route 9 and Road 320

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 20,000 square foot commercial warehouse building located on 6.65-acres of commercial zoned land; that the total site contains 17.16 acres; that the setbacks meet the minimum requirements of the zoning code; that 80 parking spaces are proposed; that ingress/egress

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to the site is off of Road 320 (Steiner Road); that on-site septic and well are proposed; that the site is not located in a flood zone and the wetlands are not disturbed; 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.

Mike Kobin with George, Miles & Buhr, LLC and Walt Bryan were present and advised the Commission that they have met with both DelDOT and the Sussex Conservation District; that neither agency has any problems with the location of the storm water management facilities; and that the proposed storm water management ponds will be dry ponds for overflow.

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

2. Jerry L. and Jill C. Green

Preliminary Commercial Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a preliminary site plan for a 27,450 square foot contractor's warehouses located on 3.47 acres of commercial zoned land; that three buildings are proposed; that building A contains 9,750 square feet, building B contains 7,800 square feet and building C contains 9,900 square feet; that the square footage for buildings A needs to be revised on the final site plan to 9,750 square feet and not 7,750 square feet; that each building contains a 10-foot by 20-foot office; that a total of nine fit-ups are proposed; that the setbacks meet the minimum requirements of the zoning code; that on-site septic and well are proposed; that 29 parking spaces are required and 32 spaces are proposed; that the final site plan needs to include a landscaping plan for the 20-foot buffer along U.S. Route 113 and that the proposed sign needs to be reduced in size or a variance is required from the Board of Adjustment; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and a landscaping plan being submitted with the final site plan; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Ross, 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.

3. Judi Folmsbee

C/U #1765 Site Plan – Road 226

Mr. Abbott advised the Commission that this is a site plan for a 3-unit multi-family dwelling structure; that the Conditional Use was approved on June 9, 2009 with 5 conditions; that the improvements exist and meet the minimum setback requirements; that 7 parking spaces are provided. 3 of the conditions of approval are referenced on the site plan and the other two have been complied with (Site plan review and approval by

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the Commission and DNREC septic approval for the 3 units); that the site plan is suitable for final approval; 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 final. Motion carried 5 – 0.

4. Truitt Property

Landscape Plan – Route One

This item was removed from the Agenda on October 5, 2009.

5. Angola Beach

5 Lots and 50' Easement – Route 24

Mr. Abbott advised the Commission that this is a request to subdivide a 6.38-acre parcel into 5 lots with access from a 50-foot easement; that the entire site is zoned C-1; that Parcel A will contain 1.21-acres, Parcel B 1.22-acres, Parcel C 1.23-acres, Parcel D 1.23-acres and the residual lands 1.49-acres; that access to the proposed lots will be from a 50-foot cross access easement to located at the rear of the site; that this easement is located off of an approved 60-foot easement required by DelDOT; that DelDOT has issued a Letter of No Objection for the lots and access; that each of the parcels contains the minimum required 150 feet of road frontage; that this subdivision meets the minor subdivision requirement of 4 lots plus the residual land for an over the counter approval but since an easement is involved, the staff felt that the Commission should act on the request; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property would require an application for a major subdivision; and that the Commission was previously provided a copy of a sketch plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted with the stipulations that the final record plan shall include a note stating who will be responsible for the maintenance of the 50-foot easement and that any further subdivision of the property will require an application for a major subdivision.

Motion carried 5 – 0.

6. Delmar Feed Mills, Inc.

3 Lots and 50' Right of Way – Road 536

Mr. Abbott advised the Commission that this is a request to subdivide a parcel into 3 lots with access from a 50-foot right of way; that Lot 1 will contain 0.75-acres, Lot 2 0.77-acres and Lot 3 0.85-acres; that the owner proposes to create the right of way over an existing 50-foot entrance to the parcel; that the request can approve as submitted or an application for a major subdivision could be required; that the lots would be too small for any further subdivision; and that the Commission was previously provide with a sketch plan.

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Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted with the stipulation that the final record plan shall indicate who will be responsible for the maintenance of the right of way. Motion carried 5 – 0.

7. Irene Gray

2 Lots and 50' Easement – Road 432

Mr. Abbott advised the Commission that this is a request to subdivide a 7.82-acre parcel into 2 lots with access from a 50-foot easement; that one parcel will contain 3.82-acres and the other 4.0-acres; that the owner proposes to create the 50-foot easement over an existing driveway; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a copy of a sketch drawing.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to approve the request as submitted with the stipulation that the final record plan shall indicate who will be responsible for the maintenance of the easement. Motion carried 5 – 0.

8. Jay Yoder

Parcel and 50' Right of Way – Road 612

Mr. Abbott advised the Commission that this is a request to create a 50-foot right of way to serve as access to a parcel; that the owner is proposing to subdivide a 14.0-acre parcel into 3 lots with minimum road frontage of 150 feet; that the residual land would have access from the 50-foot right of way; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a copy of a sketch drawing.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the request as submitted with the stipulation that the final record plan shall indicate who will be responsible for the maintenance of the right of way. Motion carried 5 – 0.

9. Michael Izzo

2 Lots on 50' Easement – Route 17

Mr. Abbott advised the Commission that this is a request to subdivide a 3.32-acre parcel into 2 lots with access from an existing 50-foot easement; that one lot will contain 1.0-acre and the other 2.32-acre; that if approved, this would make 3 lots having access from the easement; that the request can 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 would require an application for a major subdivision; and that the Commission was previously provided with a copy of a sketch drawing.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted with the stipulations that any further subdivision of the property will

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require an application for a major subdivision and that the final record plan shall indicate who will be responsible for the maintenance of the easement. Motion carried 5 – 0.

10. Henry Seppi

Lot and 50' Right of Way – Road 431

Mr. Abbott advised the Commission that this is a request to create a 2.186-acre lot with access from a 50-foot right of way; that the owner proposes to create the 50-foot right of way over an existing gravel driveway; that there is an existing mobile home on the proposed lot, however the survey notes that the mobile home will be removed; that DelDOT has issued a Letter of No Objection; that the request can be approved as submitted or an application for a major subdivision can be required; that on April 22, 2009 the Commission denied a request for this site to create 3 lots and a 50-foot right of way; that at that time, the mobile home was to remain on the site; that the staff received a letter from Gene Bayard, Esquire, representing the Elliott's' with concerns about a fence that Mr. Seppi has erected; provided the Commission with photographs of the site and fence taken by a zoning inspector; and that the Commission was previously provided with a copy of a sketch drawing.

Mr. Seppi advised the Commission that he would like to sell the lot for income; that the Elliott's have no right to use the right of way; that they are using it illegally; that he has asked the Elliott's to not use the right of way; that the Elliott's have resided at their residence for 20 years or so; that the trailer has been removed from the proposed lot; and that the fence is located on his property.

Gene Bayard, Esquire, advised the Commission that this is a typical neighbor dispute; that the Elliott's have had access from the right of way since the early 1980's; that the Elliott's purchased the property from a family member; that the Elliott's maintained the road prior to Mr. Seppi purchasing his property; that they made improvements to the entrance; and that an as-built survey needs to be performed to determine the location of the fence.

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

Meeting adjourned at 4:35 p.m.