

MINUTES OF THE REGULAR MEETING OF JANUARY 23, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 23, 2014, 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. I.G. Burton, III, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, 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 Minutes of January 9, 2014 as circulated. Motion carried 5 - 0.

OLD BUSINESS

Subdivision #2013 – 5 Gulfstream Glen Cove, LLC

Application of **GULFSTREAM GLEN COVE, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 8.84 acres into 17 lots, (Environmentally Sensitive Developing District Overlay Zone) and a waiver from the forested buffer requirements, located 500 feet west of the intersection of Road 352 (Windmill Drive) and Road 353 (Burbage Road). Tax Map I.D. #1-34-12.00-374.01.

Mr. Abbott advised the Commission that this application was deferred on October 10, 2013 pending receipt of a revised preliminary plan with attention to the required 20-foot forested buffer and the tax ditch easement and comments from DNREC; that a revised plan has been submitted along with comments from the DNREC Division of Watershed Stewardship; that the Commission has received these items; that the record is to be left open for a 15 day period for written comments; that the record for written comments will close at the close of business on February 7, 2014; that this application is on the Agenda for announcement purposes only; and that no action is required by the Commission.

Conditional Use #1975 Ronald and Susan Berwick

Application of **RONALD AND SUSAN BERWICK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto repair and sales to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.06 acres, more or less, lying east of Road 225 (Marshall Street), 2,767 feet north of Road 207 (Johnson Road) and north of Jumping Jack Lane. Tax Map I.D. #3-30-15.00-20.01.

The Chairman referred back to this application, which was deferred at the January 9, 2014 meeting.

Mr. Burton stated that he would move that the Commission recommend approval of CU #1975 for Ronald and Susan Berwick for auto repair and sales based upon the record made at the public hearing and for the following reasons:

1. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The site has a history of automotive use. Mr. Berwick's father started an automotive repair business on this site in 1944. This type of use existed there until about 2 ½ years ago.
3. The use as an automotive repair facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
4. There are other business and commercial uses in the area, including an oil company, construction company, trucking and excavating company, a convenience store and another automotive repair facility.
5. No parties appeared in opposition to the application.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The hours of operation shall be from 8:00 a.m. to 6:00 p.m., Monday through Saturday.
 - B. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - C. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
 - D. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - E. All repairs shall be performed indoors. No automobile parts shall be stored outside.
 - F. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.
 - G. No more than 15 cars shall be displayed for sale on the site at any one time. No more than 5 additional vehicles may be parked outside the building in preparation for the sales lot.
 - H. All display areas, parking and storage areas shall be clearly depicted on the Final Site Plan.
 - I. No more than 5 vehicles waiting for service or parts may be parked outside.
 - J. The site shall be subject to all DelDOT entrance and roadway requirements.
 - K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

PUBLIC HEARING

Change of Zone #1741 Bay Forest Club, LLC

Application of **BAY FOREST CLUB, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR/RPC Medium Density Residential District/Residential Planned Community for a certain parcel of land lying and being

in Baltimore Hundred, Sussex County, containing 30.695 acres, more or less, land lying east of White's Neck Road (Road 347) ½ mile north of Old Mill Road (Road 349). Tax Map I. D. #1-34-8.00-17.00, 17.02 and 18.00.

The Commission found that the applicants submitted a copy of the legal descriptions for the three parcels, a copy of the site plan for the Jim's Hide – Away infill phase, a copy of the approved MR/RPC of Bay Forest Club, a list of all property owners within 200 feet of the subject site, a copy of a colored rendering of the Conceptual Site Plan infill area, a copy of an Environmental Assessment and Public Facility Evaluation Report, a copy of the PLUS comments and the applicant's response, and copies of wetland determinations, wetlands jurisdictional determinations, a letter regarding threatened and endangered species, a copy of a Nutrient Reduction Report, a copy of a Phase 1 Environmental Assessment Report, and a copy of the proposed master plan including the infill site.

The Commission found that on January 13, 2014 the applicants submitted an Executive Summary.

The Commission found that on October 4, 2013 DelDOT issued a Letter of No Objection for recordation for the project and that the approval is valid for a five-year period.

The Commission found that on January 9, 2014 the Sussex County Engineering Department Utility Planning Division provided comments referencing that the site is located in the Millville Expansion Area of a County operated and maintained sanitary sewer district; that wastewater capacity is available for the project; that Ordinance 38 is required; that there are no System Connection Charge credits for the project; that additional System Connection Charge credits will be required; that the current System Connection Charge Rate is \$6,304.00 per EDU; that the parcels will receive sewer service through an extension of existing sewers within the existing Bay Forest Club; that the developer will undertake construction necessary extensions at their costs; that conformity to the South Coastal Area Planning Study, 2005 Update or undertaking an amendment will be required; that the project is within the boundary of the Millville Expansion of the Bethany Beach Sanitary Sewer District and connection to the sewer system is mandatory; that the proposed project is in a recent expansion areas and sanitary sewer service is available to the parcels; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity for the project as proposed lots; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's requirements and procedures; that the Sussex County Engineer must approve the connection point; that a sewer concept plan has been submitted for review and must be approved prior to any sewer construction; and that a checklist for preparing sanitary sewer concept plans has been provided.

Jim Fuqua, Attorney, Tom Natelli, and Ken Usab, P.E. with Morris Ritchie Associates, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application to amend Change of Zone #1526, Bay Forest Club; that the Bay Forest Club development is an approved and under construction Medium Density Residential/Residential Planned Community; that this application is for an additional 30.695 acres to be included in the existing project; that the proposed plan is consistent with the

existing project; that this site is located east of White's Neck Road and north of Millville; that this site contains three parcels; that the majority of the site is the former Jim's Hide – Away campground, which contained 188 campsites and other buildings; that the proposed project is for 84 additional units; that the site is an in-fill site; that the existing residential planned community was approved in March of 2004 with 21 conditions; that the existing conditions will remain the same with the exception of the total number of units; that the existing project was approved for 808 units; that if this application is approved, the developers will submit a revised master plan with minor modifications to include this area; that over 50% of the existing project has been built; that the developers went through the Preliminary Land Use Services process and responded to the comments; that an Executive Summary was submitted into the record; that according to the State's Strategies Map, the site is located in a Level 3 Investment Area; that according to the Comprehensive Land Use Plan, the site is located in an Environmentally Sensitive Developing Area which is designated as a growth area; that central water will be provided by Tidewater Utilities and central sewer will be provided by Sussex County; that adequate sewer capacity is available according to the County Engineering Department; that a sewer concept plan has been approved by the Engineering Department; that the concept plan was approved for 120 units and that only 84 units are proposed; that DelDOT has issued a Letter of No Objection; that the developer has an agreement with DelDOT for off-site improvements; that the proposed utilities will be the same as the existing development; that the site is surrounded by an existing residential planned community; that Phase 1 is completed; that Phases 2 .1 and 2.2 are under construction; that if this site is approved, there will be interconnections to the existing residential planned community; that no homes are proposed off of the main boulevards into the site; that each phase contains a community center; that the project is designed to create communities within the overall residential planned community; that emergency access has been provided; that there are pedestrian connections throughout the project; that the project's design includes greenway areas; that the entrance to Jim's Hide – Away will be removed; that enhanced buffers are provided along White's Neck Road; that there will not be any negative impacts to the wetlands; that the existing campground is close to the wetlands; that there will be buffers from the wetlands; that all storm water management areas will comply with all State regulations; that Collins Creek will be preserved; that extensive landscaping will be provided; that each community will have a green area for greenhouses and herb gardens; that sidewalks will be provided; that the design creates a sense of privacy for the homeowners' that the developers intend on creating a nice community in which owners take pride in; that this expansion will be the same as the existing project; that if the application is approved, the developers are requesting that the existing conditions of approval be incorporated into this application with the exception of the total number of units permitted; that the project will be phased; that the project will not have a negative effect on traffic; that property values will not be negatively affected; that the project will help the county's tax base; that a 100-foot buffer from Collins Creek is proposed; that the buffers are a part of the open space and will be maintained by the homeowners' association; that multi-modal paths connect to other developments in the area; that the wetlands on the site will be marked; that the existing campground is in the process of being demolished; that the campground was not open in 2013; that the proposed project will have the same restrictions and covenants as the existing development; that the plans were submitted to the existing residents for their review; that the mailbox areas are centralized; that additional amenities are proposed; that there are separate pools for adults and children; that the findings of fact for the existing residential planned

community were referenced and a proposed amendment to condition of approval # 1 was submitted .

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

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

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

OTHER BUSINESS

Subdivision #2004 – 50 PGS Properties, LLC Longwood Lakes – Amended Condition

Mr. Abbott advised the Commission that this item was deferred at the December 19, 2013 meeting to allow Mr. Ross the opportunity to participate; that this is a request to delete the condition requiring sidewalks on one side of all streets within this subdivision; that this 72 lot subdivision received final approval on October 17, 2007; that the developers are requesting that this condition be removed since all of the lots exceed 0.50 acre in size; that there is an abundance of open space and that the project is located in a low density area; that walking paths are provided around both of the storm water management ponds; that the project is currently under construction and no lots have been conveyed or transferred; and that the Commission was previously provided a copy of the site plan and a letter from the applicant's engineer.

Mr. Ross advised the Commission that he reviewed the Minutes of the December 19, 2013 meeting and listened to the audio recording; that he has reviewed the DelDOT letter that was submitted by the applicant's engineer; that he listened to the audio recording of the public hearing of 2005; that the applicant proffered walking paths but did not mention sidewalks; that the subdivision plan conforms to all requirements of the Subdivision Code; and that sidewalks are not required by the Code.

Mr. Johnson advised the Commission that he has concerns for pedestrian safety and travel within large developments; that children walking to school bus shelters need safe areas to walk; that the walking trails are only proposed around the storm water management ponds and not throughout the subdivision; and that the request is based on cost.

Mr. Burton advised the Commission that he agrees with Mr. Ross' comments; and that the Commission needs to determine a number of lots that would require sidewalks.

Mr. Smith agreed with the others and advised the Commission that only walking paths were mentioned.

Mr. Wheatley advised the Commission that a determination needs to be made for developments requiring sidewalks, that the developers and engineers also need to know when and where sidewalks are required; and that an ordinance amendment may be necessary.

Mr. Robertson advised the Commission that the applicants proffer certain amenities; that since certain items are not required, when they are proffered they become conditions of approval since the Commission has the authority to impose conditions on subdivision applications; that amenities such as sidewalks were not first required by the Commission; that these types of conditions originated because developers were making promises during presentation hearings, but the Final Site Plans were not always showing what was said during the hearing; that to solve this, the Commission started including anything that was proffered as a condition of approval so that it could be tracked and would appear on the Final Site Plan; that this had a snowball effect, as in the case of sidewalks, applicants were proffering sidewalks which then appeared as conditions; that later applicants looked at prior approvals, saw the sidewalks and were including them in their presentations and proposed conditions.

Motion by Mr. Ross, seconded by Mr. Smith and carried 4 votes to 1, with Mr. Johnson opposed, to approve the request to delete the condition requiring sidewalks on one side of all streets. Motion carried 4 – 1.

Jestice Farms, LLC
Agricultural Preservation District – Route 24 and Road 463

Mr. Abbott advised the Commission that this is a proposed Agricultural Preservation District located north of Route 24 and east of Road 463 in Broad Creek Hundred; that the site contains 234.65 acres with 135 acres being crop land and 99 acres being forested land; that the purpose of this application is for a recommendation to the Agricultural Lands Preservation Foundation; and that the Commission was previously provided a copy of the application that was submitted by the Foundation.

Motion by Mr. Ross, seconded by Mr. Smith and carried 4 votes to none, with Mr. Wheatley not participating, to forward this application to the Agricultural Lands Preservation Foundation with the recommendation that it be approved. Motion carried 4 – 0. Mr. Wheatley did not participate.

Adam Doughty
Parcel – Snow Road – Kawan Acres

This is a request to create a 2.0 acre parcel with access off of Snow Road within the Kawan Acres Subdivision; that there was a similar request in 2005 that was required to go through the major subdivision process since it was an expansion to an existing major subdivision; that this request should be required to go through the same process; and that the Commission was previously provided a sketch drawing of this request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to deny the request as submitted and to require the applicant to follow the major subdivision process if they so choose to do so. Motion carried 5 – 0.

Meeting adjourned at 7:35 p.m.