

CITY OF DOVER PLANNING COMMISSION
MARCH 18, 2019

The Regular Meeting of the City of Dover Planning Commission was held on Monday, March 18, 2019 at 7:00 PM in the City Hall Council Chambers with Vice-Chairwoman Dr. Jones presiding. Members present were Mr. Adams, Mr. Roach, Mr. Holt, Mr. Baldwin, Dr. Jones, and Ms. Maucher. Ms. Edwards, Mrs. Welsh and Mr. Tolbert were absent.

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

APPROVAL OF AGENDA

Ms. Maucher moved to approve the agenda as submitted, seconded by Mr. Holt and the motion was unanimously carried 6-0 with Ms. Edward, Mrs. Welsh and Mr. Tolbert absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF FEBRUARY 19, 2019

Mr. Holt moved to approve the Planning Commission Meeting minutes of February 19, 2019, seconded by Mr. Adams and the motion was unanimously carried 6-0 with Ms. Edward, Mrs. Welsh and Mr. Tolbert absent.

COMMUNICATIONS & REPORTS

Mr. Hugg stated that the next Planning Commission regular meeting is scheduled for Monday, April 15, 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 February 25 & 26, 2019 and March 11 & 12, 2019.

Mrs. Melson-Williams stated that the University of Delaware's Institute for Public Administration continues their training series. They do have one scheduled for Friday morning of this week, March 22, 2019. It is titled "Advanced Land-Use and Development Administration." If any of the Commissioners are interested in attending that training please see Planning Staff and they will see if there is any space available for that training. In the future, they are planning another class related to "Creating a Flood Ready Community." When they have the actual date for that class, they will pass it along.

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. S-17-02 Mitten Industrial Park at 141 Lafferty Lane (Revised 2/28/2017) – Request for One Year Extension of the Planning Commission conditional approval granted March 20,

2017 for a Site Development Plan application to permit construction of a 9,600 S.F. building, an equipment processing & storage area, and associated site improvements. The 40.09 acre+/- subject site is located on the east side of Lafferty Lane north of the Kings Cliffe Manufactured Home Park. The property is zoned IPM (Industrial Park Manufacturing Zone) and MH (Manufactured Housing Zone) and is partly subject to the AEOZ (Airport Environs Overlay Zone: Accident Potential Zone I and Noise Zone A). The project is subject to *Performance Standards Review Application*. The owner of record is Matthew E. Mitten. Property Address: 141 Lafferty Lane. Tax Parcels: part of ED-05-077.00-01-26.00-000, ED-05-077.00-01-27.00-000, and part of ED-05-086.00-01-08.00-000. Council District 2.

Representatives: Mr. Matt Mitten, Owner

Mrs. Melson-Williams stated that this is a request for an extension of Planning Commission approval. This application was reviewed by the Planning Commission back in March 2017. With that action taken by the Planning Commission in March 2017, they had two years to finalize the plans and commence construction of the project. With a letter of February 27, 2019, they are asking for a one-year extension of that approval. The letter submitted by Merestone Consultants, who is now the engineer of record working on the project, has been working to complete the engineering and final site approvals necessary from the various agencies. They took over the project according to their letter in September 2018. Their letter goes on to outline the progress that has been made with submittals to DelDOT, the Kent Conservation District, and the City's Public Works Office with submittals forthcoming to the City's Fire Marshal's Office and Planning Office, once landscape designs are finalized.

Mr. Mitten stated that they have no statements at this time.

Ms. Maucher moved to approve S-17-02 Mitten Industrial Park for the request for a one year extension, seconded by Mr. Holt and the motion carried 6-0 by voice vote with Ms. Edward, Mrs. Welsh and Mr. Tolbert absent.

- b. S-17-06 Secure Storage Revised Site Plan, Phases 2 & 3 – Request for a One Year Extension of the Planning Commission conditional approval granted March 20, 2017 for a Site Development Plan application to permit construction of Phases 2 & 3 of a mini-storage facility consisting of five (5) storage buildings, on a site already containing 14 storage buildings (Phase 1), for a total of 19 buildings. The new buildings total 94,500 S.F. Associated improvements including a boat and RV parking area and a second site entrance are also proposed. The project is subject to *Performance Standards Review Application*. The 18.68-acre subject site is located on the north side of Lafferty Lane, east of South Bay Road. The property is zoned IPM (Industrial Park Manufacturing Zone). The owner of record is Secure Storage LLC. Property address: 640 Lafferty Lane. Tax Parcel: ED05-077.00-01-25.00-000. Council District 2. *The Final Site Plan approval was granted October 16, 2017.*

Representatives: None

Mrs. Melson-Williams stated that this is a request for a one-year extension. This application was also heard at the March 2017 meeting of the Planning Commission and at the time was approved for what is Phases 2 and 3 of the Secure Storage Mini-Storage Facility project to add five storage buildings on the site continuing what was a build-out from Phase 1. The project ultimately has moved through the plan approval process. They received Final Plan Approval in October 2017. In doing so and achieving approvals from the agencies, the plan was ultimately revised from five buildings to four buildings as a design refinement that did not require its appearance back before Planning Commission. All of the agencies granted approvals at that time and the project is eligible to pull Building Permits; however, while they are anticipating a late Spring or early Summer start in 2019 because they will not be underway by the end of March, they are seeking a one-year extension of this Site Plan Application. That is presented to the Planning Commission for consideration by their letter dated February 12, 2019.

Mr. Holt moved to approve S-17-06 Secure Storage Revised Site Plan, Phases 2 & 3 for a one-year extension, seconded by Mr. Baldwin and the motion carried 6-0 by voice vote with Ms. Edward, Mrs. Welsh and Mr. Tolbert absent.

2) Continued Review of New Application:

- a. S-19-01 Tommy Car Wash at 656 North DuPont Highway – Continued 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. The Public Hearing and Review of Application S-19-01 began at the February 19, 2019 Planning Commission Meeting; it was tabled seeking additional information.*

Representatives: Mr. John Paradee, Baird, Mandalas and Brockstedt; Mr. Kevin Minnich, Minnich Engineering; Mr. Matt Dehahn, Tommy Car Wash

Ms. Maucher moved to lift application S-19-01 Tommy Car Wash at 656 North DuPont Highway from the table, seconded by Mr. Holt and the motion was carried 6-0 by voice vote with Ms. Edwards, Mrs. Welsh and Mr. Tolbert absent.

Mr. Adams has recused himself from deliberations on this application due to previous business interactions with one of the speakers who provided public testimony in February.

Mrs. Melson-Williams stated that there continue to be five members of the Planning Commission present. That is a quorum in order for the Commission to conduct business.

Mr. Paradee stated that he represents Blue Sky Dover Properties, LLC dba Tommy Car Wash. With him tonight is Mr. Kevin Minnich who is the engineer for the project as well as Mr. Matt Dehahn from Tommy Car Wash. He is an equipment and component sales manager for the company and he is available to answer any technical questions about the facility that you might have. Also, the principals are here along with Realtor Mr. Carl Kaplan.

He has handed on a copy of a supplemental submission that he would like to submit for the record. Rather than bore you by reading it, he will try to summarize it quickly. It is his understanding that some of the people who testified in opposition at the last hearing had submitted a letter as well and he would like to briefly address that letter in his response.

The first important point that the Commission should take note of is that under Delaware Law, competitors such as the gentleman who spoke to the Commission last month in opposition of this application have no legal standing to object. In this particular case, if you think about it, it makes sense because the people who spoke in opposition before you don't own any property anywhere near the site. They haven't articulated any specific or particularized injury that would show how their property would be impacted if this application were approved. Instead they were motivated perhaps by concerns about competition and tried to raise some issues that frankly they don't believe would have standing to raise. They questioned the Planning Director's interpretation of some language in the SWPOZ (Source Water Protection Overlay Zone) and they also challenged the Commission's ability to grant a waiver request. First, the Planning Staff got it right as they most always do. Delaware Law provides that an administrator's interpretation of their own regulations is entitled to some difference. These are the professionals who deal with the Code every day; they helped draft it and they understand how it works. When they interpret it and tell you that they think it mean this, you should listen to them. Secondly, Delaware courts have repeatedly held that if there are two reasonable alternative interpretations of a statute, the interpretation that favors the land owner controls. In other words in the event of a tie, if it is ambiguous or vague and you are not really sure, you give the benefit of the doubt to the property owner. Here, they submit that the Department's interpretation of Article 3 Section 29.5 of the City's *Zoning Ordinance* is not only entitled to a presumption of validity but the burden of rebutting that presumption rests on the party who would challenge it. His submission goes into all of the reasons why they think the Planning Department got it right. He won't belabor that except he will come back and rebut some of the things that the opposition had said.

There is another legal doctrine that is at play here. It has a really funny sounding Latin name called "ejusdem generis" and he almost always butchers it. What it really means is that where general words follow an enumeration of things or items by words of a more particular and specific meaning. The general words are not to be construed in their widest extent but are to be held as applying only to things of the same general kind or class as those specifically mentioned. In Article 3 Section 29.5, you have the words "automobile service station" following the phrase "gas station". The point is that "automobile service stations" are limited to those things which are a subset of gas stations. It is an important point; probably not something that you will stay up late tonight worrying about but it is an important point. In the letter dated March 12, 2019 from Mr. Shawn Tucker, he respectfully submits that Mr. Tucker is simply wrong when he says that the use of the property as a car wash constitutes a "motor vehicle service station". He then talks about whether or not there are definitions in the Code that may help you here. For example, in

Section 26-31 of the City Code, the definition of car wash is “operating a continuing business of cleaning, washing or waxing motor vehicles for profits.” It doesn’t say anything about repairing them or reconditioning them in any way. By contrast, in Section 26-31 of the *Code*, although there is no definition for “motor vehicle service station”, there is a definition for “motor vehicle serviceman” because that job requires a Business License under the City Code. It defines motor vehicle serviceman as “every person operating a business of repairing, rebuilding, repainting or otherwise reconditioning motor vehicles or their parts.” That is a very different definition than car wash. There is really no interaction or interplay between the two. If you look at the structure of the *Zoning Ordinance*, you realize that motor vehicle repair or service is very tightly regulated under the City *Zoning Ordinance*. There are many instances where it is addressed as a permitted use subject to conditions or a prohibited use outright. For example, it is an accessory use in the IO (Institutional and Office Zone) and it’s prohibited in C-1 (Neighborhood Commercial Zone), C-1A (Limited Commercial Zone) and C-2 (Central Commercial Zone) but it’s permitted in C-3 (Service Commercial Zone) and C-4 (Highway Commercial Zone) subject to several qualifying conditions dealing with things like hydraulic jacks and that kind of stuff. All of the stuff that talks about service stations and nothing to do with car washes. Of course motor vehicle service is prohibited in the shopping center district. There are plenty of places in the Code that talk about what motor vehicle service repair means and then you have a definition of car wash and they are distinctly two different things. That is the point that he wanted to make in response to Mr. Tucker’s letter.

With regard to the waiver request, respectfully Mr. Tucker’s letter is wrong when he says that we or the staff has failed to articulate how they satisfy the four criteria. His letter addresses those four criteria so he won’t belabor that. But it is interesting that Mr. Tucker admits that they meet Numbers 1 and 4. He disputes whether they meet 2 or 3 but he will submit to you that they very easily meet Number 2 which is that the character of the surrounding built environment, that it is the other properties adjacent to them don’t have any buffers at all. The Staff Report addresses all of those criteria very carefully and he would defer to Staff and suggest that they do the same. They got it right on the waiver request.

Mr. Tucker’s reliance in his letter on the *NEPA vs. City of Lewes* case is simply unfounded and it sounds nice to cite it but it’s really not on point. That case deal with a Board of Adjustment case in the City of Lewes. The City of Lewes had given its Board of Adjustment some powers that were greater than the General Assemblies had given to Boards of Adjustment under Title 22 Chapter 3. That case simply stands for the proposition that the City couldn’t give greater powers to the Board of Adjustment than the General Assembly did; therefore, the Court found that any reliance on that additional authority was inappropriate because it conflicted with the State statue. You don’t have that here. What you have here is the City of Dover has said in the *Zoning Ordinance* that you can have certain uses and certain uses are prohibited. There are some uses that the Planning Commission is empowered to grant waivers for. You have the legislative body, the authority of the City government saying these are all of the rules for the *Zoning Ordinance* and by the way we are going to condition this one slightly because we are going to let the Planning Commission grant waivers. That is an expressed delegation by the City of Dover to the Planning Commission that is not violated by any provision in the *Delaware Code* whatsoever. He will submit to the Commission that there are multiple jurisdictions (he can’t think of any that don’t have this ability), other municipalities in the State of Delaware similarly give their

Planning Commission the ability to grant waivers for certain things. It's permissible and the exercise of that waiver here is appropriate. This is a Site Plan application; it is not a Rezoning and it meets all of the Code requirements. They would respectfully request that the Planning Commission grant approval.

Mr. Swierczek stated that this is the continued review of S-19-01 Tommy Car Wash at 656 North DuPont Highway. The review of this application was tabled at the February 19, 2019 meeting. The application is to permit construction of a 5,194 SF car wash facility on the site previously occupied by Kirby and Holloway Family Restaurant. Along with the Site Plan application, the applicant had submitted a waiver request from the requirements of the Arterial Street Buffer mainly to reduce it from thirty feet to ten feet. 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. Staff continues to recommend approval of this waiver request. A public hearing on this application was opened and closed at the February meeting of the Planning Commission. During that meeting, members of the public had challenged the City's interpretation of Code, mainly Article 3 Section 29.5 which specifically lists prohibited uses in the SWPOZ (Source Water Protection Overlay Zone) as well as the City being able to administratively approve the waiver of the arterial street buffer. For these reasons, the body moved to table the review of this application. In the packets, all members of the Planning Commission should have received a memo updating the status of this application from the Planning Office. The Director of Planning, Mr. Dave Hugg consulted with the City Solicitor who agreed with the interpretation of the Planning Office in stating that the use of a car wash was not prohibited in the SWPOZ – Tier 3 Excellent Recharge Area (Source Water Protection Overlay Zone). The waiver request can be reviewed by the Planning Commission directly. For these reasons, Planning Staff continues to support approval of Application S-19-01 under the conditions as stated in the DAC Report of February 6, 2019. In the motion, the members of the Planning Commission should act according to the recommendations as described in the DAC Report and agency comments from February 6, 2019. Specifically, the DAC Report lists three recommendations found on Pages 6 and 7. Number 1 that in an effort to eliminate any potential question of compliance, Planning Staff had recommended that the applicant either move and/or condense the building so that all car wash activities contained within the structure are located outside the boundary of the SWPOZ (Source Water Protection Overlay Zone). Number 2 for the waiver request, Staff had recommended approval of the waiver request as related to the Arterial Street Buffer reducing the requirement of thirty feet to ten feet in width. The plan proposes 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 again since a portion of the property on the frontage area was being dedicated as right-of-way to Route 13. Number 3 is regarding the historic sign. To further subsection 2.28 related to architectural characteristics of proposed buildings, Staff had recommended that the Planning Commission request that the applicant keep, maintain and refurbish the historic Kirby and Holloway sign in its current location on the property. The architectural characteristics of this 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. The motion should refer to act upon these three items.

Mr. Paradee stated that the NEPA Case is actually on appeal to the Delaware Supreme Court and oral arguments are scheduled for next week. That is another reason to not pay attention to that case.

Mr. Holt questioned if the retention of the wastewater was satisfactory with Mr. Hugg and the City? Is that going to be satisfactory to prohibit leakage into the groundwater? Responding to Mr. Holt, Mr. Hugg stated that he would defer to Public Works but the short answer is that they would meet all of the requirements necessary for addressing runoff or surface water.

Mr. Lyon questioned if Mr. Holt was referring to stormwater or wastewater? Responding to Mr. Lyon, Mr. Holt stated that he was referring to wastewater.

Mr. Lyon stated that the City of Dover is a contract user for the Kent County Wastewater Treatment Plant so we have to follow any rules that they have with regards to the discharge of the effluent waste that goes into the system. The applicant will have to make sure that they get the approval for that before they satisfy the Department of Public Works approval. Typically, this is something that gets allowed into the system.

Ms. Maucher questioned if conditions are legally binding if the Commission makes a motion to approve with conditions and those conditions aren't met? Or can they not move forward unless those conditions are met? Responding to Ms. Maucher, Mrs. Melson-Williams stated that as part of the DAC Report, the Planning Staff always looks to the series of objectives that are outlined in the Code for Planning Commission when considering Site Development Plans and they add recommendations. The section is titled "Recommended Additional Considerations to Meet Code Objectives." In this section is where we typically relate Staff's opinion on any waiver requests and any other conditions or safeguards that as the Code recalls are related to public health, safety and welfare; comfort and convenience of the public; and dealing with residents in the immediate area. The safeguards or conditions are meant to further express the intent of the *Zoning Ordinance* and in this case there are three items that they identified. The first one is related to the building's position versus the SWPOZ (Source Water Protection Overlay Zone). Right now a piece of the building is within the SWPOZ (Source Water Protection Overlay Zone). The second item deals with the Arterial Street Buffer request where Staff is recommending approval of that. The third item is the historic sign. The sign that is on the property has been designated a "historic or significant sign" in the City's Sign Provisions. Those sign provisions do not indicate what the long term of that sign should be. Basically, the designation as a historic or significant sign allowed it to not be considered an abandoned sign meaning it could stay in place even though the business that it was advertising was not there. For Recommendation 3, Staff is recommending that the applicant keep, maintain and refurbish this existing sign. They think it has some advantages that new signage cannot place; both related to size and location and that it is somewhat fitting with the architectural design of the overall car wash. They think that it could be refaced and be an asset to their location. In this recommendations section, the Planning Commission can pick and choose or add others that they may feel are necessary to meet the objectives of the whole public health, safety and welfare of the project.

Mr. Hugg stated that when the Commission makes their motion on this project, they do need to address each of those recommendations and include or exclude them specifically from the

recommendation. Otherwise, if they are included they do become a binding condition of the approval.

Ms. Maucher stated that there is a fourth condition for internal sidewalks.

Mr. Paradee stated that they have no objection to three out of the four suggested conditions. The one that is problematic for them is moving the building. If you have to move the building back at all you start to compromise the circulation and the safety of the operation. There is just not enough room to push the building back in the other direction and at most they would be able to move it maybe five feet. The point really is, why should you move it at all because the legal conclusion is that this use is permitted in the SWPOZ (Source Water Protection Overlay Zone). Whether it's five feet of the building in it or all of the building in it, it's permitted. They are going to minimize it but they simply can't move the building far enough to move it all the way out. Their request would respectfully be that they comply with all of the conditions except that one.

Ms. Maucher questioned the applicant's position on the sign? Responding to Ms. Maucher, Mr. Paradee stated that they intend to work with Staff to refurbish the sign. They think it's a really neat and cool thing and they would love to see it stay. They will incorporate it into their design and retain the structure and shape. Their commitment is to work with Staff to make that happen.

Mr. Holt stated that if they are going to keep the sign maybe they can change the name of the car wash to Kirby and Holloway Car Wash or something that would make more sense and would go along with the sign that is there now.

Mr. Roach stated that he didn't know if because they tabled it and brought it, do they give the opportunity for the public to make comments. Responding to Mr. Roach, Dr. Jones stated no not tonight. The public hearing on this application was conducted at last month's meeting so therefore there is no public hearing tonight.

Ms. Maucher moved to approve S-19-01 Tommy Car Wash at 656 North DuPont Highway and the requested waiver (Arterial Street Buffer) and with the sign condition and the interior sidewalk condition, seconded by Mr. Holt and the motion was carried 5-0 with Mr. Adams recused and Ms. Edwards, Mrs. Welsh and Mr. Tolbert absent. Ms. Maucher voting yes; based on Staff recommendations and the clarification from the City Planner. Mr. Roach voting yes; due to the clarification from the City Solicitor saying this wasn't a use that wasn't specific to this actual location. Mr. Holt voting yes; based on the City of Dover. Mr. Baldwin voting yes; based on Staff recommendations to this application. Dr. Jones voting yes; based on the comments already made and the clarification on some issues that were unresolved.

Mr. Adams has returned to participate in the meeting.

NEW APPLICATIONS

- 1) Z-19-04 Lands of Beauregard at 878 South State Street – Public Hearing and Review for Recommendation to City Council on a rezoning application for a parcel of land totaling

9,600 SF +/- located at 878 South State Street. The property is zoned R-8 (One-Family Residence Zone). The proposed zoning is C-1 (Neighborhood Commercial Zone). The property is located on the west side of South State Street, north of Wyoming Avenue and south of Gooden Avenue. The owners of record are Andre M. and Jane J. Beauregard. Property Address: 878 South State Street. Tax Parcel: ED-05-077.17-03-51.00-000. Council District 2. Ordinance #2019-08.

Representatives: Mr. Lance Mears, Hunter Creek Homes

Mrs. Melson-Williams stated that this is a Rezoning application in regards to the property at 878 South State Street. This is located on the west side of South State Street in the block between Wyoming Avenue and Gooden Avenue. It is a property of 9,600 SF. Currently, there is a one-story existing building that is located on the property. There is a driveway that leads from South State Street to the rear of the property where there is a parking area and the property also has access off a rear alley to that parking area. The current zoning of the property is R-8 (One-Family Residence Zone) and they are proposing of the property to C-1 (Neighborhood Commercial Zone). This is an area of South State Street where the zoning is fairly mixed; so for example, the adjoining property to the north where there is an existing day care facility is zoned R-8 (One-Family Residence Zone). The building to the south of the subject site is zoned RGO (General Residence and Office Zone) originally also constructed as a house but has most recently been utilized as office space which is allowed under the RGO (General Residence and Office Zone). Across the street we find another multi-tenant office building on lands that are zoned C-1A (Limited Commercial Zone) and then also the YMCA facility that is zoned IO (Institutional and Office Zone). The subject site was the subject of the Conditional Use application back in 2008 to establish a church in the building and that was approved by the Planning Commission. The church was located there for a number of years but then most recently has reverted to a single-family dwelling.

With any Rezoning, we have to look to the *Comprehensive Plan* and what that tells us about the property. The Land Development Plan of the *Comprehensive Plan* identifies this property as the Residential Medium Density land use classification and with that land use classification there are a series of zones that comply with that land use classification. Most of them are very specifically residential; however, it does include C-1 (Neighborhood Commercial Zone) which this property is requesting. In the *Zoning Ordinance* when talking about Neighborhood Commercial Zone, there are a number of specific uses that are permitted in the zone. They include retail stores, personal service establishments, service establishments, restaurants and then some residential uses. There are a number of things that are specifically prohibited, meaning that a property that is zoned C-1 (Neighborhood Commercial Zone) cannot have the following prohibited uses: fuel pumps, motor vehicle storage sales or repairs, drive throughs, liquor stores, fire arm sales and tobacco shops. The other thing that is unique to the C-1 (Neighborhood Commercial Zone) is that the floor area of any one establishment in that zone is limited to 2,500 SF. Planning Staff is recommending approval of the Rezoning from R-8 (One-Family Residence Zone) to C-1 (Neighborhood Commercial Zone) as requested. They find that it is consistent with the *Comprehensive Plan* for the land use classification. The *Comprehensive Plan* also talks about the ability to have small scale commercial in residential areas. This area of South State Street is adjacent to a number of buildings where residential buildings have been altered to then be used

alternatively as non-residential uses. The DAC Reports from the other agencies basically have no objections to the Rezoning. A number of them do provide information about should a change of use be proposed, some advisory notes about how to establish that use appropriately and the requirements therefore are identified.

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

Mr. Holt moved to recommend approval to City Council for Z-19-04 Lands of Beauregard at 878 South State Street from R-8 to C-1, seconded by Ms. Maucher and the motion was carried 6-0 with Ms. Edwards, Mrs. Welsh and Mr. Tolbert absent. Mr. Adams voting yes. Mr. Roach voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Ms. Maucher voting yes. Dr. Jones voting yes.

- 2) S-19-02 Boardwalk Apartments at 127, 129, 133, 135 Roosevelt Avenue – Public Hearing and Review of a Site Development Plan Application to permit construction of a three-story 19,824 SF apartment building consisting of 18 units, four covered parking buildings, and accompanying site improvements. The previous structures on the sites will be demolished. The subject area consists three (3) parcels totaling 0.828 +/- acres located on the north side of Roosevelt Avenue east of North DuPont Highway (US Rt. 13). The property is zoned RG-2 (General Residence Zone). The owner of record is Miller Investments, LLC. Property Addresses: 127, 129, 133, and 135 Roosevelt Avenue. Tax Parcels: ED-05-077.18-02-71.00-000, ED-05-077.18-02-72.00-000, and ED-05-077.18-02-73.00-000. Council District 2. *For Consideration: Cash-in-lieu of Active Recreation Area Construction. Project is associated with variance application V-18-11.*

Representatives: Mr. Brendan Diener, Pennoni; Mr. David Miller, owner

Mr. Swierczek stated that this is a review of a Site Development Plan to permit construction of a three-story apartment building containing eighteen units and four covered parking buildings and accompanying site improvements. The previous structures on the sites will be demolished. The subject area currently consists of three parcels totaling 0.828 acres located on the north side of Roosevelt Avenue east of North DuPont Highway. There are two previous applications of note related to the sites. In 2018, the applicant for this project submitted to the Planning Office an application for Rezoning of 127, 129, 133 and 135 Roosevelt Avenue. This was application Z-18-01. The Rezoning application proposed changing the zoning for these properties from the then designation of R-8 (One Family Residence Zone) to the new designation of RG-2 (General Residence Zone). The Planning Commission held a public hearing for the Rezoning application on September 17, 2018 and recommended the Rezoning to City Council for approval. At their January 23, 2019 meeting, the Board of Adjustment reviewed application V-18-11 which sought the following three variances. Number 1 was to exceed the RG-2 (General Residence Zone) maximum lot coverage of 60% and allow the lot coverage to go up to 65.4%. Number 2 was to allow the accessory buildings to take up to 38% of the side and rear yards exceeding the typical limit of 30%. Number 3 was to allow parking within fifteen feet of a wall belonging to a multi-family dwelling. All three variances were approved by the Board of Adjustment and it is with these approved Variances that this application is presented to the Planning Commission for review.

The three parcels containing four buildings addressed as 127, 129, 133 and 135 Roosevelt Avenue currently contain a mix of one-family and multi-family residences all operated as rental units. The applicant proposes to increase the number of dwelling units onsite from ten to eighteen units by demolishing the four existing structures, consolidating the three parcels into one and then building the new apartment building. The new building would be accompanied by forty-one onsite parking spaces to meet the minimum parking requirements of the *Zoning Ordinance*. Four accessory buildings are also proposed which are intended to turn thirty-one of the parking spaces into covered parking. The remaining ten parking spaces would be located in an alcove on the first floor of the apartment thus ensuring that they are also covered by the building's second floor. The residential projects are typically required to provide Active Recreation Area under *Zoning Ordinance*, Article 5 Section 10.1. Due to the properties size and unit density, this project qualifies for an Active Recreation Area exemption for small developments. The Planning Commission will need to determine if the construction of some or all of the required Active Recreation Area is not practical or desirable and therefore will require a full or partial cash-in-lieu donation for the portion of the Active Recreation Area determined as not practical or desirable. Staff recommends that the Commission consider their relatively limited availability of land on this site when considering if the applicant should proceed with the cash-in-lieu option as described in Section 7 of the Report. Staff also recommends that some type of screening should be required in between the parking provided and the neighboring residential properties. The relatively close proximity of the accessory parking structures to the property lines may necessitate consideration of increased landscape plantings and/or fencing. It should also be noted that it appears that there may be existing fencing on adjacent residential properties.

Mr. Diener stated that they do not have any statements at this time.

Mr. Adams stated that his question relates to the large-scale plans that were provided. He is curious to know and perhaps he just missed it, but he was looking for the easement that they discussed at the last meeting and wanted to see where the easement went through the property as demonstrated on these plans. Responding to Mr. Adams, Mr. Swierczek stated that there is a separate proposal for an apartment building also on Roosevelt Avenue and also by Miller Investments. These are two separate applications.

Mr. Roach stated that it was stated that they believe there is fencing. Do you know if it is directly adjacent to the other properties and what type of fencing is it? Responding to Mr. Roach, Mr. Swierczek stated that it would appear in the plans and also viewing it on Google Maps that there is fencing on neighboring properties, but it is because of the close proximity of the accessory garage structures that Staff recommended that.

Mr. Miller stated that they will be making sure that there is fencing for them. They want the site to be very secure. He talked to Mr. Swierczek about the cash-in-lieu at their meeting. Has Staff found out any information on the particulars of that? Is that something that they deal with moving forward after this or is it part of this decision tonight? Responding to Mr. Miller, Mrs. Melson-Williams stated that dealing with Active Recreation in the City is a little confusing at times. Residential developments require Active Recreation and there is an area amount per dwelling unit that must be provided. In certain instances, there are some exemptions and it

appears that this project could qualify for one of the two different exemptions. Depending on which one you pick is then how the cash-in-lieu is calculated. In one instance, the cash-in-lieu amount is based on a percentage of the appraised value of the entire property and in another case the cash-in-lieu amount is based on what a per acre cost would be for the area that you are not providing. The short answer is tonight what the Planning Commission should be focused on is should they provide Active Recreation Area or should the cash-in-lieu option be pursued. If the cash-in-lieu option is to be pursued, then they have to receive from the applicant an appraisal and that appraisal is utilized to calculate what exactly the amount is. At that time, they can do both calculations and determine which one may be more appropriate given the property. That cash in lieu amount will have to be reviewed by the Parks, Recreation and Community Enhancement Committee as well as back to the Planning Commission to accept the specific dollar amount. The decision tonight is to either provide Active Recreation Area or provide cash-in-lieu. The amount of cash-in-lieu is yet to be determined.

Mr. Miller questioned if the permitting process for the building can run sequentially at the same time that this is happening or does it have to be prior to permitting? Responding to Mr. Miller, Mrs. Melson-Williams stated that if you are utilizing the cash-in-lieu option, the cash-in-lieu payment must be made prior to the Building Permit being issued. So as part of the process to finalize the Site Plan, that is when they would need to be moving through that process to finalize what the cash-in-lieu amount is and get it back before the appropriate bodies to act on.

Mr. Holt questioned if there is another Active Recreation Area nearby for kids in this area within a short walking distance of this site? Responding to Mr. Holt, Mrs. Melson-Williams stated that in the general area there are ways that you could walk to other places that may be considered Active Recreation Areas but there is not a specific City park in the general vicinity of Roosevelt Avenue. There are either areas that would involve driving to them or walking on what is a somewhat noncontiguous pedestrian way to get to trail systems that would then lead you to park areas.

Mr. Holt stated that he knows that the City has a number of small Active Recreation Parks around the City, but he just wondered if one of those was in this area.

Mr. Roach questioned how difficult it would be to make it come to fruition if they did not approve the cash in lieu just for the fact that he has the same question and concern in regards to that are with the car wash, the Mazda dealership, River Chase, and the project that is going to go down the street. There is absolutely nothing on that side in regards to activities for kids. Responding to Mr. Roach, Mr. Miller stated that if he is talking about the financial viability of the project, it wouldn't happen.

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

Mr. Roach questioned how close the covered parking garages are on the back side? Are they right next to each other or is there any space in between each of them when you come around the whole building? Responding to Mr. Roach, Mr. Miller stated that there are individual buildings so at the corner there are no buildings and then there are two more.

Dr. Jones questioned if the applicant is in agreement with the DAC Report and the recommendations from Staff? Responding to Dr. Jones, Mr. Diener stated yes.

Ms. Maucher moved to approve S-19-02 Boardwalk Apartments at 127, 129, 133, 135 Roosevelt Avenue with the cash-in-lieu requirement as well as the screening requirement, seconded by Mr. Holt and the motion carried 6-0 by roll call vote. Ms. Maucher voting yes; based on Staff recommendations. Mr. Adams voting yes. Mr. Roach voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Dr. Jones voting yes; based on Staff recommendations.

- 3) S-19-03 Retail Center at 747 N. DuPont Highway: Master Plan – Public Hearing and Review of a Site Development Master Plan to permit phased construction of a retail center to consist of four buildings totaling 62,260 SF in three phases. The buildings proposed include three retail structures of 19,200 SF, 19,975 SF, and 11,900 SF respectively. There is also a restaurant of 11,185 SF. The property is zoned SC-2 (Community Shopping Center Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). The property is located on the east side of North DuPont Highway and south of Leipsic Road. The owner of record is Rojan 15 DD, LLC. Property Address: 747 North DuPont Highway. Tax Parcel: ED-05-068.05-01-15.01-000. The project also involves reconfiguration of the property and parking for the hotel located at 764 Dover Leipsic Road. This adjacent property is zoned C-4 (Highway Commercial Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone). The owner of record is Delmarva Hotels LLC. Tax Parcel: ED-05-068.05-01-14.00-000. Council District 3. PLUS #2018-02-02. *This site was subject to a Minor Subdivision Application SB-18-01 as approved by the Planning Commission on February 20, 2018 and granted a one-year extension on February 19, 2019. The Subdivision proposed dividing the existing parcel of 25.01 +/- acres into two parcels of 10.007 +/- acres and 15.004 +/- acres. This proposal deals exclusively with the 10.007 +/- acre parcel to the south.*

Representatives: Mr. James Taylor Jr., Duffield Associates

Mr. Diaz stated that this project is to create a new shopping center at 747 North DuPont Highway. This location is sometimes called the old Berry Van Lines site. It's at the corner of Dover Leipsic Road and North DuPont Highway. This center would consist of three new retail buildings and a new restaurant. The center would also connect to an existing hotel that is adjacent at 764 Dover Leipsic Road through a land swap that would occur between the two properties. This project has been through several steps to get to where we are now. One of those has been through State PLUS Review. Just today the applicant submitted responses to the State comments which were placed on the Commissioner's desks this evening. They have also been through a Traffic Impact Study with DelDOT which he has been told that it's in its final stages and on its way to approval. It went through a Subdivision Application with the City last year that is SB-18-01. It was reviewed originally in February 2018 and given an extension approval in February 2019. This latest step is submission of a Site Development Master Plan Application. A Site Development Master Plan allows applicants to submit a conceptual plan of a project for the Planning Commission's review and approval and then subsequently to submit

detailed plans for individual phases which would undergo administrative review by the Planning Office. The process gives them an extended timeline for construction of the shopping center. It is a useful tool to have for large and complex projects. For this project, Phase 1 would consist of the restaurant, one retail building that is sized 11,900 SF, all of the site entrances and most of the stormwater management areas identified for the site. Phase 2 would consist of one more retail building sized 19,975 SF and then Phase 3 would consist of the last retail building sized 9,200 SF and the last largest stormwater management area which is located to the east of the center at the top of the plan shown.

There are a few issues that Planning Staff worked on with the applicant during review of this project. One was the implications of the zoning. The shopping center property is currently zoned SC-2 (Community Shopping Center Zone) while the hotel is zoned C-4 (Highway Commercial Zone). The land swap that would occur between the two properties would cause both properties to become split zoned which has a number of code ramifications which Staff examined closely to make sure that both properties will remain compliant with the base zoning. Both properties are also subject to the SWPOZ (Source Water Protection Overlay Zone) which limits the amount of impervious surface which can be constructed onsite. In the case of the site Development Master Plan specifically that limit is 75% if the project receives certification from the City Engineer for Superior Stormwater Infiltration Design. The applicant stated that they will work with Kent Conservation District and the City's Public Works Department to pursue that certification. Another issue that we are working on is the architecture of the new buildings. Initially, the applicants provided photographs which served as examples of what the buildings might look like and those are photos of existing buildings in other cities. Since then they have provided Staff with one rendering of the restaurant building that is specific to this site. It shows a Golden Corral Restaurant and that is what the building is supposed to look like; however, they have not seen renderings of the other sides of the building only the front side. They informed the applicants that they would need to bring the architecture of all of the buildings on the site to future meetings of the Planning Commission for a detailed review. There are a few other minor issues that they are working on related to bike parking, dumpsters, landscaping and making sure that the wastewater from the site can be handled by the nearest City pump station. They expect to handle all of these issues during the administrative review phase of the project.

They have a couple of Staff recommendations for conditions of approval which are related to improving the architecture of the complex and also improving the pedestrian facilities onsite. These are outlined in Section 9 of the Planning Staff portion of the DAC Report. Specifically, the first recommendation is for architecture. Staff is recommending that the Planning Commission request that the future architecture submitted for the site be carefully reviewed by the applicant before submission to make sure that there are no blank walls that would appear on the building facades. The second one is related to pedestrian facilities. Staff is recommending a few specific improvements to the onsite pedestrian network that they feel would improve the walking experience for visitors to the site, in particular the addition of crosswalks and an additional sidewalk from Dover Leipsic Road. The Commissioners should act on each of these recommended conditions either including them or not including them in the motion as necessary.

Mr. Taylor stated that they have been working extensively with the Planning Staff and plan to continue to work with Planning Staff as well as DelDOT and Kent Conservation District to get all of the approvals necessary in order to develop this property.

Mr. Roach questioned if Mr. Taylor had any issues with the recommendations from the Planning Staff? Responding to Mr. Roach, Mr. Taylor stated no, the Planning Staff has been great and they have worked through some of them. They understand the architectural requirement and at this point in the stage with a Master Plan, you are kind of early on in the stage of planning. As Mr. Diaz mentioned, the restaurant is proposed to be a Golden Corral which the architectural shows. The plan is for the remainder of the architecture of the Golden Corral to look similar to that but they will provide renderings for all four sides of the building at a later Planning Commission meeting.

Dr. Jones opened a public hearing.

Mr. Matt Groves - PO Box 285 Dover, DE 19903

Mr. Groves stated that he just found out about all of this about a week ago that it was going to get developed and he had a different idea. He is for the restaurant but what he wanted to do was have it looked at to make it a drag track to tie in with Dover Downs. He has contacted Dover Downs but hasn't heard anything yet and he is going to contact NASCAR and see what they say.

Dr. Jones stated that they have to consider the application as it is tonight but perhaps he can engage in conversation later with the concerned parties.

Mr. George Wambold – 885 Dover Leipsic Road Dover, DE 19901

Mr. Wambold stated that he lives almost across from Lot 1 at Dover Downs. He is curious on how far down the shopping center is going to come towards his house. Responding to Mr. Wambold, Mr. Taylor stated that the existing hotel is on the top left corner (referring to the plan visual on the screens.) Right now there is an access drive behind the hotel and the plan is to improve that.

Mr. Wambold stated that he was under the understanding that they were going to put apartment buildings in this area. Responding to Mr. Wambold, Mr. Taylor stated that at one point in time there was the proposal to put apartments there but right now the only thing that is planned for development is the shopping center.

Mr. Wambold stated that he is all for it.

Dr. Jones closed the public hearing.

Mr. Hugg stated that he would remind the Commission that there are Staff recommended conditions and they need to be clear as to whether they are including them or not including them in the motion.

Mr. Adams moved to approve S-19-03 Retail Center at 747 N. DuPont Highway: Master Plan as submitted with the accompanying Staff recommendations, seconded by Mr. Holt and the motion was carried 6-0 by roll call vote with Ms. Edwards, Mrs. Welsh and Mr. Tolbert absent. Mr. Adams voting yes. Mr. Roach voting yes. Mr. Holt voting yes. Mr. Baldwin voting yes. Ms. Maucher voting yes. Dr. Jones voting yes.

NEW BUSINESS

- 1) Project for Dover's 2019 Comprehensive Plan
 - a. Update on Project Activities
 - b. Review of Preliminary Draft #2A – Goals and Recommendations

Mrs. Melson-Williams stated that the Planning Staff continues to be very busy. They actually have initial drafts of about five or six chapters. What was included in the packet tonight is what they call "Preliminary Draft #2A of the Goals and Recommendations. This is the series of Goals and Recommendations for the main chapters of the plan. Last Spring they started with how do you like the existing Goals and Recommendations and now they are through drafting what are the new set of Goals and Recommendations. They are providing them to the Commission for the initial review. They would like to hear and comments or feedback on them. You do not have to take specific action this evening on them; they just wanted to keep you in the loop of what is going on. With these in fairly good shape, they are moving to working on the text of the various chapters and delving back into the series of maps that also must accompany the Comprehensive Plan. Good news for them is that last week they received the extension of the timeframe needed to complete the Comprehensive Plan. The current Comprehensive Plan was set to expire in early February. The State Cabinet Committee on State Planning Issues formally granted the extension at their meeting last week. They had actually asked for the extension back in the Fall. This is continued work on the Comprehensive Plan. If you have thoughts please visit the City's website that they have dedicated to the Comprehensive Plan so that you can see the most recent information that they have posted. They will be in the next week, posting this information for the public to start reviewing and to remind them that they are doing a Comprehensive Plan since it's been a while since we had an Open House in August 2018. The other thing that they have been doing is meeting with their adjacent jurisdictions. They met with Kent County, the Towns of Camden, Little Creek as well as Cheswold and they are still trying to get the meeting lined up with the Town of Wyoming. They continue to make progress and certainly within the next few months they will be seeing what will be the draft document to begin the formal review process for it.

Meeting adjourned at 8:33 PM.

Sincerely,

Kristen Mullaney

Secretary