

**Town of Milton
Planning and Zoning Meeting Minutes
July 18, 2006**

Members Present:

Linda Rogers Dean Sherman Ginny Weeks Gene Steele
Bernice Edwards Carol Bruce Richard Greig Louise Frey
Michael Filicko

Others Present:

Robin Davis John Brady Bob Kerr

PUBLIC HEARING

1. *The applicants, Joanne Mattioni and Susan Denise Suthard are requesting a conditional use for the retail sale of gourmet treats and accessories for pets at 309 Union Street, further identified by Sussex County Tax Map and Parcel # 2-35-14.19-168.00. The property is zoned R1 and located in the Historic District.*

Linda Rogers - Is there anyone present on behalf of this application to make a presentation?

Joanne Mattioni – We are planning to operate a small business for dogs and cats. It would take up approximately 275 square feet. There will be a separate entrance and there is off street parking. Hours of operation would be 11:00 a.m. till 6:00 p.m., Monday – Thursday, and 11:00 a.m. until 7:00 p.m., Friday and Saturday, depending on the season.

Linda Rogers – How many days of the week will you be opened?

Joanne Mattioni – During the summer, we are planning on being opened 7 days a week and in the fall we would probable cut back to 5 days a week, in the fall and winter.

Michael Filicko – How many off-street parking spaces will you provided?

Joanne Mattioni – We could easily put 20 spaces back there.

Gene Steele – Will there be any pets for sale or dog grooming?

Joanne Mattioni – No, we will not sell pets. We are not planning on having grooming. We may in the future but that is not in our plans.

Gene Spencer – Read into record a letter by Lyle Young in opposition of approval.

Linda Rogers - Would anyone like to make a comment on behalf of this application?

Felicity Lavel and Henry Sivils - Both stated this was a great idea. This would bring in more tourism.

Judy Fisher - Milton needs something like this. This property has been used for businesses in the past.

Linda Rogers - Would anyone like to make a comment in opposition to this application?

Ted Kanakos – This property isn't zoned for this type of business. This business would be in the Historic District and not in the town center. This doesn't support the town's comprehensive plan. This business would affect traffic flow and public safety. Ted read an E-mail pertaining to the requirements of a commercial driveway on a state maintained street.

Mary Hudson – The town has permitted home occupations, what they are asking for is a retail

store. If they were asking for a home occupation, I would agree with it but to ask for a retail business in the historic district, I am opposed to that.

Carol Bruce - I would like to know how you think people are going to enter and park.

Joanne Mationi - It is a one way driveway that we are going to use but it was used before when there was business ran out of this house. This is mainly going to be a walk-in business. They will enter and exit using the same driveway.

Ginny Weeks – Where do you think the delivery trucks will stop with deliveries?

Joanne Mationi - The deliveries will be in the back where the parking will be, they might stop on the street.

Dean Sherman – Motion to close public hearing on this application.

Richard Greig – Second. All in favor “Aye.” Opposed. Motioned carried.

2. *The applicant, Shipbuilders LLC, is requesting a major sub division of a parcel of land located on the northwest corner of the intersection at Mulberry Street and Shipbuilders Blvd further identified by Sussex County Tax Map and Parcel # 2-35-14.00-565.00.*

Linda Rogers - Is there anyone present on behalf of this application to make a presentation?

Vince Robinson - The certified mailing was sent out to 52 to the list the town gave use one was returned with the incorrect address. All were returned but seven. The cards were submitted to the committee. It's a major subdivision requesting permission to do six lots. There will be three lots on Mulberry, one with the entrance off of Shipbuilders. Lot 4, 5, and 6 will be facing Shipbuilders Blvd. All these lots comply with the subdivisions zoning ordinance. If this is approved, my client is willing to repair the storm water problem in the development in accordance with the Duffield report. Vince showed the committee the site plan, dated “2000”, dealing with the parcel that's was in question when this was denied in October of 2000. The plot plan has been recorded in the office of the Recorder of Deeds for the county.

Ginny Weeks - Where was the dedicated open space if that's not it?

Vince Robertson - At the time it was approved that it wasn't an open space it was approved for future development. This piece of property is not really tied into the development.

Bernice Edwards – If that was not for future development, so what I'm hearing you say, that there was on time, that this was an open space. I guess you have a tennis court, you have a pool, you have a pool house and with open space, it was never intended for that.

Vince Robertson – I'm not trying to dodge that question. At the time this was approved, there wasn't a designation for open space. As far back as 1984, it was agreed to be reserved for future development, but as recently as “2000”, the town signed off on it as reserved for future development, they didn't give it that special open space classification.

Louise Frey - Is this the same map as given back in 2004?

Vince Robertson - This one is the same. The one we are asking approval for is dated August 17, 2004. If we get approval tonight we will go get engineering approval and the agencies approvals through the state. So we would like to get preliminary approval tonight. So we can finalize the details on all the issues. Vince also showed site plans of what the house would look like and a packet of all the plans and approvals.

Linda Rogers - Does anyone have any questions for the applicant?

Richard Greig - Are these going to be rentals?

Vince Robertson - No.

Richard Greig - What about sewer, are you aware of the fact of no more space and that this could be a problem?

Vince Robertson - We want to get through this stage so we can go further to look at all these issues.

Bob Kerr – I'm going on memory from 1994, when the original sub division was approved, I believe the area in question was identified on that portion, which is the Shipbuilders to the left as you go into the entrance, was identified not as an open area as per a town ordinance but was identified as an open or recreation area for something of that order. If my memory is correct, it clearly said on the record plan that it was a recreational area or an open area or something. It wasn't in accordance with an ordinance of the town, it was something that the developers were providing and I believe at that time the plans for the swimming pool or clubhouse were presented. At some time, there should have been a site plan that was approved for that portion. The pool just didn't show up, there should have been some record of it being constructed or approved for construction.

Vince Robertson – There was at one point, amendments to the site plan over time. There was a site plan recorded, they called it open space.

Linda Rogers – Explained how the development started and how it has changed in design.

Would anyone like to make a comment on this application?

Nick Carter – He was told when he bought his lot that the swimming pool and the tennis court would be open space and become part of the homeowners association. That is why bought lot #4.

Laurie Hilferty – Could you tell me the last time the homeowners association was in affect?

Vince Robertson – No I can't. The homeowners association is a different organization.

Ginny Weeks – You are asking for a sub division. Is this going to be taken out of the original Shipbuilders development and become its' own entity?

Vince Robertson - Because it was reserved on future development on that one site plan, the short answer would be, it would be a separate project and not part of the other Shipbuilders. This would have its own set of covenants.

Bernice Edwards – Are owners of this project different than the owners of the original project?

Gene Steele - Lets make it simple. When did the owners become the owners?

Vince Robertson – I don't have the exact date but the can supply that to you. Probably 5 or 6 years.

Bernice Edwards – Will the building (clubhouse) stay?

Vince Robertson - The building is still in use and he isn't taking down this building.

Richard Greig - It was stated that there are many issues dealing with this property and this should be looked at by the town. Linda Rogers – Submitted two letters in opposition to the sub division.

Dean Sherman – Motion to close the public hearing.

Gene Steele – Second.

All in favor say "Aye." Opposed. Public hearing closed.

Linda Rogers - Would anyone have any objection to moving item number five up to being the next item on the agenda?

Ginny Weeks – I make a motion to move item #5 up to the next item on the agenda.

Carol Bruce – Second.

The Planning and Zoning Committee will review the following:

1. Review the application and special permitted use approval for a small in-home daycare, operated by Laurie Anne Hilferty, at 441 Rudder Lane further identified by Sussex County Tax Map and Parcel # 2-35-14.00-260.00.

Linda Rogers – Mr. Brady asked that this application be reviewed.

John Brady – I wasn't present when this was brought to the board. John Brady wanted to question the covenant and how it prevents this type of business being operated. The applicant has to certify that there are no covenants or anything barring this type of application from being done at this location. My understanding was at that time the applicant was unaware of the covenant on record. This covenant prohibits this type of operation. Based on the fact it did not appear to violate any covenant or any ordinance in place that the recommendation was to grant it. Information has come to light that this would violate this covenant, although planning and zoning doesn't enforce the covenant, it does require that the covenant be made aware of. That is why I asked the board to bring this back up to review the recommendation. The covenant was read into record.

Richard Greig - It was stated that there is no homeowners association, then why would the covenant have any standing?

John Brady - The town ordinance 6.0, 6.02, 6.03, and 6.04 was read into record. The covenant is written in the deeds of this land. This can still be reviewed and approved. If you find that all the requirements can be met, you can vote in favor of it. You don't have to re-vote, you just need a better record.

Linda Rogers - A letter from George V. Carey requested that we review this application positively.

John Brady - The motion that would have to be made should identify each fact for Zoning Ordinance 6.0 (A-I) that the town would be improved.

Linda Rogers – Does anyone have any more questions?

Richard Greig – These covenants are only met for the residents of this sub division and I didn't think that it is appropriate for the town to enforce them.

Linda Rogers - We have heard the public, the applicant and Mr. Brady.

John Brady - There are three options: you can take no action, you can defer your action, or you can make a motion to reverse your action due to new evidence.

Bernice Edwards – She can continue providing this service if the board take no action.

John Brady – Correct.

Linda Rogers – Does someone want to change the decision we made or move on?

John Brady – Explained the course of law action that could be taken by a resident if approval was not rescinded (in reference to covenant). Read Zoning Ordinance 6.0.4 (A – I).

Ginny Weeks – I make a motion to defer action on this until next month, so we can go into executive session to get more information from the Town Solicitor.

John Brady - Executive session is only for potential or pending litigation. You are not at potential or pending litigation. If you think there could be potential litigation, you could ask for an executive session.

Linda Rogers – Mrs. Weeks has made a motion to defer action and have an executive session to review this case. Is there a second to the motion?

Carol Bruce – Second.

Ginny Weeks – I think they need an executive session because there were certain things that occurred that could influence the decision in a way that would be detrimental to the town.

John Brady - The purpose of an executive session would be to discuss potential or pending litigation or personnel matters. To discuss whether or not you followed the ordinance would not be justified as a specific reason for an executive session. The only thing that can be justified is if someone were here to say tonight, I'm a homeowner in Shipbuilders and I don't want this here, then that could be potential litigation.

Ginny Weeks – I would like to withdraw my motion.

Carol Bruce – Withdraw second.

Richard Greig - I would like to make a motion that we leave it as it is.

Carol Bruce – Second.

Linda Rogers – We have a motion to leave the existing approval for the special permitted use with the condition that it come back for review in one year and sighting the factors (A-I) in the Zoning Ordinance Section 6.0.4. Roll call vote.

Weeks – No, Steele – No, Edwards – Yes, Bruce – Yes, Sherman – Yes, Greig – Yes, Rogers – Yes, Filicko – Yes, Frey – No. Motion carried.

2. *The applicants, Joanne Mationi and Susan Denise Suthard are requesting a conditional use for the retail sale of gourmet treats and accessories for pets at 309 Union Street further identified by Sussex County Tax Map and Parcel # 2-35-14.19-168.00. The property is located in the R-1 Historic District.*

Linda Rogers - This is what the public hearing was for previously in the meeting. Is there any discussion by the members?

Ginny Weeks – I'm worried about the whole backyard becoming a parking lot.

Joanne Mationi – Our backyard goes all the way back to Behringer Ave. I only put all the parking spaces on there, just to show we could have all that space for parking.

Ginny Weeks - This member will only approve parking for two parking spots for the business, two for the resident ending in a total of four parking spaces.

The definition of a home occupation was read.

Bob Kerr – This application does not meet the requirements of a home occupation.

Ginny Weeks – Are they going to have to get a sign approval from Historic Preservation?

Robin Davis – Yes, a sign will have to be approved.

Bob Kerr - A state permit will be necessary for the entrance. This site plan isn't complete which doesn't show a lot of needed information. It can be approved for preliminary site plan to come back with final and all state permits that are required.

Ginny Weeks - I move that we recommend this to town council for conditional use approval with conditions:

1. No more than 2 parking spaces for the business.
2. Business space not larger than 275 square feet.
3. One year review from final site plan.
4. Need approvals from all state agencies, not limited to but including Deldot, Fire Marshall, Storm Water Management.

Dean Sherman – Second.

All those in favor. "Aye." Opposed. Motion carried.

3. *The applicant, Shipbuilders, LLC is requesting a major sub division of a parcel of land located on the northwest corner on the intersection at Mulberry Street and Shipbuilders Blvd. The property is further identified by Sussex County Tax Map and Parcel # 2-35-14.00-565.00.*

Linda Rogers - This is what the public hearing was for previously in the meeting. Is there any discussing by the members?

Dean Sherman - There was a question whether this is open space or for future development. If we look at the definition for development, I think we're assuming that development means to build residential dwellings or some sort of dwellings. The definition for open space and development was read. The point that the applicant's representative is trying to make is for future development, this property has been developed with a community building, tennis court and a swimming pool that has now been filled in. So his argument to say that development is intended for building houses or subdividing to build more houses, as I would read it, you could argue the fact that it is being developed and the conditions of the plot plan that he referred to are actually now being exercised. The plot that he presented, did see to be developed for future development, I believe that it is future development. For us to try intervene between all the complexities of the existing homeowners, the homeowners association and this new developer, when we know this has always been open or recreational space. Our applicant is trying to make a point based on the "2000" or "2004" plot that refers to it as future development, but I think development could be considered that community building, that tennis court, that swimming pool, that basketball court or what ever is going on out there, that is development. People are assuming that development means sticks and siding. That area has always been designated as recreational or open space.

Dean Sherman - I make a motion to defer action on this application to double check the information and give Mr. Robertson a chance to rebut what I have described.

Richard Greig – Second.

John Brady – Would like more time to listen to the tape of this meeting and do more research on this plot before a decision is made. Would like the commission to defer action.

All in favor, "Aye." Opposed. Motion carried.

4. *The applicant, Terrific Toys, is requesting the addition of a 50' x 60' x 16' structure for storage to be located behind the current structure located at 401 Broadkill Road, further identified by Sussex County Tax Map and Parcel # 2-35-14.15-75.00. The property is currently zoned C-1.*

Linda Rogers - Is there anyone present on behalf of this request?

Dirk Grove - The applicant explained the nature of his business and presented the plan with all the materials, the curb and sidewalk, and the look of the new building. They run a catalog business with not much traffic. The applicant stated that they have submitted their plans to Deldot, Fire Marshall and have a scheduled appointment with Soil Conservation. This is a submission of a conceptual site plan not an official site plan.

Ginny Weeks was concerned that this building has an entrance off a residential street (Palmer St) and would like to see a more detailed landscaping plan. The sheds we asked about and they are going to stay. The sign out front will also be changed. The building is going to be a steel building. One of the members stated that she doesn't mind the warehouse but she doesn't want it to look like a warehouse. It was also made clear that there are two unloading areas and that

certain members are worried about the truck turning around depending on the unloading dock that they use. Lighting was also a concern. Bob Kerr had concerns with parking area and getting out on Route #16, landscaping between residential properties and this property and sidewalk requirements.

Louise Frey - I make a motion to approve the conceptual site plan with the conditions they install a new sign, submit a landscaping and lighting plan.

Dean Sherman - Suggested that Mr. Grove speak with Mr. Kerr because the commission will require a more detailed site plan (dumpster location, utility location, etc) when dealing with commercial properties.

Gene Steele – Second.

All in favor, “Aye.” Opposed. Motion carried.

5. *The applicant, River Basin Engineering, is requesting a concept plan review for the out parcel of the Milton Park Center further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.00 and for an additional building to be located on 68.01. The proposed uses are commercial/retail.*

Linda Rogers - Is there anyone present on behalf of this request?

Scott Pinder - The applicant came before the commission in February. The applicant stated that a lot has been improved since his last visit. They are requesting a waiver on the number of parking spaces for Parcel A and two parking spaces on Parcel B. A few parcels that are shown are within the 30' building setback line but can make adjustments if needed. They will submit a complete landscaping and lighting plan. The plans were changed so that a fast food restaurant would not be put on the corner and will now be in the inter part of the parcel.

Parcel B was discussed first. On parcel B, two parking spots are within the restricted building line and would like the board to waiver that. Parcel A was then discussed. The future addition to Food Lion should not be included in this plan. The parking was also discussed on parcel A. it was stated that some parts of the plan will be taken off at the preliminary site plan. There was a question on the loading dock and how would trucks get in and out on both parcels. Members express their concern about the entrances and parking on both parcels. Cars would have to travel through the parking area for the retail space to get to the fast food restaurant and that is a big issue with the members. Parcel A is fronting Route #5 and Parcel B is fronting Route #16. John Brady read Zoning Ordinance 7.2.5 (1). Members have an issue since it was never mentioned that another retail space would be put on Route #5 and that parcel B is 1.32 acres and you are trying to put two building on this parcel. Another problem is irrigation on the two parcels. Members think this applicant should go back to the drawing board.

Gene Steele - I make a motion to deny the plan as submitted.

Carol Bruce – Second

All in favor, “Aye.” Opposed. Motion carried.

Adjournment