

**CITY OF DOVER PLANNING COMMISSION
FEBRUARY 19, 2019**

The Regular Meeting of the City of Dover Planning Commission was held on Tuesday, February 19, 2019 at 7:00 PM in the City Hall Council Chambers with Chairman Mr. Tolbert presiding. Members present were Mr. Adams, Mr. Roach, Ms. Edwards, Mr. Holt, Mr. Baldwin, Dr. Jones, Ms. Maucher and Mr. Tolbert. Mrs. Welsh was absent.

Staff members present were Mr. Dave Hugg, Mrs. Dawn Melson-Williams, Mr. Jason Lyon, Mr. Julian Swierczek, Mr. Eddie Diaz and Mrs. Kristen Mullaney.

APPROVAL OF AGENDA

Mr. Adams moved to approve the agenda as submitted, seconded by Mr. Holt and the motion was unanimously carried 8-0 with Mrs. Welsh absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF JANUARY 22, 2019

Mr. Holt moved to approve the Planning Commission Meeting minutes of January 22, 2019, seconded by Mr. Baldwin and the motion was unanimously carried 8-0 with Mrs. Welsh absent.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams stated that the next Planning Commission regular meeting is scheduled for Monday, March 18, 2019 at 7:00pm in the City Council Chambers.

Mr. Hugg provided an update on the regular City Council and various Committee meetings held on January 28 & 29, 2019.

Mrs. Melson-Williams stated that there is a training series that is available to the Commissioners. If anyone is interested in attending those events please let Planning Staff know to get registered. They are typically held on Friday mornings in Dover. The next one is coming up on the first Friday in March and then there is a second one also being held in March.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Melson-Williams presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

- 1) Request for Extensions of Planning Commission Approval:
 - a. SB-18-01 Minor Subdivision Plan for 747 North DuPont Highway – Request for One Year Extension of the Planning Commission approval granted February 20, 2018 for a Minor Subdivision Plan application to permit the subdivision of a 25.01 +/- acre parcel into: Lot 1 of 10.007 acres and Lot 2 of 15.004 acres. The property is located on the northeast side of North DuPont Highway and south of Leipsic Road. The property is zoned SC-2 (Community Shopping Center: Shopping Center Development Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 3: Excellent

Recharge Area). The owner of record is Rojan DD 15 LLC. Property Addresses: 747 North DuPont Highway. Tax Parcel: ED-05-068.05-01-15.00-000. Council District 3.

Representatives: None

Mr. Diaz stated that this application went before the Planning Commission in February 2018. The purpose of the plan was to subdivide the parcel at 747 North DuPont Highway from 25 acres into a 10 acre front parcel along North DuPont Highway and a 15 acre rear parcel along Leipsic Road. As it has been a year since the plan was submitted to the Planning Commission and they have not yet finalized the plan which is getting it recorded at the Recorder of Deeds Office in Kent County. That Subdivision Plan will expire unless it is given an extension tonight. Staff is recommending that they do be granted an extension in light of they recently submitted the final documents needed to get final approval for the subdivision and get it recorded.

Ms. Maucher moved to approve SB-18-01 Minor Subdivision Plan for 747 North DuPont Highway for the request for extension, seconded by Ms. Edwards and the motion carried 8-0 by roll call vote. Ms. Maucher voting yes; they have made progress according to Staff and they are close to commencing. Mr. Adams voting yes. Mr. Roach voting yes. Ms. Edwards voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Dr. Jones voting yes. Mr. Tolbert voting yes.

NEW APPLICATIONS

- 1) AX-19-01 Lands of New Wind Properties 2920 LLC at 2920 N. DuPont Highway – Public Hearing and Review for Recommendation to City Council of an Annexation Request and Rezoning Request for a parcel of land totaling 0.57 acres +/- (25,000 SF) located at 2920 North DuPont Highway, Dover. The property is currently zoned BG (General Business Zone) in Kent County. The proposed zoning is C-4 (Highway Commercial Zone). The property is located on the east side of North DuPont Highway and adjacent to the north side of Maxwell Street. The annexation category according to Dover's 2008 *Comprehensive Plan* is Category 1: High Priority Annexation Areas and the land use designation is Commercial. The owner of New Wind Properties 2920 LLC. Property Address: 2920 N. DuPont Highway. Tax Parcel: ED-00-057.02-01-08.00-000. Proposed Council District 3. Ordinance #2019-01. *The First Reading of this Annexation Request was completed on January 14, 2019. Final Reading/Public Hearing is scheduled before City Council for March 11, 2019.*

Representatives: Mr. Brock Parker, Parker and Associates

Mrs. Melson-Williams stated that this is a request for Annexation. The applicants are the owner of record which is New Wind Properties 2920 LLC and also Franchise Management Services Inc. who is the potential redeveloper of the site. The property is 0.57 acres and located on the east side of North DuPont Highway and is adjacent to Maxwell Street. This is the area of the City that is up across from what was the old Dover Sheraton, the North Dover Lowes, north of Wawa and near the Dover Towne Center project that has the Outback Steakhouse Restaurant in the front. Currently, the property in the County is zoned BG (General Business Zone). They are requesting annexation into the City with a proposed zoning classification of C-4 (Highway Commercial Zone). With any Annexation, we have to look to the City's *Comprehensive Plan*

and in there we find that this area is designated as Category 1: High Priority for Annexation and has a land use designation of Commercial. On the property, there is currently a vacant commercial building and the potential development has been working through some of the review process with Kent County to redevelop that building into a restaurant with drive-through for that site.

Tonight, the Planning Commission will be making a recommendation on the Annexation and a recommendation in regards to the zoning of the property. In doing so, our *Comprehensive Plan* calls for our zoning to be in compliance with the land use category that is outlined in the *Comprehensive Plan*. With a land use category of Commercial, the proposed zoning of C-4 (Highway Commercial Zone) does comply with that. Also, to be considered should be the character and compatibility of the surrounding land uses, the adjacent street types and the general environment that the property is located in. The DAC Report does include a listing of the types of uses that are allowed in the C-4 (Highway Commercial Zone). It allows for a variety of retail, office, restaurants and service type of establishments. It also allows for hotels, places of public assembly, some other service needs and some manufacturing type activities. There are also a number of conditional uses that could be reviewed in the C-4 (Highway Commercial Zone). It is the recommendation of Planning Staff that the Annexation occur and that the zoning of the property be C-4 (Highway Commercial Zone). Staff finds that the subject property is within the City's Annexation Plan as a High Priority Annexation Area and that the C-4 (Highway Commercial Zone) zoning is consistent with the development along the highway corridor and is also consistent with the land use category of Commercial. In the DAC Report, a number of the participating agencies have provided comments. Basically, they have no objections to the Annexation of the parcel. They do provide a series of Advisory Comments related to redevelopment of the site. Specifically, the Public Works Office has noted that water and sanitary sewer is located on the west side of North DuPont Highway and the applicant is pursuing the ability to connect to City sewer through that office. The property already is served by City of Dover Electric. Likewise, the Fire Marshal's Office has provided some advisory information related to fire protection needs of the site and the building should it become part of the City of Dover. DelDOT and the Kent Conservation District likewise have no objection to Annexation.

Mr. Parker stated that they are the Civil Engineers and Surveyors representing the developers of the property. They take no exception to any of the comments in the Staff Report. The Advisory Comments are all things that we know and things that we are prepared to overcome. As you know, the property has been through the County portion of the planning process. It was at the conclusion of that planning process that they went in to get their septic system replaced. Once they started throwing in all of their arcs from all of their adjacent wells and septic, it just got too small for their feasible use for a Dunkin Donuts Store. They approached Dover and they said that there is sewer on the other side; so their current plan is to tie that building into the sewer that is on the other side of the highway through a small lift station force main. ~~Mr. Diaz~~ (Mr. Jason Lyon) and his group have been very accommodating and helpful to them in trying to get that plan work together. They have met with DelDOT and they seem agreeable to letting them get across their road. The proposed zoning that is suggested by the City does fit their needs and their ultimate use. They take no exception to any of the comments in the DAC Report.

Mr. Tolbert questioned if they will continue to work cooperatively with Planning Staff regarding this application? Responding to Mr. Tolbert, Mr. Parker stated yes.

Mr. Tolbert opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Ms. Maucher questioned if they were planning to connect to City water immediately or wait until the well fails? Responding to Ms. Maucher, Mr. Parker stated that they are going to wait until the well fails. DNREC is now reviewing the existing well to make sure that it's sufficient for their use.

Mr. Holt moved to recommend approval to City Council for application AX-19-01 to C-4 (Highway Commercial Zone).

Ms. Edwards questioned if the motion should also include the Annexation of the property? Responding to Ms. Edwards, Mr. Tolbert stated absolutely.

Mr. Holt moved to recommend approval to City Council for application AX-19-01 for annexation of the property and for the zoning of C-4 (Highway Commercial Zone), seconded by Dr. Jones and the motion was carried 8-0 by roll call vote. Mr. Holt voting yes; he thinks that it's a good extension on the City Plan and should be a good fit for Dover. Mr. Baldwin voting yes. Dr. Jones voting yes. Ms. Maucher voting yes; based on Staff recommendations. Mr. Adams voting yes. Mr. Roach voting yes; you can never have too many Dunkin Donuts. Ms. Edwards voting yes. Mr. Tolbert voting yes; there are no problems with this application.

- 2) MI-19-02 Comprehensive Plan Amendment 2019 – Public Hearing and Review for Recommendation to City Council on an Amendment to the 2008 *Comprehensive Plan*, as amended. The Amendment is for Consideration of Amendment to Map 12-1: Land Development Plan Map. The Request for a 22.967-acre parcel located on the north side of Commerce Way is to revise the Land Use Classification from Residential High Density to Industrial and Public Utilities. The area to be revised consists of 13.967 acres as the remaining area of 9.00 acres currently has the Land Use Classification of Industrial and Public Utilities. The property owner is H&M Properties, LLC c/o Jack Melvin. Property Address: 22.967 Acres on Commerce Way. Tax Parcel: ED-05-076.10-02-07.03-000. Ordinance #2019-04. *This is associated with Rezoning Application Z-19-01.*

Representative: Ms. Cynthia Yencer, R & R Commercial Realty

Mrs. Melson-Williams stated that this is a request for an Amendment to what is the 2008 *Comprehensive Plan* for the City of Dover. Tonight, we are considering an amendment to Map 12-1 which is the Land Development Plan Map that is included as part of the *Comprehensive Plan*. For this request, there are dealing with a property that is located on the north side of Commerce Way. The request is to revise the land use classification from Residential High Density to a classification of Industrial and Public Utilities.

Mrs. Melson-Williams shared a visual map example of the before and after for this property. As

you can see, currently the Land Development Plan Map is split between the two land use classifications of the Residential High Density and the Industrial. The applicant made a request to the City in December which is the timeframe for the once a year time that they consider Comprehensive Plan Amendments to change that classification from Residential to the Industrial classification. The property in total is 22.967 acres of land. They are dealing with an area of revision that is on the western portion of the property and that is 13.967 acres. The remaining 9 acres already carries with it that Industrial land use classification. In looking at this request, they go to the *Comprehensive Plan* which discusses approaches to both the Residential High Density and what they would call Employment Centers and Industrial Land Uses in the City. Information excerpted from the *Comprehensive Plan* is in the DAC Report for your reference. Adjacent to this property is actually part of the Enterprise Business Park; so it has kind of industrial and office type neighbors. To the north and west, there are residential areas in the form of single family detached houses and the Woodmill Apartment Complex. This evening, the Planning Staff is recommending that the Commission approve the request for change in the land use classification. As you all know, Staff is currently working on preparing the 2019 Comprehensive Plan and as early as August 2018 they released a Preliminary Land Development Plan Map for that new document. Specifically for this area, Staff was making the recommendation to take that entire parcel to that Industrial land use classification. The property owner wanted to be moving a little quicker than we are through the Comprehensive Plan process; so, that's why they went ahead and made the Comprehensive Plan Amendment request. While Staff recognizes that both affordable housing and economic development are needed in the City and they are both issues that the *Comprehensive Plan* strives to address, they feel that this site is better suited for Industrial development. It is one of the few shovel ready Industrial sites in the City since it's in an Industrial Park that has the infrastructure in place so we do support the land use classification change to Industrial. The other participating DAC members have no objection to this proposed amendment to the *Comprehensive Plan*. She will note that this is associated with a Rezoning application that they will consider next.

Ms. Yencer stated that she was here tonight on behalf of the owner, H & M Properties LLC. She is here to answer any questions that the Commission might have in reference to their applications or the Comprehensive Plan.

Mr. Tolbert opened a public hearing.

Ms. Charley Roberson – 1242 South Farmview Drive Dover DE 19904

Ms. Robinson stated that there is an area behind the houses that has a wooded parcel that has foxes and sometimes deer. She would like to know what is going to happen with that area. Responding to Ms. Robinson, Mrs. Melson-Williams stated that she believes that Ms. Robinson is talking about the area along the north property line of the subject site. That is not part of this application and it would remain as is. She believes that there is some City owned land but she is not sure if it is or not. She believes that the wooded area is not found on this parcel, it's something that separates this parcel from the residential area. One thing of note, in order to develop this property there will be additional review processes involving a Site Development Plan that will look more closely to what it is adjacent to and what types of buffering may be required. This is a first step towards making a change in rezoning the property. She doesn't believe that it affects that wooded area that Ms. Robinson is referring to. (Ms. Robinson had no

further statements or questions.)

Mr. Tolbert closed the public hearing.

Mr. Adams moved to recommend approval to City Council for MI-19-02 Comprehensive Plan Amendment 2019 for land use classification change from Residential High Density to Industrial and Public Utilities as submitted, seconded by Dr. Jones and the motion was carried 8-0 by roll call vote. Mr. Adams voting yes. Mr. Roach voting yes. Ms. Edwards voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Dr. Jones voting yes. Ms. Maucher voting yes. Mr. Tolbert voting yes.

- 3) Z-19-01 Lands of H & M Properties, LLC on Commerce Way – Public Hearing and Review for Recommendation to City Council for a rezoning application for a 22.967 acre +/- parcel. The property is zoned RG-2 (General Residence Zone) and IPM (Industrial Park Manufacturing Zone). The proposed zoning is IPM (Industrial Park Manufacturing Zone) for the entire parcel. The property is located on the northwest side of Commerce Way and north of West North Street and is part of the Enterprise Business Park. The owners of record are H & M Properties, LLC. Property Address: 22.967 Acres on Commerce Way. Tax Parcel: ED-05-076.10-02-07.03-000. Council District 1. Ordinance #2019-05. *Associated with request MI-19-02 for Comprehensive Plan Amendment as a Land Use Classification revision to Map 12-1.*

Representatives: Ms. Cynthia Yencer, R & R Commercial Realty

Mrs. Melson-Williams stated that this is for the same property and this is the second step in the process; this is a request for Rezoning. The property is located on the north side of Commerce Way. As mentioned before, the entire parcel consists of 22.967 acres and the area of this Rezoning request is 13.967 acres. Currently, that area is zoned RG-2 (General Residence Zone) and the balance of the property is zoned IPM (Industrial Park Manufacturing Zone). The applicant is requesting that the area that is currently RG-2 (General Residence Zone) be rezoned to IPM (Industrial Park Manufacturing Zone) which would make the entire parcel in the IPM (Industrial Park Manufacturing Zone) district. As mentioned before, with any Rezoning they have to look to the *Comprehensive Plan* and with the Commission's recommendation of approval of the Comprehensive Plan Amendment that sets up the appropriate land use classification for them to consider rezoning of the western portion of this property to the IPM (Industrial Park Manufacturing Zone) zoning district. The DAC Report does note some previous history related to zoning and previous development efforts that were focused on this property. However, the most recent Development Plan from 2008 has long since expired and that project was to develop that residential side in that format. That equitable owner never followed through and the current property owner is seeking to take his entire property to that IPM (Industrial Park Manufacturing Zone) to set it up for future development activity.

The Planning Staff in regards to this Rezoning request is recommending for approval of the Rezoning from RG-2 (General Residence Zone) to IPM (Industrial Park Manufacturing Zone) noting that the companion Comprehensive Plan Amendment will have to be first approved before the zoning request can be considered compliant with the *Comprehensive Plan*. The

Rezoning, Staff finds, would place the entire property in the same zoning district and actually return it to what was its original zoning classification of IPM (Industrial Park Manufacturing Zone). The Development Advisory Committee's other participating agencies have no objections to the proposed Rezoning. Again, they provide some advisory comments for future development activities should that occur on this property. It is noted that any development would require at least some type of Site Plan application which would be subject to its own Public Hearing process.

Ms. Yencer stated that they have no comments at this time and they accept all of the DAC comments.

Mr. Tolbert opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Ms. Edwards moved to recommend approval to City Council for Z-19-01 Lands of H&M Properties LLC from RG-2 (General Residence Zone) to IPM (Industrial Park Manufacturing Zone), seconded by Mr. Holt and the motion was carried 8-0 by roll call vote. Ms. Edwards voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Dr. Jones voting yes. Ms. Maucher voting yes. Mr. Adams voting yes. Mr. Roach voting yes. Mr. Tolbert voting yes.

- 4) Z-19-02 Lands of Wesley College at 45 South State Street – Public Hearing and Review for Recommendation to City Council for a rezoning application for a two (2) parcels of land totaling 0.81 acres +/- located at 45 South State Street. The properties are zoned RG-O (General Residence and Office Zone) and are subject to the H (Historic District Zone). The proposed zoning for both parcels is IO (Institutional and Office Zone), while retaining the H (Historic District Zone). The properties are located between South State Street and South American Avenue, north of Reed Street. The owner of record is Wesley College, Inc. Parcel 1 is 0.32 +/- acres and is addressed as 45 South State Street. Parcel 2 is 0.49 +/- acres and has frontage on South American Avenue. Tax Parcels: ED-05-077.05-04-33.00-000 and ED-05-077.05-04-36.00-000. Council District 2. Ordinance #2019-06.

Representative: Mr. Jonathan Street, Becker Morgan Group

Mr. Swierczek stated that this application is a review of a Rezoning application consisting of two parcels of land totaling 0.81 acres located on the east side of South State Street north of East Reed Street. The property is zoned RGO (General Residence & Office Zone) and is currently subject to H (Historic District). The proposed zoning is to IO (Institutional & Office Zone) while retaining the H (Historic District Overlay Zone). The property on the west has frontage along South State Street and contains the building that previously housed the City of Dover's Library. The parcel to the east has frontage along South American Avenue on its east side and contains a parking lot as well as two carriage house structures. The applicant is seeking Rezoning to IO (Institutional & Office Zone) to allow for the future utilization of the building by Wesley College as a flexible classroom and meeting space for their Occupational Therapy Program.

The redevelopment of the site will be subject to a separate application and permit submission. This is only for the Rezoning. The 2008 *Comprehensive Plan* recommends that the property be

used for a mixed-use zone type and the proposed zoning of IO (Institutional & Office Zone) is listed as compatible with the Mixed Use classification. Furthermore, the IO (Institutional & Office Zone) lists public institutions including schools, colleges and universities as permitted uses. Staff therefore recommends that the Rezoning be granted to IO (Institutional & Office Zone) with the H (Historic District Overlay Zone) to remain as requested as the proposed zoning is consistent with the *Comprehensive Plan* for the Mixed-Use land use. Wesley College is a vital asset for the City of Dover's Downtown area and the intended project that this Rezoning would allow represents a significant investment. It further promotes the idea of a mixed-use Downtown and there are several office, residential and institutional uses within the immediate vicinity. The IO (Institutional & Office Zone) clearly permits institutional uses such as colleges and the applicant is keeping the H (Historic District Zone) designation.

Mr. Street stated that the application is simply a Rezoning of the two parcels. One of them contains the old Dover Public Library and the other one is to the rear of the Library itself. Wesley acquired these properties from the City and they are in the middle of the planning stage for redevelopment of the interior of the building itself and the classroom space. These parcels will eventually be consolidated together to make up one parcel to utilize the building itself as classroom space and the parking lot for the College itself. They are in receipt of the Staff Reports and they take no exception to them. They have no issues or questions with the Report itself.

Mr. Tolbert opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Dr. Jones moved to recommend approval to City Council for Z-19-02 – Lands of Wesley College at 45 South State Street to change the zoning from RGO (General Residence & Office Zone) to IO (Institutional & Office Zone) with the H (Historic District Overlay Zone), seconded by Ms. Maucher and the motion was carried 8-0 by roll call vote. Dr. Jones voting yes. Ms. Maucher voting yes. Mr. Adams voting yes. Mr. Roach voting yes and hopes to see that building revitalized as soon as possible. Ms. Edwards voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Mr. Tolbert voting yes; the old Library building will be very well used by the College.

- 5) Z-19-03 Lands of Schreppler at 157 Roosevelt Avenue – Public Hearing and Review for Recommendation to City Council for a rezoning application for 1.641 acres +/- parcel of land located at 157 Roosevelt Avenue. The property is zoned R-8 (One-Family Residence Zone). The proposed zoning is RG-2 (General Residence Zone). The property is located on the north side of the eastern end of Roosevelt Avenue. The owners of record are Paul and Linda Schreppler. The equitable owner is Miller Investments LLC c/o David Miller. Property Address: 157 Roosevelt Avenue. Tax Parcel: ED-05-077.18-02-75.00-000. Council District 2. Ordinance #2019-07.

Representative: Mr. David Miller, Miller Investments LLC

Mr. Diaz stated that this application is at the east end of Roosevelt Avenue. This parcel is bordered on the east by the St. Jones River and on the north and on the west is bordered by lands of the Riverside Mobile Home Park. Across the street are the River Chase Apartments and additional nearby uses in this block of Roosevelt Avenue include a number of one family

residences, the Kent County Theater Guild and towards the west end, a number of commercial uses that front on North DuPont Highway. The parcel is 1.67 acres in size. It is currently zoned R-8 (One Family Residence Zone). The proposed zoning is RG-2 (General Residence Zone). The RG-2 (General Residence Zone) allows a number of additional kinds of residential uses beyond one family dwellings; particularly, it allows garden apartment buildings. This would be a fit for the applicant's stated intention to develop a 22-unit apartment building on the site. The applicant did submit a preliminary plan of what that apartment building (layout) would look like; however, because this is the application for the Rezoning, your motion tonight would not be approval or denial of the specific design that you see on the plan. It would have to come back to the Planning Commission for a regular Site Development Plan approval. Staff is recommending that the Planning Commission and the City Council approve the Rezoning. Staff has noted that this area has trending away from its original historical use as one family dwellings towards more dense residential uses with the existing River Chase Apartments and the Riverside Mobile Home Park being the prior uses that are fitting that trending. The applicant also came in October 2018 to request Rezoning of another property on this street that also went from R-8 (One Family Residence Zone) to RG-2 (General Residence Zone) that were eighteen apartment units.

Mr. Holt stated that they received a letter tonight with an opposition from Riverside Mobile Home Park regarding a sewer easement that they have. How is that going to affect the property? They are saying that it would limit their use of moving mobile homes in and out of the property. Responding to Mr. Holt, Mr. Diaz stated that there is a sanitary sewer easement between the two parallel dotted lines shown on the plan that run diagonally across the property. This letter actually notes two different reasons. The sanitary sewer easement refers to the land set aside for the sewer line that runs underneath the ground within that area. Ultimately, in order for this property to be rebuilt, that property would have to be receptive somehow. It would either have to not be disturbed during construction or it would have to be redirected around development. The other easement that is noted in this letter is a claimed easement by necessity. That is different from the sanitary sewer easement; it's more of an access easement. That is what the owner of the Mobile Home Park is claiming that they use it to basically take homes when they are coming in and out of the park across the grass because the normal driveway for Park is too narrow and has too great an angle for the homes to brought down it. One thing that you should note is that the sanitary sewer easement is a recorded easement while the "easement by necessity" means in legal terms is that they don't have something written down but because they have been using it unchallenged then they basically have an established right to it. But they would need to work with a legal team to actually transform that into a formal easement. At the moment, it is not recognized the way the sanitary sewer easement is.

Mr. Adams questioned the width of the sanitary sewer easement. Responding to Mr. Adams, Mr. Miller stated that the current written easement is a ten-foot easement access for the maintenance of the sewer. It is drawn out as twenty feet on the plan because typically they are twenty feet but this one was written back in the 1960's and is only a ten foot easement currently.

Mr. Adams stated that given the fact that the Code has changed, does that change the easement at all or is the recorded easement of ten feet as noted by the equitable owner the amount of easement that we should be thinking about when we are thinking about this easement that's in place? Responding to Mr. Adams, Mr. Diaz stated that they would be working with a ten foot

easement because that would be in the property's legal description. It would basically be considered non-conforming to current Code.

Mr. Miller stated that in reference to that ten foot easement, he would have no problem making it twenty feet. He has been working with the owner of the mobile home park trying to accommodate the fact that this development would block her usage of getting those homes in and out of the property. At this point, she has not been willing to accept his negotiation to move everything over and give her access to the property on the right side. He is more than willing to make that happen as well. However, the recommendations that Staff have made and the work that we have done with them to make this project viable to bring additional housing to this community is because we all know housing is very limited and tight in this community. So, we would just ask that you would approve the zone change for them.

Ms. Maucher questioned how long the access has been used by the Mobile Home Park? Responding to Ms. Maucher, Mr. Miller stated that because he is only the equitable owner, he doesn't know the answer to that. He knows that there has been a claim and he knows that there is an agreement between the current owner and the existing owner that she was not allowed to use that to move the homes in and out because from what he understands, they damaged the property one time doing it. Regardless, it is a sewer easement access for maintenance of the sewer. It is not an access road or an access to allow them to move property from one place to another.

Mr. Tolbert opened a public hearing.

Ms. Nicole Faries – Baird, Mandalas and Brockstedt for 151 E Roosevelt Avenue Dover DE 19901

Ms. Faries stated that she represents Riverside Mobile Home Park. Her client is opposed to this application because it does have two easements across this property. Mr. Diaz is correct; the other easement, the easement by necessity, which they would suggest was obtained by adverse possession. It was stated on the record that it was used without permission; therefore, it's adverse possession. It has been used for over forty years and they will be filing legal action to get that legally recognized because it is not in writing. The important part for her client is that they have old mobile homes in the mobile home community and when those homes deteriorate, they have to move those homes out and move new homes in. They have been using the sewer easement area as also a transgressional easement to basically move homes in and out of the community because they can't get through their curved entrance. The other concern that they have is that there have been several other lots on East Roosevelt Avenue that were converted to Garden Apartments and the traffic in that area is becoming burdensome. There was testimony from the residents. The traffic backs up at the light because there is a car wash in the neighborhood as well. So to add another apartment complex on top of the mobile home community and the other apartment complexes in the area are just greatly going to inhibit this roadway. There are residents of Riverside Mobile Home Park here tonight in opposition. (7 Residents were indicated in the audience by a show of hands.)

Mr. Roach stated that the applicant made a statement earlier that he was trying to work with the owner in regards to creating a different way to be able to have the mobile homes still be able to be moved. Was that a conversation that you are aware of or is that something that the owner is

not willing to negotiate in regards to access for the mobile homes to be able to be taken in and out? Responding to Mr. Roach, Ms. Faries stated that she has not had any conversations with Mr. Miller. She has reached out to his representative to say that she is representing the property owner but she has not received any communications. If they could have more discussions after tonight, she definitely welcomes that.

Mr. Adams stated that he would be interested to understand from either Miller Investments or from the property owner if that point is in dispute at all. Is it your understanding that this property has been used for forty years in the way that it's been represented by counsel? Responding to Mr. Adams, Mr. Miller stated that when he first approached the seller which is the owner of the mobile home park in reference to actually purchasing the park as well, he had paid to have a survey done on that property. When they did the survey, she had additional encroachments. The driveway encroaches and she has some light poles, asphalt and dumpsters that encroach upon this property. In discussions with the property owner, she said she has no problem moving all of that stuff off of your (his) property. He has never been told by her that this is something that they have used for years. All that he heard was one story that they moved a home one time, damaged the property and the owner got upset. He hasn't seen the letter. He has never been contacted by anybody. He doesn't have a counsel; he works for himself. This is completely out of the blue tonight for him.

Ms. Faries stated that she doesn't think that the parties agree over the easement and she thinks that's why legal action would be necessary. Mr. Miller mentioned speaking to the seller. She wants to make it clear because some residents have been confused about this; Riverside Mobile Home Park is not the seller and is not selling. (Ms. Faries introduced Ms. Karen Kemp, Property Manager of Riverside Mobile Home Park.) She asked Ms. Kemp how long she has worked for this mobile home park. Responding to Ms. Faries, Ms. Kemp stated approximately six years.

Ms. Faries questioned if during that time they have moved homes in and out of the community? Responding to Ms. Faries, Ms. Kemp stated yes they have.

Ms. Faries asked Ms. Kemp to describe what path they have used. Responding to Ms. Faries, Ms. Kemp stated that they try to stay as close to their driveway as they can. The back tires do usually hit the property that we are talking about this evening as it comes around the turn. They have on a couple of occasions come across the field when they couldn't make access around the driveway and any time damage was done they did fix that damage. They brought in dirt; they seeded it and fixed it.

Mr. Tolbert stated that he would like to remind everyone that they are only dealing with a Rezoning tonight, not any other issue regarding this application. They will have to come back before the Planning Commission again if there is anything else.

Ms. Maucher questioned how the resolution of the legal issue would affect the project if you were to have to give up that easement? How would that impact your plan for the project? Responding to Ms. Maucher, Mr. Miller stated that whenever you have an easement for a sewer line maintenance you have to leave it accessible. He can't build a building on it so it would always be accessible to her by law because it has to be. What he proposed to her is to take the

driveway that she has on the left hand side and slide everything over and give her a complete driveway that comes all the way through so she can just come right off of the street. They spoke to Mr. Diaz about this and they are aware that they would have to go to the Board of Adjustment to get additional waivers for some of the compliance of the Code at that point but this is something that he has had his architects drop an additional drawing for. They have sent it to the owner and have had conversations with her. The only person that she is aware of that has any legal rights to this property is the owner. As the Chairman said this is in reference to zoning and he thinks that it fits within the parameters and the desires of the City and brings more housing. Affordable housing comes from supply and he is trying to create a supply so they can maybe get the rents a little bit cheaper. He is a renter here; he is a move in from another state and rent is surprisingly expensive for this area.

Ms. Faries stated that their opposition is with respect to the Rezoning. This is under the *Comprehensive Plan* as a single family dwelling and they think that should be respected even though it's been changed elsewhere on the street because of the traffic impact it's had and the particular impact that it will have on the community right behind it.

Mr. Beau Zebley – Olson Realty

Mr. Zebley stated that this is within the *Comprehensive Plan* for more dense residential and the issue with traffic is not with the fifty-five apartments at the end of the street or their project of eighteen apartments or the Theatre Guild. The issue on the street is the car wash. That is why traffic is backed up all the way down Roosevelt Avenue at times. Having sixteen to twenty additional units is not going to affect what happens at the car wash whether or not they redevelop this property or not. City Council did vote in favor to rezone the other property that they have located on Roosevelt Avenue.

Mrs. Nina Lazzeroni – 146 Roosevelt Avenue Dover DE 19901

Mrs. Lazzeroni stated that 146 Roosevelt Avenue is her primary residence. They would like to say that they are in favor of this project. They are hoping that it will improve the look of their street and their small part of the community and perhaps even raise the property values to the homeowners. Most of them have been living there for a long time and they have vested interests. Besides this being their home, also monetarily in this they are hoping that it will be favorable to that. As far as the traffic problem, she agrees with the previous gentleman that the traffic is at the corner of Roosevelt Avenue and Route 13 and it's from the car wash. It gets clogged up because people are waiting to turn into the car wash. As a person who lives directly on the street, not back into the trailer park or back into the apartments, the traffic does not bother them. It would be good if people actually followed the 25 MPH speed limit but the volume of traffic is no issue at all for them.

Ms. Kelly Croft – 138 Roosevelt Avenue Dover DE 19901

Ms. Croft stated that she was in support of the Rezoning.

Mrs. Janie Wolfe – 142 Roosevelt Avenue Dover DE 19901

Mrs. Wolfe stated that she and her husband are home owners and they have been living at this location for sixteen years. They agree with the Rezoning. They also believe that it will improve the look of their neighborhood. They don't believe that the traffic is caused by any of the

rezoning that has been done already or what they are asking for because there is nothing that's there to cause traffic; the car wash that is causing the traffic issues. She thinks that this will improve their area and bring the property value up for their home.

Mr. Ronald Short – 151 Roosevelt Avenue F-2 Dover DE 19901

Mr. Short stated that he opposes the Rezoning because he feels like there is a lot of traffic on the street. They are having more and more kids in the area and they have had a couple of accidents over the years.

Mr. James Tieman – 151 Roosevelt Avenue A-6 Dover DE 19901

Mr. Tieman stated that he disagrees with the Rezoning because traffic is terrible. The keyword at one time was "yet" but it will happen. There have been plenty of accidents that almost happened in this area. If anyone has spare time they can come down there and look at the site and see how small it is, look at the congested area that it will be and look at the bottleneck that it will make. There are accidents just waiting to happen.

Mrs. Janie Wolfe – 142 Roosevelt Avenue Dover DE 19901

Mrs. Wolfe stated that she has been living in this area for sixteen years and she has never seen a trailer come in and out of that trailer park. She knows that they said there were issues with moving homes but she has never seen it happen. She could have missed it but she lives right across from the trailer park and again, they keep bringing up this issue with the traffic. It is the car wash and the light at the highway that's the issue; it's not Roosevelt Avenue. She believes that the traffic lights need to be looked at because there are accidents there but it's not because of the traffic coming in and out of Roosevelt Avenue.

Mr. Tolbert stated that they have heard comments that were pro and con from people in the area and he wants to stress to everyone that all they are dealing with at the hearing this evening is the zoning issue. All of the other issues that have been brought up other than zoning will have to be dealt with later on. He suggests that everyone keeps up with what goes on at City Council with regard to this application.

Mr. Tolbert closed the public hearing.

Mr. Adams moved to recommend approval to City Council for Z-19-03 Lands of Schreppler at 157 Roosevelt Avenue that the zoning to RG-2 (General Residence Zone) be granted as requested as the proposed zoning is consistent with the Comprehensive Plan for the Residential Medium Density land-use classification. Aside from his motion, he would encourage Mr. Miller and the park owner to continue their conversations around finding a solution that would be in the best interest of all parties, seconded by Ms. Maucher and the motion was carried 7-0 by roll call vote with Mr. Holt absent (Mr. Holt stepped away during the motion). Mr. Adams voting yes. Mr. Roach voting yes; he also encourages that the conversations with the applicant and the park owner continue. He also hopes that as willing that Mr. Miller was prior to the Rezoning to work with the park owner that it continues. Ms. Edwards voting yes. Mr. Baldwin voting yes; it is consistent with the Comprehensive Plan. Dr. Jones voting yes; for reasons previously stated. Ms. Maucher voting yes. Mr. Tolbert voting yes; he would encourage the applicant to follow what Mr. Adams stated in his motion to continue to work together to see if you can resolve some of the

problems that have been stated at this hearing.

- 6) S-19-01 Tommy Car Wash at 656 North DuPont Highway – Public Hearing and Review of a Site Development Plan Application to permit construction of a new 5,194 SF Car Wash structure and accompanying site improvements. The previous structures on the site have been demolished, and the site is now vacant. The property consists of a total 0.940+/- acres and is located on a site bounded by North DuPont Highway to the northeast, and Lepore Road to the southeast. The property is zoned C-4 (Highway Commercial Zone) and is partly subject to the SWPOZ (Source Water Protection Overlay Zone). The owner of record is Kathleen J. Gray. The equitable owner is Manpreet Mattu. Property Address: 656 North DuPont Highway. Tax Parcel: ED-05-068.09-01-09.01-000. Council District 3. *Waiver Request: Reduction of Arterial Street Buffer.*

Representative: Mr. Kevin Minnich, Minnich Engineering

Mr. Swierczek stated that this application is a Site Development Plan to permit construction of a new 5,194 SF car wash structure and accompanying site improvements. Just to note, this is the site that previously contained the Kirby and Holloway Restaurant since 1948. The previous structures on the site have been demolished and the site is now vacant. The property consists of a total of 0.94 acres and is zoned C-4 (Highway Commercial Zone) and is partly subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area. There are two previous applications of note related to this site. In May 2014, an Administrative Site Plan S-14-14 was submitted to rebuild and expand the Kirby and Holloway Restaurant. It received Final Plan Approval in December 2014 but no work commenced and the approval has since expired. Secondly, at the March 2014 meeting of the Historic District Commission, they reviewed application HI-14-02 to determine historic and/or cultural aesthetic significance of the pylon sign for the original Kirby and Holloway Restaurant located on the site. The Historic District Commission moved to approve the application which granted the sign legal non-conforming status helping the sign to avoid being designated as an “abandoned sign” which would have necessitated its removal.

The Site Development Plan presented overall shows one main structure housing the car wash facilities as well as associated site improvements including nineteen red umbrella like structures for the individual vacuum stations. While renderings were submitted showing an overall color scheme of the structure of red, gray and black with a curving roofline, material selection for building architecture canopy and vacuum spaces were not given. As noted, the site is partially covered by the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area which means that the site is further subject to the requirements of Code laid out in Article 3 Section 29.7 which specifically prohibits automobile body repair shop, motor vehicle, boat or farm equipment service and gas stations and motor vehicle service stations. The applicant therefore further submitted a diagram depicting the car wash facility activities in the eastern portion of the building with regard to that SWPOZ (Source Water Protection Overlay Zone). It is the interpretation of the Planning Director that the use of the car wash facility does not constitute a motor vehicle service use. It is determined that the intent of the two listed prohibited uses above is more for service stations, gas stations, mechanic shops and not car washes. The above

referenced restrictions pertain chiefly to the actual overlay zone itself not necessarily the entirety of the parcel; so, any of those added restrictions would be only for the overlay zone, not the parcel in its entirety. In an effort to eliminate any potential question of compliance, Planning Staff has recommended that the applicant either move or condense the building so that all car wash activities contained in the structure are located outside the boundary of the SWPOZ (Source Water Protection Overlay Zone). In Subsection 2.28 related to the architectural characteristics of the proposed building, Staff further recommends that the applicant keep, maintain and refurbish the historic Kirby and Holloway sign in its current location on the property. The architectural characteristics of the pylon sign including the shapes and arrangements of the five sign panels and the curving arrow are unique and should be kept. However, the sign panels may otherwise be refaced to suit the needs of the new business as part of the sign refurbishment. Planning Staff notes that for the sign to be replaced, a new one could not be built to the same size at the same location. Lastly, the applicant also submitted a waiver request for the requirements of the Arterial Street Buffer mainly to reduce it from thirty feet to ten feet. The plan purposes a landscaped area with tree and shrub plantings between the on-site drive aisle and the new street frontage sidewalk. The available area for the buffer was reduced since a portion of the property on this frontage area is being dedicated as right-of-way to Route 13. It should also be noted that while the letter from the applicant states that they are requesting the waiver to be reduced from thirty feet to nineteen feet, the plans submitted actually show that they are requesting a reduction of the Arterial Street Buffer to ten feet. Wherever you see in the Report nineteen feet, it should actually be ten feet. Planning Staff recommends approval of the waiver request. Just to reiterate for members of the Planning Commission, any motion tonight should be three fold in considering first the DAC application itself for the project; secondly, the waiver request for the reduction of the Arterial Street Buffer and lastly, addressing any of the conditions as laid out in the recommendations of the DAC Report.

Mr. Adams stated that he would be interested to hear from Planning Staff whether or not a recommendation has been made before with respect to maintaining and keeping a sign and asking an owner to repurpose a sign that's been left on a property. Responding to Mr. Adams, Mrs. Melson-Williams stated that this sign is unique. It is actually the only sign in the City that has the historic and significant designation. That is a fairly recent change to our Sign Regulations. Typically, when a business vacates a location and they are gone for a specific period of time, any signage that denoted that business name has to be removed. If it does not, it then meets the definition of being an "abandoned sign." In this case, the site was presented to the Historic District Commission which has the ability to designate a historic and significant sign which kind of gets it out of that process of an abandoned sign having to be removed. This is unique because it is the only sign that carries with it that status. They are somewhat in new territory about what happens next. The Code itself does not specifically say that it can't be demolished. Staff feels that it certainly is a landmark of some sense here in Dover. It has been there for quite some time and is very unique. They actually did the calculations of could you rebuild a sign of that size at that location and the short answer is no. So it certainly presents an opportunity for a new property owner to potentially reface and make use of a sign in a location that he could not get approval for without a whole series of variances in today's world. They see it as an opportunity and they think that because of the type of activity that's being proposed in their project design, it's an excellent opportunity to reface and give that sign new life for a new business at that site.

Mr. Holt stated that he is disappointed that there will be no more scrapple and eggs. He had many good meals there. He wonders if instead of calling this Tommy Car Wash, maybe K & H Car Wash. Maybe they can incorporate it into their name. Responding to Mr. Holt, Mr. Swierczek stated that he would like to reiterate that they did recommend that the applicant could reface portions of the sign so long as they keep the overall structure of it.

Mr. Holt stated that he thought since it was there that it would be a good chance to keep the sign and use it for the name of the car wash. It's not going to bring back his scrapple and eggs but it's one of those things where time marches on.

Ms. Maucher questioned if the applicant had any comment on the consolidation of operations in the building. Are they in agreement and willing to do that? Responding to Ms. Maucher, Mr. Minnich stated they gave Planning Staff an explanation as to what portion of that building was actually in the SWPOZ (Source Water Protection Overlay Zone) and it was a very small portion and it was basically the drying portion where the car comes out and the blowers are on. There is no real washing or hazardous materials leaving at that point where you are crossing into that little section of SWPOZ (Source Water Protection Overlay Zone). Compressing and consolidating that building is probably not an option. Just like with any of the restaurants or franchises, they have their own set parameters that are hard to move away from. That building is like a prototype building and he thinks that it is the smallest one that would fit on that site.

Mr. Adams stated that he would be interested to understand from the applicant as it relates to the sign, whether or not the applicant is in support of maintaining it. Responding to Mr. Adams, Mr. Minnich stated that he realizes that it's a sensitive issue with the City. He thinks of all things, the developers and equitable owners want to be good neighbors with the City and want to work with the City. What he would like to see happen is that they be able to work with Planning and not have to make that decision tonight to say yes or no about keeping the sign. He doesn't know if that is even possible.

Mrs. Melson-Williams stated that she thinks that the Planning Commission could take that approach. In the DAC Report, their discussion of the sign is in the Recommendations section which is part of the Report where the Planning Commission can kind of pick and choose items if they like those concept ideas. The Commission could certainly take the stance of encouraging the sign to stay but allowing the applicant to further explore that idea and work with Staff on that. They could ask that Staff report back to them about the progress of success or no success on that. She thinks there are certainly options.

Mr. Roach stated that when the applicant made the statement of the "drying area" and then referred back to Planning Staff in regards to his explanation of what use would be in that area, would that suffice in this situation? Responding to Mr. Roach, Mr. Swierczek stated that it was the determination based on the added plan that the applicant had submitted that what was going on in that small portion at the eastern edge of the building where the Overlay Zone overlaps the functions of the interior of the building that it did not violate the intentions of the Ordinance when it limits vehicle service. The main approach from the Planning Office was that there was no question of that. It would be best, if possible, if the applicant could condense that or move it

to the west.

Mr. Roach stated that he understands condensing the building because it's the model of the building and you can't make it smaller. Would the option of moving it to the west be an issue as well based on the development that they want to do? Responding to Mr. Roach, Mr. Minnich stated that there is not a whole lot of room to move it. If you move it five or ten feet, you are still going to catch the corner of the building. If you move it to the west, you are not going to be able to get that entire building out of the SWPOZ (Source Water Protection Overlay Zone) and still be able to have a functioning drive-through lane.

Mr. Adams stated that he noted that in terms of site consideration and site coverage, the existing coverage was at 86% and that this new proposed application reduces that coverage to 68%. He further noted that there was a required reduction of 15% and this goes beyond that. He is curious to understand if the previous use of Kirby and Holloway, was that building in the SWPOZ (Source Water Protection Overlay Zone) as constructed previously? Would this be something that is being asked of the new owner that wasn't necessarily asked of the previous owner? Responding to Mr. Adams, Mr. Swierczek stated that it should be noted that the Kirby and Holloway Restaurant predated the SWPOZ (Source Water Protection Overlay Zone) so that would have been built before any of that consideration would have been incorporated into the City Code.

Mr. Minnich stated that he would like to reiterate that they are willing to work with Planning Staff on the sign issue. It was the first thing that was brought up. He just didn't want it to be something where Planning Commission had to make a motion and make a decision tonight about the sign having to stay or not. They hope for an approval on the preliminary plan.

Mr. Tolbert opened a public hearing.

Mr. Shawn Tucker – DBR on behalf of Race Track Car Wash

Mr. Tucker stated that he was here tonight on behalf of Race Track Car Wash who is in opposition to tonight's application. He would like to comment in regard to the proposed use and the application related to the plan and then in regard to the waiver that is sought. Motor vehicle service stations are in fact prohibited in the Recharge Area that is identified. Staff certainly touched on that this evening. However, motor vehicle service stations are not defined in the City's Zone Code. Generally in Delaware, when something is not defined in the Code we tend to rely on Webster's Dictionary. While certainly gas stations and service stations would fall under that general phrase in Webster's, service stations also generically includes "a place at which some service is offered." You would be hard pressed if you were to read the owner's manual in your car and not to find a provision that talks about how you are supposed to take care of your paint and your interior and what kind of products you use to do that. Respectfully, that is part of "servicing" your car. They would first take note that while they certainly respect the Planning Office's recommendation and opinion; they would respectfully disagree regarding whether or not this is in fact a "motor vehicle service station" because it does serve to wash and clean both the inside and the outside of a vehicle. If you think about it, it makes a lot of sense why the City decided to prohibit those types of uses where you have a lot of motor vehicles coming in and out. You have the risk of oil leaks and with a car wash you also have the risk of the spillage of the

chemicals used to clean vehicles. It may be biodegradable but this is going into drinking water potentially and this is not a moderately sensitive Recharge Area. It is identified as an Excellent Recharge Area. This is one that he thinks the City would want to consider carefully and protect. There are certainly other areas in the City where a car wash could be located that is not close to one of these sensitive areas. Simply shrinking the footprint or altering the footprint of the building doesn't necessarily protect against that concern because things spill. In regards to the plan, they would submit that legally this use should not be permitted on any parcel that includes a SWPOZ (Source Water Protection Overlay Zone) with an Excellent Recharge Area designation.

Regarding the waiver that is requested, he would like to focus on the legal standards in the City's Code, particularly those found at 7.33 in the Zoning Code. It states that "the Planning Commission may approve a buffer less than thirty feet in depth. In approving a lesser amount of buffering, the Planning Commission shall consider the following factors." He would like to focus on focus on two of the factors in particular that he does not believe the applicant can meet this evening and the Planning Department did not address these. He thinks the reason why they did not is because the applicant cannot meet the standard. The first one is "whether there are specific constraints related to the existing lot size, lot configuration or the orientation of existing buildings on adjoining properties that would severally limit the development potential of the property if a deep buffer was required." He doesn't think that there is any evidence to support that this standard could be met this evening. Proof of that is in the Department's own report. There was a restaurant that was approved on this site in 2014. The owner or another applicant had that approved and allowed that to expire; it was for another restaurant. His point is that there are certainly other permitted developments on this property. You would be hard pressed to argue under that unless this buffer is limited or a variance or waiver is granted you could say that without limiting or lifting it in part, there would be some severe limitation on development on this property. They know that is simply untrue because there has been a restaurant use that was reapproved after the first restaurant had burnt down. The second standard that he would focus on is whether there is a significant landscape area within the right-of-way of the arterial street itself that can contribute to the buffer and whether future road improvement activities are likely to reduce the depth of this area. Certainly the intent of this section is to attempt to give credit to an applicant who may have landscaping in DelDOT's right-of-way already or perhaps even in the center aisle in between Route 13 in the north and south bound lanes. That doesn't exist; there is no landscaping not in the DelDOT right-of-way and not in the median separating the north and south bound lanes. In addition, the Department notes that DelDOT is doing a taking which is even further going to reduce the buffer from the right-of-way. That is an issue between the applicant and DelDOT. Sometimes that can be negotiated and sometimes that can't, but it makes the situation even more severe and certainly not better. He would respectfully submit as to (item) C that provision that City Council requires us to consider this evening can also not be met by the applicant. Lastly, this is more of a legal housekeeping matter for the record. There was a recent decision by our Superior Court in *Nepa vs. Board of Adjustment* in the City of Lewes that indicated that municipalities cannot impose stricter requirements or different requirements in general upon the standards set in Title 22 regarding Board of Adjustment variances. This is really a jurisdictional point but a waiver is a variance; it is just another way of labeling it. This is a 60% plus variance which is no small variance if you are in front of the Board of Adjustment because they are being asked to drop down to eleven feet from the thirty foot requirement by the

applicant. He would just submit that this application, if you follow the reasoning in the Nepa case, it technically belongs before the Board of Adjustment.

Mr. Harvey Blonder – Race Track Car Wash 226 North DuPont Highway Dover DE 19901

Mr. Blonder stated that he is one of the owners of Race Track Car Wash. He wants to bring it to the attention of the Planning Commission that we have two other car washes within 1.25 miles of our car wash. This will be the third car wash in this vicinity. They are going to have nineteen self-service vacuum cleaners on the property. He has been in this business since 1959 and they have had as many as eleven automatic car washes. He is very familiar with the car wash business. There are full service car washes, self-service car washes and flex-service car washes. When a customer vacuums their own car, it is traditional that they will put tire shine on their tires. They will open up their trunks to vacuum them out and put their trash in the trash cans. They will wax their cars on the outside in the free vacuum area. In fact, they will use the free vacuums to do whatever reconditioning work at the same time because they have just paid for a car wash and now they want to complete the service to make their cars as nice as possible. Sometimes they will even lift up their hoods, spray motor cleaners on it and let it sit in there as it drips on the ground. There are pollutants that go on the ground a lot of times and this is more than just a car wash. It's a car wash and it's a center to clean your car with the free vacuums. People here might have used those types of vacuums before and if they have, they know what he is talking about. Also, you have heard people from the trailer park and the surrounding area here earlier. At all of the car washes, there are certain times of the year where they all have traffic problems. After the roads have been salted and it snows, the police come and make them get off of the main road or they will ticket the cars and exiting is a big problem. This is an extremely small property for a car wash. They have approximately 2.4 acres up the street and they have an exit problem. If they have an exit problem with the width that they have of about 280 feet along North DuPont Highway, they certainly this car wash is going to have a more severe problem. Cars aren't going to be able to get in; they are going to be backed up on the highway and they are not going to be able to exit at peak times. He thinks that if you take all of that into consideration, you will find out that this is not only a car wash but it's a service station. He is very well qualified because he understands this business and this is what they do at our locations. They have very similar locations as this particular Tommy Car Wash at other locations in different areas.

Mr. Scott Becker – Coastal Car Wash, South DuPont Highway

Mr. Becker stated that he wants to point out that he has a very similar car wash to the one proposed tonight. They have the same idea with self-service vacuum drops that are free. They buy a car wash and most of the time they will exit out to the right. They have been there for about five and a half years and about three weeks ago they had to replace about twelve potholes on their lot from dripping liquids. Speaking about the SWPOZ (Source Water Protection Overlay Zone), if you exit the tunnel as its proposed on this lot you are basically driving those vehicles and turning around over that zone. They are going to have potholes and there are going to have liquids dripping. He literally just had to replace twelve potholes for \$5,000. It is due to motor oils and spillage out of backs of trucks once they accelerate. He is sure that they have some technology like they do that prevents a lot of the soap from getting into the bed but it's still a pickup bed and it's going to get water in it and spill on the road. He wanted to point that out to the Commission and say that if they are going to say that there is not going to be any spillage, he

has the proof to show you.

Mr. Victor Giangrant – Westside Car Wash 805 Forest Street Dover DE 19904

Mr. Giangrant stated that he has been in the car wash industry his whole life. Speaking of spillage, there are many types of chemicals that they use like waxes or soaps. Some are corrosive and some are not. It just depends on what product each car wash is using. There is spillage; it's just the nature of the game.

Mr. Victor Giangrant – Westside Car Wash 805 Forest Street Dover DE 19904

Mr. Giangrant stated that they have been at this location for about 38 years. He respectfully disagrees with the engineer of this project. The exit end of a car wash is the wettest part of the car wash. For pickup trucks, the back of the bed is a pool. If your conveyor speed is set at forty cars per hour, according to the International Car Wash Association you retain 1.2 gallons of water in your pickup truck bed. And everybody knows when you step on the accelerator out comes the water. He is also a master plumber so he knows a little bit about water.

Mr. Tolbert closed the public hearing.

Mr. Adams stated that he wanted to formally recuse himself from the consideration of this application. It has come to his attention that he has interaction with Mr. Blonder during his time when he was going to be acquiring the car wash through his current employer M&T Bank and Wilmington Trust. (Mr. Blonder spoke during the Public Hearing on the application S-19-01.)

Ms. Maucher questioned if Planning Staff has had a legal opinion on the definition? There were legal concerns raised; have those been reviewed by the City Solicitor? Responding to Ms. Maucher, Mr. Swierczek stated no, they have not been reviewed by the City Solicitor.

Ms. Maucher asked if there could be a motion to table this until such time as legal counsel can review some of the concerns? She doesn't know if these concerns were raised previous to this or is this the first time? Responding to Ms. Maucher, Mr. Swierczek stated that this is the first time that Staff has heard legal arguments against it.

Ms. Maucher moved to table S-19-01 Tommy Car Wash at 656 North DuPont Highway until the legal concerns that were raised have been reviewed, seconded by Ms. Edwards and the motion was carried 7-0 by roll call vote with Mr. Adams recused and Mrs. Welsh absent. Ms. Maucher voting yes. Mr. Roach voting yes; as much as he would love to see that lot redeveloped but with the legal issues that were not brought to Planning Staff until now and the concerns from professionals in regard to the SWPOZ (Source Water Protection Overlay Zone) in regard to having a car wash in the area. Ms. Edwards voting yes; based on the reasons previously stated. Mr. Holt voting yes; based on the discussion and he thinks that they need to explore the whole matter a little more thoroughly. Mr. Baldwin voting yes. Dr. Jones voting yes; for reasons previously mentioned. Mr. Tolbert voting yes; the applicant has already stated that he is willing to work cooperatively with the Planning Staff.

NEW BUSINESS

1) Nomination and Election of Officer (Vice-Chairman)

Mrs. Melson-Williams stated that with Mr. Holden's departure from the Planning Commission, that leaves a vacancy in the Vice Chairman position. The Commission had deferred action on proceeding on nominations and election of that position at the last meeting hoping that there would be a larger contingent of Planning Commissioners present. This evening they are looking for nominations. Basically, the By Laws indicate that the Vice-Chairman would serve to conduct the meeting should the Chairman not be present. Typically, they are elected together at the annual meeting of the Commission which happens in July so this position would serve through that time frame.

Mr. Tolbert moved to nominate Dr. Jones for Vice-Chairman because of her experience with Government. Being on this Commission is not her first experience; she was also on the City Council Legislative Committee which is the Council's most important committee, seconded by Ms. Maucher.

Mr. Roach questioned if Dr. Jones would be willing to serve as the Vice-Chairman? Responding to Mr. Roach, Dr. Jones stated that based upon the comment that this position expires in July and then there is a re-election.

Mrs. Melson-Williams stated that the Planning Commission has an annual meeting that would come up in July. The Chairman and the Vice-Chairman would continue to serve up through that meeting, where there would then be an election for both positions. Responding to Mrs. Melson-Williams, Dr. Jones stated that she will accept the nomination.

Mr. Roach moved to close the nominations and to suspend the secret ballot vote due to the fact that there is only one nomination and that they select the Vice-Chairman by voice vote, seconded by Mr. Adams and the motion was carried 8-0 by roll call vote.

2) Appointment to the Architectural Review Oversight Subcommittee of Planning Commission (in accordance with *Zoning Ordinance*, Article 10 §2.28): Planning Commission Member

Mrs. Melson-Williams stated that the Appointment to the Architectural Review Oversight Subcommittee of the Planning Commission was required. There is a sheet explaining this Subcommittee in the packet. It includes two members of the Planning Commission and currently Mrs. Welsh is one of the appointed Planning Commission members and with the departure of Mr. Holden, they need to replace him. This is something that a member would serve until the annual meeting held in July when that Subcommittee is reappointed. You can see on the sheet the tasks of the Architectural Review Oversight Subcommittee. They meet when called upon. They have met in the time that she has been with the City.

Mr. Roach moved to nominate Ms. Maucher for the appointment to the Architectural Review Oversight Subcommittee of the Planning Commission, seconded by Mr. Holt.

Mr. Roach moved to close the nominations and to suspend the secret ballot vote due to the fact that there is only one nomination and that they select the appointment to the Architectural Review

Oversight Committee by voice vote, seconded by Mr. Holt and the motion was carried 8-0 by voice vote.

- 3) Project for Dover's 2019 Comprehensive Plan
 - a. Update on Project Activities

Mrs. Melson-Williams stated the Planning Staff has been looking very closely through the Goals and Recommendations. They are working on Preliminary Draft #2 of those items. They will probably be releasing that in the next couple of weeks. They have been thoroughly reviewing those Goals and Recommendations and hopefully have come up with a better package. When it is released they will provide them to the Commission and post it up on the project webpage. They are also going through the two map series that they have issued to date which was the Preliminary Draft of the Land Development Plan Application, Land Development Plan Map and the two maps associated with annexations. Again, they are continuing to tweak those maps and there will be updated map series for them as well. Staff wise, they are on a push to have substantial text of the plan document written, focusing on Chapters 5 through 11 which are the core topic chapters that Staff will have an initial draft of for their internal review in the next couple of weeks. The *Comprehensive Plan* at this point in time is still under the 2008 *Comprehensive Plan*. They have made a request for extension of the new *Comprehensive Plan* update, which will be considered by the State Cabinet Committee on state planning issues on March 12, 2019. Our current plan technically expired February 9, 2019 but they are good because they asked for an extension well before that. The next few months are very busy for the Planning Office in regards to the *Comprehensive Plan* as they hope to have a draft document and be bringing that through the formal review process before summer.

Ms. Maucher questioned if the parcel with the split zoning was a result of not having electronic mapping capabilities and it was just a line otherwise drawn? In the new *Comprehensive Plan* she assumes that they are going to line up to parcel boundaries. Responding to Ms. Maucher, Mrs. Melson-Williams stated that in such cases like that which we were dealing with earlier this evening, that was actually an earlier request for amendment that split that property into the two land use classifications and then was subsequently rezoned. It ended up being what they would call "split zoned". Part of that ultimately would have resolved itself in the prior development project that did not move forward. She believes that they would have subdivided the property and each section would have ended up on its own parcel. Split land use classifications and split zoning on properties at times can be problematic. In some instances it does go through a formal review process and there is a conscious decision that it is split. In other cases it may be where boundaries of open space and recreation areas or other natural features will end up in a land use classification that reflects that while the balance of the property may be in a more regular land use for commercial or residential use. That still does occur. For the most part, most of the maps do align with the property lines but that is not always the case.

Dr. Jones questioned if the noon-1PM workshops are completely off the table? Is that something that they are no longer doing? She knows that they are taking care of certain business at the end of the meetings but she for one benefited from an occasional informal setting. Responding to Dr. Jones, Mrs. Melson-Williams stated that they did discuss restarting those meetings. With the *Comprehensive Plan* they have to be careful because in a Quarterly Workshop you can't

formally take action and with the *Comprehensive Plan* approaching in the upcoming months, they may have to actually schedule Planning Commission meetings that are specific to the *Comprehensive Plan*, dealing with that only, and the regular business of applications is done in a separate meeting. They are thinking that in the next couple of months, there may be multiple times that the Commission will have to meet outside of the regular meeting but that will be to transact business. The Quarterly Workshop is meant to be utilized as a training opportunity. They did discuss even as recently as preparing for this meeting, what their approach should be but given the *Comprehensive Plan* they thought that they needed to keep moving with main business at regular meetings or special called meetings specific to the *Comprehensive Plan* business. They will probably look to go back to a Quarterly Workshop. It is not required by Code but they did find it beneficial to share information with the Commissioners. The discussion with Staff was that right now their focus is the *Comprehensive Plan* and that's probably going to trigger a lot of work on the Commissioner's part and the Planning Staff's part.

Meeting adjourned at 9:18 PM.

Sincerely,

Kristen Mullaney
Secretary