

MINUTES OF THE REGULAR MEETING OF MARCH 13, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 13, 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. Rodney Smith, Mr. I.G. Burton III, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence 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 amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of February 27, 2014 as circulated. Motion carried 5 – 0.

OLD BUSINESS

Conditional Use #1979 – Thomas and Judy Munce

Application of **THOMAS AND JUDY MUNCE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail package store and tavern to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.033 acres, more or less, lying east of U.S. Route 113 and 2,800 feet north of Route 16 (Tax Map I.D. 2-30-26.00-35.01).

The Commission discussed this application which has been deferred since February 27, 2014.

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #1979 for Thomas and Judy Munce for a conditional use of land for a retail package store and tavern based upon the record made during the public hearing and for the following reasons:

1. This site has historically been used as a tavern and package store. Such a use has been located at this site on U.S. Route 113 for many years, well before zoning was put into place.
2. The use was a legal non-conforming use (in other words, grandfathered), but lost its status due to delays in reopening the business. Since it was closed for more than 2 years, the legal non-conforming status expired.
3. The Applicants intend to use the premises in its current condition, with existing signage. They have stated that they have no plans to expand the building or the use at this time.
4. The use, which has been in existence for a very long time prior to the 2 year interruption, will not have any adverse impact on traffic, the neighborhood or neighboring property values.
5. No parties appeared in opposition to the Application.
6. This recommendation is subject to the following conditions:
 - A. The use as a tavern shall occur between the hours of noon and 1:00 a.m.
 - B. The hours of operation for the package store shall be between noon and 1:00a.m.

- C. There shall be no restaurant or cooking facilities on the premises.
- D. The use shall comply with all Sussex County parking requirements.
- E. The existing signage shall be permitted.
- F. Security lighting shall be provided. It shall be downward screened to provide safety but shall not shine on neighboring properties or roadways.
- G. The structure shall exist in its current configuration. Any expansion shall require additional site plan approvals by the Sussex County Planning and Zoning Commission.
- H. Any dumpsters on the site shall be screened from view of neighboring properties and roadways.
- I. 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.

Change of Zone #1740 – Zhenguo Zhang

Application of **ZHENGUO ZHANG** to amend Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.3522 acres, more or less, land lying southwest of Route One (Coastal highway) 1,000 feet northwest of Road 258 (Hudson Road) (Tax Map I.D. 2-35-16.00-64.00).

The Commission discussed this application which has been deferred since February 27, 2014.

Mr. Burton stated that he would move that the Commission recommend denial of Change in Zone #1740 for Zhenguo Zhang for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

1. Although this site is located along State Route One, it is in an area that has not developed with other commercially or business zoned properties. As a result, the re-zoning to CR-1 would create a stand-alone 2.35 acre parcel that is not compatible with the adjacent or surrounding properties.
2. The recent applications for properties in this general area have sought Conditional Use or B-1 approvals, not re-zonings to CR-1. This property should be treated in a similar way.
3. The Applicant presented this re-zoning request for a specific use that does not appear to require CR-1 Zoning. Instead, it could be operated under a Conditional Use approval or possible B-1 Zoning.
4. The property is not located in a developing area according to the Sussex County Comprehensive Plan.
5. It is my recommendation that if the Applicant chooses to pursue a Conditional Use that the Application Fees for doing so should be waived by the County.

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 denied for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Conditional Use #1980 – Eastern Shore Auto Exchange

Application of **EASTERN SHORE AUTO EXCHANGE** to consider the Conditional Use of land in a B-1 Neighborhood Business District for a used car sales facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 14,295 square feet, more or less, land lying southwest of Route 5 (Harbeson Road) 0.5 mile south of Road 292A (Rust Road) (Tax Map I.D. 2-34-4.00-11.00).

The Commission found that the Applicant submitted a survey/site plan with his application.

The Commission found that DelDOT has issued a letter of “No Contention” of the use of existing entrances with conditions.

The Commission found that the County Engineering Department Utility Planning Division provided a memorandum on March 10, 2014 referencing that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conforming to the North Coastal Planning Area will be required; that the proposed project is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that this site is located in a Low Density Area according to the Sussex County Comprehensive Plan Update.

The Commission found that Wendy Wall was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that they have applied for an automotive sales lot; that there will not be any auto repairs performed on the site; that they will be detailing some vehicles on the site; that the metal building will be used for storage of vehicles for sale; that they will not be offering more than 10 vehicles for sale at any one time; that business hours are proposed to be from 10:00 a.m. to 6:00 or 7:00 p.m. with weekend hours by appointment only; that signage will be limited to placement on the building; that a detail shop exists to the south and that there are several businesses in the Harbeson intersection area to the north; that the building was previously used as a package store; and that security lighting already exists on the site.

The Commission found that Christian Thompson was present, not in opposition, with some concerns about expansion of lighting; that the existing lighting is not an issue; that she would prefer that there not be any night-time activities; and that she has no objection if the vehicles displayed do not exceed 10 vehicles.

The Commission found that there were no other parties present in support of or in opposition to this application.

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

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

Conditional Use #1981 – Robert & Julie Norwood

Application of **ROBERT & JULIE NORWOOD** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office for cleaning service business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,205 square feet, more or less, land lying at the northeast corner of Route 24 and Retz Lane (a private street) 280 feet southwest of Road 284 (Mulberry Knoll Road) (Tax Map I.D. 3-34-12.00- 25.00 & 26.00).

The Commission found that the Applicant submitted a survey/site plan and photographs of the site and other business uses in the area, including but not limited to Delaware Eye Institute, Apple Electric, Family Dollar, Maplewood Dental, Ryan Homes office, Beebe Medical Center, LogoMotive, Sussex Tree, Windswept Stables, Next Stop : College; Bella Mead Farm, Lamps and Shades, Copp's Seafood, Top of the Line Janitorial, and Beacon Middle School.

The Commission found that DelDOT had reviewed an application for this site as a rezoning to CR-1 and determined that a Traffic Impact Study was not recommended and that the current Level of Service “E” of Route 24 at this location would not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided a memorandum on March 10, 2014 referencing that the site is located in the Goslee Creek Planning Area; that the proposed office will use an existing on-site septic system; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conforming to the North Coastal Planning Area Study will be required; that when the County provides sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

The Commission found that a copy of the public notice was returned with a note from Pastor Maxine McWhorter Ungerbuehler, a resident on Retz Lane, advising that they are the Applicants neighbors and that they have no objection.

The Commission found that Robert Norwood was present and stated in his presentation and in response to questions raised by the Commission that he thanks the Commission for allowing him to be considered as a Conditional Use; that he wants to operate an office for his window cleaning business and to park his three (3) company trucks on the site; that he plans on converting the garage into an office; that the existing dwelling is in need of a lot of repairs and improvements and may become a rental; that there will not be any mechanical work on vehicles on site; that there were be a standard household trash receptacle for business trash; that he would like to erect a lighted sign; that the one security pole light on the premises is sufficient since it is located between the garage and the dwelling; that normal business hours are from 8:00 a.m. to 7:00 p.m.; that there is no work performed on site, except some office work; that he currently has three (3) employees, but the number of employees increases to eight (8) during the summer season; that

access to the site will be from Retz Lane, with no direct access to Route 24; that his employees will be parking and meeting on the site to go to job sites; and that he plans on creating a stone parking area with parking bumpers to mark the parking spaces.

The Commission found that there were no parties present in support of or in opposition to this application.

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

Change of Zone #1745 – Capital Development Partners, LLC

Application of **CAPITAL DEVELOPMENT PARTNERS, LLC** to amend Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.912 acres, more or less, land lying south of Route 16 and 300 feet east of U.S. Route 113 (Tax Map I.D. 2-30-26.00-102.00 (part of)).

The Commission found that the Applicants provided an Exhibit Booklet on March 4, 2014 and that the Booklet contains a Presentation Outline; Concept Plans: boundary survey, conceptual site plan, and building elevations; references to Land Utilization/Zoning: map of existing businesses, Zoning Map, Future Land Use Map, and State Spending Strategies Map; references to Environmental Issues: a current aerial location map, a 1992 aerial map, and a Sourcewater Protection Areas map; and references to Traffic: a DelDOT Support Facilities Report.

The Commission found that on January 6, 2014 DelDOT provided comments in the form of a letter and Support Facilities Report referencing that they recommend that this application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that that site is located in the Ellendale Sanitary Sewer District; that wastewater capacity is available for up to 4.0 Equivalent Dwelling Units (EDU) per acre; that downstream upgrades, at the developers expense, could be required for a project that exceeds 4.0 EDU per acre; that the current System Connection Charge Rate is \$7,992.00 per EDU; that the parcel is served with an 8-inch lateral on the parcels frontage along Route 16 (Beach Highway); that the lateral is located near the parcels northeast corner; that conformity to the Ellendale Wastewater Planning Study of June 2007 will be required; and additional information is required before a capacity determination and EDU Assessment can be made; and that a concept plan is required.

The Commission found that Zac Crouch, Professional Engineer from Davis, Bowen & Friedel, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a Dollar General store is proposed to be built on this site; that they will be complying with all DelDOT requirements; that several commercial and business uses and zonings exist in close proximity to this site; that they will be submitting site plans in the near future if the rezoning is approved; that Dollar General has built several stores in

the County recently; that the site is almost adjacent to the intersection of U.S. Route 113 and Route 16; that the site is located in an Investment Level 2 according to the State Spending Strategies; that the site is located in an excellent recharge area; that the parcel will be subdivided from a larger 10 acre parcel; that they have not received any comments from the Town of Ellendale; and that Jeffrey Reed, an adjoining property owner, has provided a letter in support of this rezoning.

Mr. Crouch submitted a copy of Mr. Reed's letter for the record.

The Commission found that there were no parties present in support of or in opposition to this application.

Mr. Burton stated that he would move that the Commission recommend approval of Change of Zone No. 1745 for Capital Development Partners, LLC for a change of zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) The site is in a Developing Area according to the Sussex County Comprehensive Plan. It is very near the Town of Ellendale.
- 2) The site, essentially at the intersection of U.S. Route 113 and Route 16, is appropriate for CR-1 zoning.
- 3) There are many other commercial zonings and uses in the vicinity. The rezoning will be consistent with this area.
- 4) The rezoning will not adversely affect neighboring properties or area roadways.
- 5) No parties appeared in opposition to this application.

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

OTHER BUSINESS

The Arbors of Cottage Dale CU #1845 Site Plan – Road 275 (Plantation Road)

Mr. Abbott advised the Commission that this is the preliminary site plan for 168 apartment units located on 18.33 acres; that the site is zoned MR, Medium Density Residential and the conditional use was approved on February 23, 2010 with 18 conditions of approval; that the conditions of approval are noted on the site plan; that the applicants are requesting that condition #8 that states "The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along both sides of all streets." be revised to state "Interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along both sides of the entrance road. Sidewalks shall be installed along one side of all interior parking areas." that five buildings with thirty units each and one building with eighteen units are proposed; that the setbacks meet the minimum requirements of the zoning code; that there is a 40-foot separation between buildings; that the site plan indicates that the site is zoned MR and AR-1; that the correct zoning is MR and the

final site plan needs to be corrected; that four, six car garage buildings and two, eight car garage buildings are also proposed; that the amenities include a pool house, pool area, equipment shed, and tot lots; that 286 parking spaces are required and 295 spaces are proposed; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the site is not located in a flood zone; that the final site plan needs to contain the required wetlands statement; that the final site plan needs to include a landscape plan and an architectural rendition; that the site plan is suitable for preliminary approval only; that final approval should be subject to the review and approval of the Commission; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson discussed the request to amend the sidewalk condition and stated that he would like the sidewalks adjacent to the proposed buildings; Mr. Ross recalled that the amenity area was to be relocated to a more central area or that traffic calming devices were to be installed along the interior driveways; and Mr. Smith stated that condition of approval #15 addresses the traffic calming devices.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary and to amend condition of approval #8 with the stipulation that the sidewalks shall be located adjacent to the buildings and that traffic calming devices be shown on the final site plan which is subject to the Commission's review and approval. Motion carried 5 – 0.

**Peninsula Lakes MR/RPC
Revised Master Plan – Road 299 (Bay Farm Road)**

Mr. Abbott advised the Commission that this is a revised master plan for a 660 unit residential planned community; that 588 single-family lots, 72 multi-family units and 15,000 square feet of commercial space are proposed; that the revisions for this plan include: 1) an additional entrance onto Bay Farm Road across from Pot Nets Lakeside is proposed, this affects the areas near lots 88 through 94 and is subject to DelDOT's approval, 2) Legion Road has been abandoned at DelDOT and removed as a through road, the northern portion has been replaced by a private road, 3) Condition of approval #3 states "Residential building permits shall not exceed 100 per year." the developers are requesting that this be revised to 150 units per year, and 4) The developers are requesting that the front yard setback be reduced to 15 feet, since the project is a residential planned community, the Commission may modify the setback requirements; that this is for an amended master plan only and that each phase of the project will be subject to site plan review and approval by the Commission; and that the Commission was previously provided a copy of the site plan.

Mr. Abbott advised the Commission that the staff has been provided with a document indicating that a portion of Legion Road has been abandoned/vacated at DelDOT and that the abandonment/vacation document was approved on March 14, 2006 and recorded in Deed Book 3648 Page 188.

The Commission discussed concerns about vehicles having to go out onto Route 24 and whether the proposed private street will be gated or permit through traffic.

Frank Kea of Solutions, IPEM advised the Commission that there are no intentions to have a gated community; that the proposed loop street is a 60-foot right of way and the paving will be wider than the previous Legion Road pavement; that traffic can continue through the development; that 15 foot front yard setbacks will allow for deeper rear yards; that the proposed sidewalks are not against the back of the right of way; and that there will be adequate room for vehicle parking.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the revised master plan as submitted. Motion carried 5 – 0.

**Stonewater Creek Phase 5.3
Revised Preliminary – Route 5**

Mr. Abbott advised the Commission that this is a revised subdivision plan for Phase 5.3 of the Stonewater Creek subdivision; that 68 lots are approved and recorded for this section; that the revision is for the deletion of 2 cul-de-sac streets and the reconfiguration of the lots; 68 single-family lots are still proposed; that all agency approvals have been received; and that the Commission was previously provided a copy of the proposed plan and a smaller section of the recorded plan for comparison.

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

**Subdivision #2007 – 7 – Tuong T. Quan
Kew Garden – Amended Condition**

Mr. Abbott advised the Commission that this is a request to delete the condition “As stated by the applicant, pathways shall be located across the front of the lots in an easement form”; that this 18 lot standard subdivision application (0.75 acre) received final approval on May 19, 2010; and that the Commission was previously provided a copy of a letter from the developers detailing the reasons for this request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to delete the condition of approval as requested. Motion carried 5 – 0.

**Terrance Seidel
2 Lots and 50' Easement – Road 364 (Camp Barnes Road)**

Mr. Abbott advised the Commission that this is a request to subdivide a 2.22 acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that 1 lot will contain 0.92 acre and the other 1.30 acres; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a copy of the proposed subdivision.

Mr. Abbott advised the Commission that the staff received an email from DelDOT indicating that they are about to issue a Letter of No Objection and that they are not opposed to this request proceeding.

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

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that the County Council, Planning and Zoning Commission and the Board of Adjustment will conduct a Workshop at 1:30 p.m. on April 1, 2014 at the West Annex Building.

Meeting adjourned at 7:30 p.m.