

MINUTES OF THE REGULAR MEETING OF FEBRUARY 28, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 28, 2013, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. I.G. Burton, 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. Johnson, seconded by Mr. Burton and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of January 24, 2013 as circulated. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of February 14, 2013 as circulated. Motion carried 4 – 0.

OLD BUSINESS

Conditional Use #1952 – application of **CLINTON E. MCCUTCHEN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for boat repair, boat storage, and boat sales, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.36 acres, more or less, lying southwest of Route 20 (Hardscrabble Road) at corner with and northeast of Road 473 (Messick Road)(Tax Map I.D. 2-32-2.00-21.00).

The Commission discussed this application which has been deferred since February 14, 2013.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1952 for Clinton E. McCutchen for boat repair, boat storage and boat 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 location, surrounded by Hardscrabble Road, Messick Road and a DPL power line right-of-way is appropriate for this proposed use.
- 3) The use, as a boat storage facility, is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
- 4) The Applicant intends to continue using the property as his primary residence while this use is underway.

- 5) This recommendation for approval is subject to the following conditions and stipulations:
- A. The boat storage facility will be open during daylight hours only.
 - B. The perimeter of the site shall be fenced and gated with a 7-foot high chain linked type of fencing.
 - C. All persons visiting the site shall be accompanied by representatives of the Applicant.
 - D. This approval is for boats (including personal watercraft) only, not the storage, sales and maintenance of vehicles and RVs.
 - E. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - F. Security lighting shall be provided on the site and shall be directed away from neighboring properties and roadways.
 - G. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - H. All repairs shall be performed either indoors or on an impervious surface on the site.
 - I. No unregistered or permanently inoperable boats, watercraft or trailers shall be stored on the site.
 - J. No more than 40 boats (including personal watercraft) shall be stored on the site at any one time.
 - K. All parking and storage areas shall be clearly depicted on the Final Site Plan and also physically identified on the site itself.
 - L. The site shall be subject to all DeIDOT entrance and roadway requirements.
 - M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, 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 and with the conditions and stipulations stated. Motion carried 4 – 0.

Conditional Use #1956 – application of **MARK A. GIBLIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto repair and service as extension to an approved towing service and landscaping business (Conditional Use No. 1933), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.374 acres, more or less, lying southeast of Route 17 (Roxana Road) 1,185 feet northeast of Road 382 (Zion Church Road)(Tax Map I.D. 5-33-6.00-60.02).

The Commission discussed this application which has been deferred since February 14, 2013.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1956 for Mark A. Giblin for auto repair and service as an extension to C/U #1933 based upon the record made at the public hearing and for the following reasons:

- 1) This is an extension for Conditional Use. No. 1933 granted to the Applicant for a towing service and landscaping business. As part of that approval, the Commission found that the use was consistent with other small scale businesses in that area, including a bait and tackle shop, HVAC business, and other similar uses in the vicinity.
- 2) Auto repair and service is a natural extension of the approved towing service.
- 3) The auto repair and service use will provide a public service to residents of the area and Sussex County in general. It also promotes the orderly growth, convenience and welfare of Sussex County and its residents.
- 4) The use, with the existing conditions required in C/U #1933 and with those imposed on this recommendation, will not have any adverse impact on neighboring properties, roadways or public facilities.
- 5) This recommendation is subject to the following conditions:
 - A. The Conditions imposed upon C/U #1933 shall remain in effect.
 - B. Condition "B" of C/U #1933 is modified so that no more than 18 vehicles shall be permitted on the property besides the Applicant's own vehicles.
 - C. The hours of operation of the auto repair and service activities shall be from 8:00 a.m. to 8:00 p.m. seven (7) days a week.
 - D. All liquids, oils, and similar materials shall be disposed of in accordance with all State and Federal requirements.
 - E. Parking areas for vehicles and customers associated with the service and repair component of this use shall be clearly shown on the Final Site Plan and marked on the site itself.
 - F. The Applicant shall comply with all DelDOT entrance requirements.
 - G. The Final Site Plan showing this use and the use of Conditional Use No. 1933 shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0.

Conditional Use #1957 – application of **GEORGE R. AND SANDRA L. VANFLEET** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a rental and storage units, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.148 acres, more or less, lying south of Route 54 1,550 feet northeast of Road 387 (Hudson Road)(Tax Map I.D. 5-33-18.00-35.04).

The Commission discussed this application which has been deferred since February 14, 2013.

Mr. Ross suggested that the application be deferred since Mr. Wheatley had abstained during the public hearing, and since Mr. Smith was absent.

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to defer action for further consideration. Motion carried 3 – 0, with Mr. Wheatley abstaining.

PUBLIC HEARINGS

Conditional Use #1958 – application of **OMAR ROAD, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for warehousing and relocation of a helicopter pad as extension to Conditional Use No. 1679 (office and warehousing) and Conditional Use No. 1858 (helicopter landing site, private) to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 8.46 acres, more or less, lying north of Omar Road (Route 54) approximately 1,692 feet east of the intersection of Omar Road and Dukes Road (Road 354)(Tax Map I.D. 4-33-7.00-15.01 & 15.02).

The Commission found that the Applicants provided a survey/site plan for the intended use.

Mr. Lank advised the Commission that the property has been approved for two previous Conditional Use application, i.e. C/U #1679 for office and warehousing, and C/U #1858 for a helicopter landing site, private; that the Applicants are proposing to add additional warehousing and to slightly relocate the helicopter pad; and that copies of Ordinance No. 1894 for Conditional Use No. 1679 and Ordinance No. 2149 for Conditional Use No. 1858 can be made available.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on December 10, 2012 which reference that a traffic impact study is not recommended, and that the current Level of Service “C” of Omar Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum on February 21, 2013 which references that the site is located in the Dagsboro/Frankford Planning Area; that sewer service has not been extended to the area at this time; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the Dagsboro/Frankford Planning Study will be required; that the parcel is in a planning area for sewer service; that when sewer service is provided to the area, connection is mandatory; that the County does not have a schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that George Herker was present with Ron Sutton, Professional Engineer with Civil Engineering Associates, LLC, and stated in their presentations and in response to questions raised by the Commission that additional warehousing is proposed to allow for expansion of Mr. Herker’s landscaping business; that the helicopter pad is being moved approximately 15 feet to accommodate the location of the new warehouse building; that the warehouse building will be utilized for the storage of trucks, equipment and materials; that no new entrances are proposed; that DelDOT did not required a traffic

impact study; that the company has 8 to 10 regular employees; that the maximum number of employees anticipated in the future will be 16 to 20; that the proposed warehouse building will be similar to the existing warehouse; and that the business has been in operation for approximately eight (8) years.

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

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

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1958 for Omar Road, LLC for warehousing and relocation of a helicopter pad as an extension to C/U #1679 (office and warehousing) and C/U #1858 (helicopter landing site, private) based upon the record made during the public hearing and for the following reasons:

- 1) This is an extension of an existing conditional use. It will not require any new entrances on Omar Road, and it will not have any adverse effect on traffic or neighboring properties.
- 2) The relocated helipad will not have any material effect on the site or the area. It is still centrally located on the site.
- 3) The use as a landscaping company, with warehouses for that use, provides a benefit to Sussex County businesses and residents.
- 4) The application represents a reasonable expansion of the Applicant's business to meet the growing needs and economy of Sussex County.
- 5) No parties appeared in opposition to the application.
- 6) This Conditional Use shall be subject to the existing conditions of C/U #1679 (office and warehousing) and C/U #1858 (helicopter landing site, private).
- 7) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, 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 4 – 0.

Change of Zone #1726 – application of **ROBERT M. & SANDRA E. DAVIDSON** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District, to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 7.57 acres, more or less, lying north of Route 9 approximately 800 feet east of Route 5 at Harbeson (Tax Map I.D. 2-35-30.00-26.00).

The Commission found that the Applicants provided a survey of the property with the application, and that on February 18, 2013 the Applicants provided an Exhibit Booklet, which contains a listing of the project team; references to the qualifications of Pennoni Associates, Inc., Mark H. Davidson, Associate Vice President and Office Director for Pennoni, and Douglas D. Barry, Professional Engineer and Division Manager for

Pennoni; an aerial map of the Harbeson area depicting the location of other commercial/business uses and zoning; a copy of the application form; a copy of the deed and surveys for the property; copies of portions of the Comprehensive Land Use Plan referencing Developing Areas and a copy of the Future Land Use Plan from the Comprehensive Land Use Plan; a copy of the Service Level Evaluation form to DelDOT and response letter and Support Facilities Report from DelDOT; a series of Maps and aerial photographs referencing the location, zoning, the State Strategies, soil classifications, ground water recharge, State wetlands, topography, and suggested proposed Findings of Fact.

The Commission found that DelDOT provided comments on November 19, 2012 in the form of a letter and Support Facilities Report which reference that a traffic impact study is not recommended and that the current Level of Service "E" will not change as a result of this application; that given the size of the parcel, commercial uses that could be developed on the land could generate up to 5,390 trips during a typical weekday, 209 trips during the morning peak hour and 544 trips during the evening peak hour; that based on those volumes, the development would warrant a traffic impact study; that DelDOT volume warrants for such a study are 400 trips per day and 50 trips per peak hour; that however, while the site could be redeveloped in the future to meet or exceed the criteria referenced, the Department presently cannot predict the site's future trip generation with enough accuracy to make a traffic impact study useful; and that the Department is willing to postpone a decision on DelDOT requirements for a traffic impact study until the subject land has been rezoned and is proposed for redevelopment in a manner that warrants a traffic impact study.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on February 21, 2013 and that the memorandum references that the site is located in the North Coastal Planning Area; that the parcel is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Robert Davidson was present with Douglas Barry, Professional Engineer with Pennoni Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they are applying for rezoning so that the Applicant does not have to apply for every expansion of his existing Conditional Use; that the site is currently used for an office and storage of materials and equipment for his house moving business; that additional storage buildings may be built in the near future; that he has no intent to change the use; that there are several business and commercial uses in the area; that the adjacent parcel was recently rezoned CR-1 Commercial Residential; that according to the State Strategies the site is located in an Investment Level 3; that according to the Comprehensive Land Use Plan the site is located in a Developing Area; that they have met with DelDOT and were advised that since no development is currently proposed, a traffic impact study will not be required at this time; that the site is served with on-site water and on-site septic; that Route 9 is a major arterial roadway; that they are aware that the Commission and other agencies will review any future site plans before any development activities take place;

that no outside storage is intended; that the existing storage contains approximately 1,500 square feet; and that a home being relocated may be stored on the site for one or two weeks pending preparation of the site for the relocation.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1726 for Robert M. and Sandra Davidson for a change of zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

- 1) This property is currently the subject of a conditional use for a contractor's storage yard.
- 2) The location is appropriate for CR-1 zoning. It is located along Route 9 near the intersection with Route 5. The adjoining property was recently rezoned to CR-1. It is next to a Delmarva Power substation and there are other commercially zoned properties and businesses in the immediate vicinity. These uses include retail, warehouse, contracting, and truck repair facilities.
- 3) The property is in a Development District according to the current Sussex County Comprehensive Land Use Plan.
- 4) The rezoning will not have an adverse effect on traffic or neighboring properties.
- 5) The rezoning promotes the orderly growth of Sussex County.
- 6) CR-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping, personal and miscellaneous service activities, and that such uses should be located along arterial roadways where a general mixture of commercial and service activity now exists. In this case, the project along this area of Route 9 falls within the stated purposes of the CR-1 District.

Motion by Mr. Johnson, seconded by Mr. Burton, 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 4 – 0.

OTHER BUSINESS

Sussex Oral Surgery Associates
CU #1898 Site Plan – Road 532

Mr. Abbott advised the Commission that this is a site plan for a one-story dental office located on 30,750 square feet in an AR-1 Agricultural Residential District in Northwest Fork Hundred; that this conditional use was approved on June 14, 2011 with 6 conditions; that the conditions of approval are noted on the site plan; that the use will be established in an existing frame building; that 6 parking spaces are required and 7 spaces are proposed; that a portion of 5 spaces are within the front yard setback and are subject to site plan review; that on-site septic and well are proposed; that ingress/egress to the

site is off of Road 532 and there is no direct access to U.S. Route 13; that all agency approvals have been received except Sussex Conservation District; that if preliminary approval is granted, final approval could be subject to the staff receiving an approval from the Sussex Conservation District; and that the Commission was previously provided a copy of the site plan.

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 receipt of the Sussex Conservation District approval. Motion carried 4 – 0.

Marina Bay at the Peninsula MR/RPC
Revised Site Plan Phase 5B – Road 299

Mr. Abbott advised the Commission that this is a revised site plan to reduce 20 units on the previously approved site plan to 15 units on the revised site plan; that in the five areas affected, the previously approved plan was for 4 detached units each; that the revised plan is for 3 units each; that this is a reduction of 5 units for this area; that the revision is based on the current market demand; that each group of buildings is within a 165-foot building envelope with a 40-foot separation between building envelopes; that since this project is a residential planned community, the Commission review and approval is necessary; and that the Commission was previously provided a copy of the revised site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the revised site plan as submitted. Motion carried 4 – 0.

Beacon Medical Group, P.A.
Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story, 9,960 square foot medical/general office building located on 1.0 acre in a C-1 General Commercial District; that the building setbacks meet the requirements of the zoning code; that 50 parking spaces are required and 54 spaces are provided on site; that there are an additional 7 shared spaces located on the adjoining parcel; that a majority of the spaces are within the front yard setback and are subject to site plan review; that there are other projects in the area with parking located in the front yard setback; that ingress/egress to the site is from a cross access easement located on the adjacent Peninsula Healthcare Services property; that water will be provided by Tidewater Utilities and sewer will be provided by Sussex County; that the site is not located in a flood plain and there are no wetlands on the site; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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 4 – 0.

Hunter's Walk MR/RPC
Amended Conditions – Route One

Mr. Abbott advised the Commission that this is a request to amend 2 conditions of approval for this project; that the first request is to amend the requirements requiring sidewalks on both sides of all streets; that the project has been redesigned using Green Design BMP's; that the applicants are still proposing sidewalks in front of all buildings on both sides of the roads and are also proposing walking trails as highlighted on the site plan; that the applicants are also requesting the condition requiring a tennis court and a multi-purpose court be eliminated; that the developers conducted a market study and found that there is not a demand which would result in them barely being used; that the developers are willing to build the swimming pool and community center within 2 years of the issuance of the first residential building permit instead of the required 3 years; and that the Commission was previously provided a copy of a letter from the developers and a copy of a reduced site plan.

Paul Jones and Ben Gordy were present on behalf of this item and advised the Commission that the project has been redesigned utilizing Best Management Practices and Green Technology; that the interior driveways were proposed to have curb and guttering when originally designed; that that is not the case now; that they conducted a market study and anticipate older residents living in the units that will not utilize tennis courts or the multi-purpose court.

The Commission discussed this request and expressed concerns about safe pedestrian travel.

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

Marjorie Ann Fisher, Trustee
Lot on 50' Easement – Road 410

Mr. Abbott advised the Commission that this is a request to create a 1.22 acre lot with a dwelling and accessory building located on it with access from a 50-foot easement; that the residual lands will contain 8.42 acres; that the owners are proposing to extend an existing 50-foot easement that was approved in 2004; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would be the second parcel having access from the easement; that DelDOT has issued a Letter of No Objection; and that the Commission was previously provided a sketch drawing of the request.

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

Meeting adjourned at 7:10 p.m.