

PLANNING & ZONING MEETING

DECEMBER 16, 2021

**ATTENDEES: David Chillas, Chairman
Morris Deputy, Town Manager
Frank Bailey, Fire Chief
Gene Bloemker
Donald Dibert
Bruce Orr
Joe Pontak
Gretchen Rachko
Charles Roberts
Craig Sherman**

PUBLIC HEARINGS:

1. 119 Patriot Drive, Suite D – Conditional Use Permit request for a martial arts academy (302 Brazilian Jiu Jitsu) in an M-I zoned area. CU-19-21. Tax Parcel No. 23-041.00-019.

Bill Walters requested Conditional Use approval to open a martial arts academy in an M-I zoned area. They want to expand their business with a second location; they currently have a studio in Wilmington. Jiu Jitsu is a wrestling sport; classes will be available for both adults and kids.

Craig Sherman asked if the building had an emergency location and what the proposed maximum capacity is versus parking availability.

Mr. Walters said the emergency exit is located in the rear of the building. Maximum capacity will be 25 – 30 people. A parking lot is on-site and parking is available on Patriot Drive – he is not sure of the exact number of parking spaces; it's a new building.

Gene Bloemker asked when classes will be held.

Walters said classes will be scheduled from 12 to 1 p.m. and evenings from 5 to 8 p.m., 5 days a week.

Moved by Bruce Orr and seconded by Craig Sherman to recommend Mayor and Council approve 119 Patriot Drive, Suite D, Conditional Use Permit request for a martial arts academy (302 Brazilian Jiu Jitsu) in an M-I zoned area. CU-19-21. Tax Parcel No. 23-041.00-019. Motion Carried Unanimously.

2. 118-120 Sleepy Hollow Drive, Suites 5 & 6 – Conditional Use Permit request for a custom car restoration facility (One Off Rod and Custom) in an M-I zoned area. CU-20-21. Tax Parcel No. 23-021.00-129.

Gary Conkell said he purchased the business from Larry Stewart about six years ago. He did not realize that he needed a Conditional Use Permit in his name to continue the business until he was notified by the Town that he was in violation.

Gretchen Rachko asked if the violations cited by code enforcement had been cleared up yet. Mr. Conkell said he was just cited for the violations a week ago and the code officials requested that he prepare a plan of action to rectify the violations.

Joe Pontak asked if there is a time frame to clean up the area. Mr. Conkell said the time frame will be discussed when the plan of action is presented to the code officials. There is no time frame at this point.

Morris Deputy commented that the NPDES Permit has conditions for cleaning up certain violations, but there is no time frame. It will be cleaned up regardless of what is recommended tonight.

Chip Roberts asked if any hazardous materials are used. Mr. Conkell said their painting facility uses water based, environment friendly paint; DNREC inspects the facility periodically. Product disposal is DNREC compliant.

Craig Sherman questioned the "fluid discharge stain" listed in the violations. Mr. Conkell said the stain was caused by a broken hydraulic line on a fork lift; they were instructed on how to clean it up.

Bob Mullin, landlord for the property, said he spoke with the code officials last week about some of the issues, including the fence. Mr. Mullin explained that a split rail fence was installed when the building was built. A portion of the fence had been removed and vehicles from the adjoining property were cutting through to the fire lane. Mr. Conkell parked a vehicle in the fire lane to stop other vehicles from coming through. Mullin said he is getting estimates to fix the fence.

Moved by Craig Sherman and seconded by Bruce Orr to recommend Mayor and Council approve 118-120 Sleepy Hollow Drive, Suites 5 & 6 Conditional Use Permit request for a custom car restoration facility (One Off Rod and Custom) in an M-I zoned area, with the conditions the Town's code officials monitor and maintain the compliance for the property, per the cited violations, to ensure no long term issues continue. CU-20-21. Tax Parcel No. 23-021.00-129. Motion Carried Unanimously.

3. Dove Run Centre – Lot B – Conditional Use Permit request for garden apartments in a C-3 zoned area. CU-16-21. Tax Parcel No. 23-025.00-084.

Moved by Craig Sherman and seconded by Gene Bloemker to bring tabled Item 3 Dove Run Center Lot B Conditional Use Permit CU-16-21 request for garden apartments in a C-3 zoned area, back to the floor consideration. Motion Carried Unanimously.

Chairman Chillas announced the Town met with DelDOT and found that current traffic studies show the project meets acceptable standards. Therefore, only the zoning request will be considered tonight, not traffic.

Mark Russo with Van de Mark & Lynch Engineers presented the plan for Dove Run Center, Lot B Conditional Use Permit request for garden apartments in a C-3 zoned area.

- Lot B is approximately 15.1 acres, the undeveloped portion of Dove Run Center.
- Eight, three-story garden apartments, a pool and community center are proposed.
- The plan proposes 24 units per building for a total of 192 units.
- The buildings will be similar to the apartment buildings at Westtown.
- Water, sewer, and stormwater systems will tie into existing infrastructure.
- Landscaping will meet or exceed Town requirements.
- This plan reduces the impervious area by two acres and will have less environmental impact versus the previously approved shopping center plan. Reducing the impervious area will produce less stormwater runoff to the ponds and provide more green space.
- The apartment use will reduce the number of vehicle trips versus a shopping center build-out.
- The PLUS review meeting was held.

Chairman Chillas asked if any changes had been made to the plan.

Mr. Russo said no changes have been made; changes are usually made after the PLUS comments and the engineer's review comments have been received.

Gretchen Rachko asked what the outcome of the PLUS meeting was.

Mr. Russo said other than standard comments, they discussed changing the turning movements at the entrance off Dove Run Boulevard to Dornoch Circle, and that movement will be adjusted.

Joe Pontak asked what the 20 garages are for.

Bill Krapf said the garages are for lease on a first-come/first-served basis by the apartment residents. Residents use the garages to park their vehicles inside or for additional storage space.

Bruce Orr asked if the 4800 sq. ft. community center and pool are sufficient for the size of the development.

Mr. Russo said yes, the ratio is similar to other apartment complexes.

Morris Deputy said there is no size requirement for a pool or community center based on number of units.

Vince Green asked if an environmental impact study was done by DNREC.

Morris Deputy said an environmental impact study was done for the original Dove Run Plan. The new plan will have to comply with the State's Sediment and Stormwater Regulations.

Chuck Longfellow, resident, asked the commission to deny the Conditional Use Permit request per the Zoning Code Section 10. (1) (a) (iii) stating that it will "Be in conflict with the general purposes of the Comprehensive Plan or related Town planning or development policies". He further commented that the Comp Plan states that we must "ensure that Middletown residents have adequate access to retail, personal and professional services and employment establishments. Page 44 states "to attract and retain existing employers, this Plan recommends that sufficient land be zoned for commercial and industrial uses". The parcel is zoned Employment/Regional Retail. The west side of town has plenty of employment opportunities – the east side should have more. He feels a loophole in the code allows the owner to apply for a Conditional Use Permit.

David Graham asked if the Zoning Code definition of school versus day care was ever clarified.

Morris Deputy said the interpretation from the solicitor is that a day care center is not considered a school.

Question on Traffic Study:

Craig Sherman explained that the traffic plan was estimated out through 2045 by DelDOT; the plan is broken down per multiple sections through the east side and west side.

Joe Pontak said the traffic plan is on the Town's website and explains how the study was done. He said the study takes some time to go through, but recommended residents take the time to review it. He pointed out that if a plan meets the requirements of the code, there's nothing they can do.

Bruce Orr added that two scenarios were done for the study. The first study without improvements gave the area an E rating; the second study showing proposed improvements, such as the additional lanes, traffic circles, etc., improved the rating to A and C for traffic movement in the Dove Run area.

The commission explained that they are a recommending body only; Mayor and Council have final approval; concerns should be expressed at Council meetings, which are held the first Monday of each month. The next meeting is January 3, 2022.

Additional comments from residents:

- The residents should have been notified about the proposed change.
- The apartments will create additional trash and crime.
- Who did the traffic study?
- The property is zoned Employment/Regional Retail – not residential.
- The existing traffic and safety of children going to the high school is a big issue. Suggested the installation of an ADA compliant walkway over 299.
- Suggested installing an eight-lane pool for the general community to use.
- Just because a plan is legal doesn't mean it's right.
- It was suggested the plan be tabled until the residents can voice their opinion to Council. It was also suggested the code should be changed to eliminate the section allowing apartments in the commercial district with a Conditional Use Permit.
- Many people use Dove Run Boulevard to cut through the development; additional apartments will only increase that problem.

Chairman Chillas asked the Commission members to state the reason for their vote.

Moved by Gene Bloemker and seconded by Bruce Orr to recommend Mayor and Council approve Dove Run Centre, Lot B, Conditional Use Permit request for garden apartments in a C-3 zoned area. CU-16-21, Tax Parcel No. 23-025.00-084.

Gretchen Rachko: Nay – The original commercial plan should remain.

Bruce Orr: I vote Yes, based on the outcome of the traffic analysis meeting.

Gene Bloemker: Nay – The original commercial plan should not be changed.

Joe Pontak: Nay – The original proposed plan should not be changed.

Craig Sherman: Nay – It would be better to leave it commercial versus residential.

Charles Roberts: Nay – Based on the number of residents attending the meeting, the original plan should not be changed.

Donald Dibert: Nay – The original plan should not be changed.

Motion DENIED 6-1.

The Commission suggested the Dove Run residents attend the Mayor and Council meeting to express their concerns.

It was also suggested the developer should meet with the residents of Dove Run to discuss the project.

4. Dove Run Centre – Lot B – Preliminary Major Land Development Plan to redevelop Lot B in the Dove Run Centre. Previously-approved plans were for big-box commercial development. This re-development plan asks for garden apartments. Tax Parcel No. 23-025.00-084.

Moved by Gene Bloemker and seconded by Bruce Orr to recommend Mayor and Council approve Dove Run Centre – Lot B – Preliminary Major Land Development Plan to re-develop Lot B in the Dove Run Centre. Previously-approved plans were for big-box commercial development. This re-development plan asks for garden apartments. Tax Parcel No. 23-025.00-084.

With the Conditional Use Permit being denied, no vote was taken on the Land Development Plan.

Moved by Charles Roberts and seconded by Donald Dibert to adjourn. Motion Carried Unanimously.

We believe these minutes accurately reflect what transpired; however, we will appreciate comments involving a different understanding of what occurred. Unless we are notified in writing to the contrary within 10 days after receipt, we will assume all in attendance concur with the accuracy of this transcription.

Respectfully Submitted,

Morris Deputy, Town Manager

RY 12/21/21

Cc: Mayor and Council
P & Z Members
All Attendees
Duffield Associates