

MINUTES OF THE REGULAR MEETING OF MAY 12, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 12, 2016 in the County Council Chambers, Sussex County Administrative Office Building, 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, Mr. Marty Ross, and Mr. Douglas Hudson, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Planning and Zoning Manager, Mr. Daniel Brandewie – Planner, and Mrs. Jennifer Norwood – Recording Secretary.

Ms. Cornwell stated that there are two changes in the Agenda and announced that CZ 1800 Sussex Real Estate Partners, LLC under Old Business and Windmill Woods under Other Business should be removed from the agenda.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Revised Agenda. Motion carried 4 – 0.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Minutes of April 28, 2016 as amended. Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #2047 Delmarva Petroleum Service

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for equipment storage and repair for a contracting business located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 4.972 acres, more or less. The property is located northeast of Clendaniel Pond Rd. (Rd. 38) approximately 700 ft. north of Fleatown Rd. (Rd. 224). (911 Address: 9483 Clendaniel Pond Rd., Lincoln). Tax Map I.D. 230-13.00-148.00

Ms. Cornwell advised the Commission that staff is in receipt of the Service Level Evaluation from DelDOT and a TIS was not required; that the Department of Engineering Utility Planning Division submitted comments; the staff analysis is submitted into the record; and the applicant submitted an exhibit book.

The Commission found that Dennis Schrader, Esquire, was present on behalf of the Applicant, with Curtis Walls, the property and business owner; that an exhibit book has been provided to the Commission for review; that the 4.972 acre parcel is zoned AR-1 (Agricultural Residential District); that the business is already in operation on the property; that when the Applicant purchased the property the previous owner operated a business; that the property is located in a low density Level 4 area; that no new streets will be created; that there are no wetlands or tax ditches on the property; that his son lives in the existing dwelling on the property; that no business is conducted from the dwelling; that the existing block building and pole shed are used for the equipment storage and repair for a contracting business; that there are Leland Cypress

trees along both side property lines; that there is an existing fence between the dwelling and the existing buildings used for business; that farmland surrounds the property; that the nearest dwelling is approximately 150 feet away; that there have been no previous complaints from the neighbors; that there is adequate parking; that there are no sales, displays or customers on the property; that his employees arrive at the site approximately at 7:00 a.m. to load the work trucks and leave the site by 7:30 a.m.; that the employees return to the site between 4:00 p.m. and 4:30 p.m. at the end of the day; that there is no petroleum stored on the property; that they only store equipment needed to maintain petroleum equipment for their customers; that he currently has four (4) employees in state and three (3) employees that work out of state; that they receive approximately three (3) UPS deliveries per week; that there is no negative impact to the traffic; that the use is compatible to the neighborhood; that he has been in operation at this location for five (5) years; that he realized recently he did not have the proper approval needed to operate a business on this property and applied right away; that he replaced the septic system two (2) years ago; that the security lighting on the property does not shine on the neighbors properties; that they do maintenance on their work trucks such as oil changes or minor repairs; that large repairs to vehicles are not done at the site; that equipment repair is the business and all work is done at the customer's property; that regular hours of operation are Monday through Friday; that they are on call 24/7 and on Saturday and Sundays; that there is a significant tree line and distance from the road that there is no need for a trash enclosure; that there are no sales or business conducted at the property; that the block building was constructed in 2005 for the previous owner's business; and that the previous owner purchased the property in 2004.

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

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/U #2048 Delaware Shore Equity, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a warehouse and office to receive and store HVAC equipment located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.457 acres, more or less. The property is located east of John J. Williams Hwy. (Rt. 24), 1,150 ft. southwest of Jolyns Way (Rd. 289). (911 Address: None Available). Tax Map I.D. 234-11.00-502.00

Ms. Cornwell advised the Commission that staff is in receipt of the Service Level Evaluation from DelDOT and a TIS was not required; that the Department of Engineering Utility Planning Division submitted comments; the staff analysis is submitted into the record; and the applicant submitted an exhibit book.

The Commission found that Dennis Schrader, Esquire, was present on behalf of the applicant, with David George, the property and business owner; that an exhibit book has been provided to the Commission to review; that the 1.457 acre parcel is zoned AR-1 (Agricultural Residential District); that the property is located in the environmentally sensitive area and located in a Level 2 low density area; that the applicant has run the business out of his home for twenty-two (22)

years; that all work is done at the customers location and no work is done at the site; that the employees start their work day from their homes; that the existing building on the property will be used to store equipment and vehicles; that the property is wooded along the right side and rear of the property; that there are security lights on the existing building and they do not shine on the neighboring properties; that the applicant plans to build a dwelling on the property in the future; that employees will only be on site once or twice a week to pick up equipment needed for the customer; that he has two (2) employees; that approximately two (2) deliveries per week will be made to the site; that the use will not have a negative impact to the neighborhood or impact traffic; that the use is compatible to the surrounding area; that there is a boat storage facility, church, fire station, and upholstery business in the area; that only HVAC equipment will be stored in the building; that the refrigerant stored on site is not a hazardous material; and that there will be no vehicle repair done on site.

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

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

2016-5 Estates at Enchanted Woods – Eastern Shore Brothers, LLC

This is a major subdivision plan. The plan proposes to subdivide 15.56 acres +/- into 14 single family lots. The property is located on the south side of Huff Rd. approximately 0.78 miles west of Gravel Hill Rd. The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D. 235-24.00-234.00 - 249.00 & 235-24.00-39.01

Waiver request for elimination of the 20' Landscape Buffer

Ms. Cornwell advised the Commission that staff is in receipt of the Service Level Evaluation from DelDOT and a TIS was not required; that the Department of Engineering Utility Planning Division submitted comments; and that this application is the same design and layout as a pervious application that had been approved; however, it expired at the end of 2015.

Ms. Cornwell advised the Commission that this application was forward to the Technical Advisory Committee for comments and that the agencies commented on the application. The application is also requesting a waiver from the 20 ft. landscape buffer.

Irving McKenzie, of Eastern Shore Brothers, LLC, and Kevin Smith, Project Manager with Kercher Engineering were present and stated that the subdivision was previously approved and recorded in May 2006; that the previous owner began site construction such as tree removal, installation of swales, and stormwater management ponds; that the previous owner filed bankruptcy and had two (2) time extensions approved; that he purchased the property prior to the time extension lapse in September 2015; that during that time he diligently worked with Planning and Zoning Department to get the project substantially underway by the end of year 2015; that they also met with Sussex Conservation District and DNREC during this time to get approvals needed; that this procedure was very time consuming; that there was an issue with the road thickness based on the current standards; that he offered to thicken the roads to meet the current standards prior to the time extension; that a letter in January 2016 was sent to Planning and

Zoning stating DelDOT's approval would be coming in the next thirty (30) days; that the time extension was not granted due to not having all agency approvals; that he submitted pictures to show the site work that has been completed; that due to the history and updated agency approvals for this site the proposed subdivision application is the same as previously approved; that due to an existing easement around the property the landscape buffer waiver has been requested; that the approval from DNREC is based on the plan without the buffer requirement; that if the buffer is required it changes the plan completely and would have to be re-reviewed and approved by DNREC; that all lots have been given parcel numbers and 911 addresses; that the subdivision was designed around the existing dwelling on Lot 3 of the subdivision; that the County Engineering Department will not grant approval until Planning & Zoning Commission approval is granted; that the wetlands to the south were delineated in 2004 and will remain intact; that the waiver is needed along the east and west sides of the property; that the swales are within the easements shown on the plan; that the swales drain into the roadside swale and then into the stormwater management pond; that there are swales on both sides of Enchanted Way Road; that there is an access easement to maintain the pond only; that the wetlands on Lot 13 will be delineated; that each lot will have its own septic system and well; that the wetlands are non-tidal wetlands; that the wetlands on Lot 13 will be removed if approved; that permanent markers will be placed to show the boundary of the wetlands; that trees and shrubs cannot be planted within the swales; and that swales will be both in the front and the rear of the proposed lots.

The Commission found that Sherri Malone, a resident in the area, spoke in opposition to the application and submitted pictures to the Commission and stated that she is concerned about the waiver of the landscape buffer; that the buffer is needed; that the property is located near a sharp turn in the road; that the road is in disarray and people run off the road; that the current conditions are poor and there is standing water on the property; that there are three (3) culverts on the property and are not buried; that there are no markers for the wetlands; that the current swales drain into Huff Road; that the habitat is being destroyed; that the original approval was ten (10) years ago and there have been a lot of changes within that time; that the density is too high for $\frac{3}{4}$ acre lots; that the wildlife is being affected; that she is concerned about being on the perimeter of two (2) separate fire companies and what the addition of fourteen (14) dwelling will have on their ability to help in an emergency; and that almost the entire road (Huff Road) is fully developed.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115 (“ZONING”), ARTICLE XXI (“SIGNS”).

Mr. James Sharp, Esquire, of Moore and Rutt, presented a Power Point presentation to the Commission and summarized the proposed Ordinance; and that a copy of the Power Point presentation is available for review in the Office of Planning and Zoning.

Mr. Burton stated that the working groups recommendations and the proposed ordinance do not match; and that the amended ordinance will create a huge amount of non-conforming signs throughout the County.

Mr. Ross stated that he feels the County should notify current sign owners of the changes to the Ordinance; that a current sign owner under the proposed ordinance may never be able to erect a new sign if destroyed by no intent of the sign owner; that if a proposed sign meets all zoning requirements there should be no need for special use exception hearings with the Board of Adjustment; and that the County regulations should match DeIDOT regulations.

Mr. David Hutt, Esquire, of Wilson, James, Halbrook & Bayard, LLP, was present on behalf of and represented Clear Channel Outdoor, Geyer Signs, Hocker Signs, Jack Lingo Realtors, JD Sign Company, Ocean Atlantic, Phillips Signs, Inc., Premier Outdoor Media, LLC, Rogers Sign Co., Inc., and Timmons Outdoor Advertising; that Mr. Hutt submitted exhibits and a proposed alternate version of the proposed ordinance to the Commission for review. Mr. Hutt went through the proposed alternative ordinance. The exhibit booklet and alternate version is available for review in the Office of Planning and Zoning.

The Commission found that Andy Strine, a local business owner, was present in opposition to the proposed ordinance and stated that his family owns a local business and has for many years; that the current sign for their business is non-conforming; that unforeseen circumstances could require them to replace or relocate the sign; and that the proposed ordinance does not provide any options to replace the sign, which is critical to their business.

The Commission found that Terry Strine, a local business owner, was present in opposition to the proposed ordinance and stated that the intent of the proposed ordinance needs to be fair; that signs are the life of businesses and crucial to their success; and that to have no options for non-conforming signs to be replaced, repaired, or re-constructed without increasing the non-conformity is counter productive.

The Commission found that Jason Dean, of JD Signs, was present and responded to questions raised by the Commission on Electronic Message Display signs; that the term Nit measures the output of light from a sign; that the average range for signs is 7,500 to 10,000 Nit's; that there is software and hardware available to automatically adjust the ambient light from a sign during different times of the day; that the term foot candle is the brightness of the sign; that tools to measure foot candle are readily available and a good tool to use for enforcement; that an Electronic Message Display is most distracting when the sign is too bright; that animation and screen changes are not distraction issues; that a sign that is too dim to read is also more distracting than a proper working sign; that lack of enforcement is an issue; and that an on-premise sign is the most important tool for small businesses.

The Commission found that Dan Kramer and Paul Reiger, were present and stated that the current enforcement issues need to be addressed.

The Commission found that Dennis Forney was present and stated that he was on the working group and there needs to be distance between billboards, and better enforcement.

The Commission found that Ben Phillips, Gerald Hocker, Jr., and Lynn Rogers were present and stated that they are in opposition to the proposed ordinance; that they were part of the working

group and that they feel the proposed ordinance does not reflect the suggestions made by the working group.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to defer action until May 26, 2016 for further consideration. Motion carried 4 – 0.

OTHER BUSINESS

Solitudes on Whites Creek (2005-59) Revised Final Subdivision Plan

Ms. Cornwell advised the Commission that this is the final subdivision plan for a revision to the development. The original subdivision was approved by the Planning Commission at their meeting on August 19, 2009. The original plan proposed 139 single family lots. The revised preliminary plan was approved by the Planning Commission at their meeting on October 15, 2015. The revised plan proposed 119 single family lots, a reduction of twenty (20) lots. There were no significant changes to the road layout. There is an increase in open space throughout the subdivision. Sidewalks will be provided along both sides of the streets and streetlights will be provided throughout the development. The property is located off of Clubhouse Rd. and Main St. The property is zoned MR. The Plan shall expire unless recorded and under substantial construction on or before July 1, 2016. The Planning Office is in receipt of all agency approvals.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the Revised Final Subdivision Plan. Motion carried 4-0.

Waters Run Deletion of Sidewalks

Ms. Cornwell advised the Commission that this is a request to delete the requirement of sidewalks along both sides of the road for the subdivision and eliminate sidewalks along both sides of the road in certain locations. The Planning Commission deferred the request at their meetings on January 22, 2015 and March 19, 2015 due to outstanding issues with the subdivision. These items are being addressed. The request is for the deletion of the requirement to construct sidewalks along lots 5-9, 21-38, 41-48, and the open space between lots 10 and 21. The request includes the removal of sidewalk from lots 4, 10 and 39-40. The sidewalk along clubhouse is proposed to be constructed along with sidewalk along lots 10-20. The existing sidewalk along lots 49-56 will remain with the gap in front of lot 50 filled in. The ADA compliant ramps will remain at the intersection of Waters Run and Woods Run Cir. Staff notes that there is an opportunity to provide a cross walk across Woods Run Cir. between lots 49 and 13. This would allow for safe pedestrian crossing of the road. The request shown on the plan provided is to remove any sidewalk shown in green and have sidewalk along the rest of the roads.

There was a brief discussion regarding the request.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the request for the deletion of sidewalks as presented with the installation of a crosswalk. Motion carried 4-0.

**Benson Subdivision (2016-6)
Waiver of 20' Landscape Buffer**

Ms. Cornwell advised the Commission that this is a waiver request for the elimination of a portion of the 20 ft. landscape buffer. The Planning Commission granted preliminary and final subdivision approval on April 28, 2015. The waiver request for the elimination of a portion of the 20 ft. buffer was inadvertently left off the application. A portion of the site will comply with the 20 ft. landscape buffer. This plan is the same plan that was originally approved as part of the original application 2006-6.

There was a brief discussion regarding the request.

Motion by Mr. Burton, seconded by Mr. Hudson and carried unanimously to approve the waiver request for the elimination of the 20 ft. Landscape Buffer as shown on the plan. Motion carried 4-0.

**Park Shore (formerly part of Henlopen Station)
Revised Preliminary Site Plan**

Mr. Brandewie advised the Commission that this is a revised preliminary site plan to change the layout and number of buildings for the development. The property is located off of Canal Crossing Rd. The tax parcel is 334-13.20-33.01. The property is zoned C-1. This plan is for the construction of 22 units. The overall number of units remains the same (94). The original plan contained two (2) buildings with the 22 units. The proposed plan will have five (5) buildings with the same number of dwelling units. The plan was originally approved in 1984. Staff is bringing the plan back to the Commission as this is a significant change in design from the original approved plan. The plan complies with the required number of parking spaces and will provide easements for access. Staff is in receipt of all agency approvals.

Motion by Mr. Ross, seconded by Mr. Burton and carried unanimously to approve the revised site plan as both preliminary and final site plan as the staff is in receipt of all agency approvals. Motion carried 4-0.

**Lands of Lowe (CU 2003)
Preliminary Site Plan**

Ms. Cornwell advised the Commission that this is a preliminary site plan for the establishment of a retail store as part of the Conditional Use (CU 2003). The property is located off of Omar Rd. The tax parcel is 134-14.00-6.00 (portion of). The property is zoned AR-1. The Planning Commission recommended approval of the Conditional Use on November 14, 2014. County Council approved the Conditional Use on December 9, 2014. The plan shows the 1,200 SF building with parking along the west side of the property. The site will utilize the existing

entrance. The Site Plan complies with the conditions of approval. Staff is in receipt of all agency approvals.

Motion by Mr. Ross, seconded by Mr. Burton and carried unanimously to approve the site plan as both preliminary and final site plan as the staff is in receipt of all agency approvals. Motion carried 4-0.

The Reserves – Clubhouse Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of a pool, clubhouse, pavilion, play area and a 24 space parking lot on a 3.1 acre lot associated with “The Reserves” residential development. The site also contains an above ground propane storage tank area. The building consists of 3,322 square feet and will be served by a 24 space parking lot. The subdivision is located off Woodlawn Avenue near Ocean View. The property is zoned MR-RPC. The tax parcel is 134-12.00-468.13. The Planning Office is awaiting approvals from the appropriate agencies.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 3-0 with Mr. Wheatley abstaining.

Redden Ridge – Amenities Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of a pool and pool house in addition to a 9 space parking lot associated with the Redden Ridge (2013-8) residential development. The building consists of 480 square feet and is located on 1.33 acres. The property is zoned AR-1 and is in the Environmental Sensitive Developing District Overlay Zone. The subdivision is located off Old Landing Road. The tax parcel is 334-12.00-122.03. The Planning Office is awaiting approvals from the appropriate agencies.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 4-0.

The Overlook – Amenities Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a preliminary site plan for the construction of a pool, community building and parking lot on a 1.93 acre lot associated with “The Overlook” residential development. The building consists of 5,021 square feet and will be served by a 10 space parking lot. The site has marina access to Little Assawoman Bay. The subdivision is located off Bayville Rd. and Ashlyn Rd. The property is zoned MR-RPC. The tax parcel is 533-20.00-140.00. The Planning Office is awaiting approvals from the appropriate agencies.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 4-0.

**Lands of Tull on Woodpecker Rd.
Minor Subdivision with 50 ft. easement**

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of two (2) lots off an existing 50 ft. easement and to allow for the extension of the 50 ft. easement. The property is located off of Woodpecker Rd. The tax parcel is 531-12.00-83.02. The property is zoned AR-1. There is one (1) existing lot with access off of the easement. This subdivision will create two (2) additional lots off of the easement (lots 2 and 3). Lot 1 has access off of Woodpecker Rd. Any further subdivision shall require a major subdivision. The Planning Office is awaiting approval from DelDOT.

Motion by Mr. Ross, seconded by Mr. Burton and carried unanimously to approve the minor subdivision with approval subject to staff upon receipt of all agency approvals and that any further subdivision shall require a major subdivision. Motion carried 4-0.

Meeting adjourned at 10:14 P.M.