

Planning & Zoning Commission

May 25, 2017

The regularly scheduled meeting of the Planning & Zoning Commission was held at Town Hall on Thursday, May 25, 2017. In attendance were Chairman Boyan, Commission Members Catellier and Wilson, Clerk of Council Fisher and Community Development Coordinator Hardin. Absent: Commissioner Scholl, Commission Member Morgan and Code Enforcement Officer Bounds. Guests: Tina Wagner, Lou Alberti, Joey Gilkerson, Tim Glass and William Hotton.

Call to Order

Chairman Boyan called the meeting to order. The Commission performed the Pledge of Allegiance.

Approval of Minutes

Commission Member Wilson made a motion to approve the April, 2017 minutes. Commission Member Catellier seconded the motion which passed with 3 ayes and 2 absent.

New Business

Insight Homes- Tina Wagner- New Home Construction- Lot 171, 9522 Heron Ponds Parkway, Delmar, MD

Ms. Wagner informed the Commission that this will be a Drake style home which will be just under 1,800 sq. ft. and will have a 2 car garage. There will be a stone foundation and the plat indicates a driveway. Commission Member Catellier wanted it on the record that the Drake style home has already been approved as a style of home to be built in Heron Ponds. Both Ms. Wagner and the Commission agrees that this home on this particular Lot fits very snugly but within the set-backs.

Commission Member Catellier made a motion for favorable recommendation to the Maryland Mayor and Commissioners for the Drake style home to be built on Lot 171, 9522 Heron Ponds Parkway, Delmar, MD, per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Ms. Wagner was informed to come to the Mayor and Commissioners meeting on June 12th for final approval.

Insight Homes- Tina Wagner- New Home Construction- Lot 172, 9510 Heron Ponds Parkway, Delmar, MD

Ms. Wagner informed the Commission that this would be a traditional Vandelay style home with 2 bedrooms and 2 bathrooms and an attached 2 car garage on the right. It will have a stone foundation as well. Commission Member Catellier wanted it on the record

that the Vandelay style home has already been approved as a style of home to be built in Heron Ponds.

Commission Member Catellier made a motion for favorable recommendation to the Maryland Mayor and Commissioners for the Vandelay style home to be built on Lot 172, 9510 Heron Ponds Parkway, Delmar, MD, per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Bradley Gillis- Preliminary Site Plan for 19,800 sq. ft. commercial retail/merchandising/office flex use north side of E. State Street

Commission Member Catellier stated that he was part of the design team for this building and while there will not be a vote this evening in which he would recuse himself, he will take part in the discussion.

Mr. Joey Gilkerson stated that the building is just under 20,000 sq. ft. and located on the south side of Rt. 13. He and Mr. Glass are here presenting the same concept as was presented to the Planning and Zoning Commission a few months ago, however they have provided additional site information based on their submission to other county departments. They were here this evening for preliminary approval.

Mr. Glass, when asked about the storm-water management plan, stated that the full blown plans have been submitted to Sussex County Soil Conservation. They have received some comments back from Sussex County and are working on them now.

Community Development Coordinator Hardin informed Mr. Glass once the applicant moves forward with the Public Works Agreement, then DB&F will get involved and provide a site plan with comments. Also the three parcels will need to be combined into one since the combined footprint of the building will not fit onto any one of those parcels.

The topic of dumpsters came up. Mr. Gilkerson stated that they are showing 4 dumpsters on site. Not sure if that is all that will be needed due to not knowing what businesses will be located on the site.

Community Development Coordinator Hardin said that he spoke with Mr. Glass this morning and he wanted to clarify about the possibility of DB&F reviewing storm-water management after the developer addresses the comments from Sussex County. A review will take place but no final approvals will be given until such time as the Public Works agreement has been hammered out. Once Sussex County has been satisfied then DB&F will review the plans on behalf of the Town.

The Commission was happy with what they have presented so far and look forward to seeing them when they have everything in place.

William Hotton- Conceptual Plan for Retail Establishment at 9091 Ocean Highway, Delmar, MD

Mr. Hotton said that this property is on the right hand side, north bound lane of Rt. 13. He is representing the client who is interested in purchasing the property. The client will be putting a building for a poultry pharmaceutical company on the property. They receive and ship out bulk supplies to poultry companies like Mountaire and Tyson. Mr. Hotton said that he is not aware of any production being done on-site. The client will be leasing the property for the next five years and will build a retail establishment on the property that will be between 20,000 and 30,000 sq. ft. The business will employ between 3-5 people and will have a truck high loading dock.

Mr. Hotton said the property is next to a nice residential development and currently is occupied and is a multi-family complex. He is hoping that the Town of Delmar would want the new company there rather than what is there now.

Everyone was in agreement that this is something that they think Delmar Maryland would want. Since this is a conceptual plan, he would have to go before the Maryland Mayor and Commissioners and the date and time for that meeting was given to him.

Lou Alberti- Special Exception Request for Service Station and Repair Garage at his location of 504 N. Penn. Avenue- currently zoned Light Industrial.

Mr. Alberti made a statement that his request is for a special exception and a zoning change so he can continue to do what he has been doing on his property for the last 30 years. Community Development Coordinator Hardin clarified that Mr. Alberti's request is for a special exception and is an entirely different procedure than rezoning. Mr. Alberti will have the burden of proof before the Delaware Board of Adjustments for the Special Exception request. He will have to show a hardship. CDC Hardin said that he would supply Mr. Alberti the details of his responsibilities if he doesn't already have a copy. CDC Hardin said that the Board of Zoning Appeals will only deal with facts and is made up of the Delmar, Delaware Town Attorney, Delmar, Delaware Mayor and the Public Works Director. A member of the Planning and Zoning Commission will be present as well as the Code Enforcement Officer and himself, the Community Development Coordinator. Mr. Alberti does have the option of hiring an attorney for the Hearing since it is a semi-quasi hearing.

Mr. Alberti said that he has a son that has 2 spaces in the building for working on his race car. Mr. Alberti, himself, is occupying ½ of a 60 ft. section. The office is not being used. Mr. Alberti stated that he does own a few cars that he works on and are at the building. The warehouse is holding the inventory that he has to liquidate from Delmarva Refrigeration. He said he is not sure how long it will take to liquidate all of the inventory.

When speaking about the outside of the property, Mr. Alberti stated that it is his intention to clean up the property. He has sold one of the vans he used for Delmarva Refrigeration. On the property and outside of the warehouse, he does have some vans for sale and his son has a Nova for sale. There is no business of any type being operated out of the building. He is using the building for his personal use. He did say that his son has bought

and sold some car frames on the property. The son is a certified welder and got into race cars while he was in college.

Mr. Alberti said that when he received the notice from the part time code enforcement officer, he was told that he needed to cover up the vehicles on the property with tarps

Mr. Alberti kept stating how many businesses have been in the building and that there was a trucking company working out of the building when he bought the place. He is amazed that the Town does not have any records of any of their business licenses. When he is finished liquidating the inventory, he wants to rent the office space and the warehouse.

Commission Member Catellier read a portion of the response letter that Mayor Houlihan sent to Mr. Alberti (which will be attached to these minutes in the Minute book). In the letter it spoke about approvals that may have been given without authority. Commission Member Catellier stated that we are the first ones to admit that mistakes may have happened in the past with approvals given by a handshake. But with the present administration, everyone is going to abide by the Code. The Town and Planning and Zoning wants to work with Mr. Alberti.

Mr. Alberti said that he is bordered by Light Industrial zoning and then by property owned by the Town. When asked, CDC Hardin stated that there is nothing in the Code that mandates the zoning be contiguous. The inherent use for his property would be per the zoning code. When discussing his property, Mr. Alberti said that he has too many vehicles to move them all inside the building.

CDC Hardin said that the business license issued to Mr. Alberti was for a HVAC shop and never to be used as an automotive garage. He also said not only are there cars on the property but the back of the property looks like a salvage yard. CDC Hardin also informed Mr. Alberti that he not could store a camper on the property. Mr. Alberti said that it is not possible to store all his vehicles inside the building and that he is taking scrap metal to the scrap shop every day. Mr. Hardin said that none of the Zoning Codes would allow for scrap parts being left in the yard.

Mr. Alberti spoke of all the other businesses that were on the location and did what he is doing. When asked he did not have any written documentation to prove that and he stated that the Town doesn't have any records either. Clerk of Council Fisher stated that she searched the written record as far back as 1985 and could not find anything. She also explained that there is an Archival process that explains that the Town does not have to maintain records for a lifetime. There is a schedule for shredding and archiving materials.

Commission Member Catellier said that Planning and Zoning wants to help Mr. Alberti and he thinks the most proper way to move forward is for Mr. Alberti to change the zoning on his parcel to Community Business. CDC Hardin said that Community Business does recognize an automobile sales lot and sales as an inherent use. There is an application that Mr. Alberti would have to fill out, there will be a Public Hearing for both

the Planning and Zoning Commission as well as the Delaware Mayor and Council to hear comments from neighbors or anyone wishing to give a statement. The property will be posted and Mr. Alberti would be financially responsible for the 2 notices that would need to be in the newspaper advertising the public hearings. There is a 60 day statute for appeals, and then the zoning will be legal.

Mr. Alberti raised a question about being able to store vehicles on the property with Community Business zoning. CDC Hardin said that it would fall under the terms of long term parking.

All the members of Planning and Zoning Commission agreed that Mr. Alberti should move forward with rezoning the property. CDC Hardin said that he will make available to Mr. Alberti the regulations for a Community Business property.

CDC Hardin read the definition for "Garage Repair" which in part reads... "used for the storage, care or repair of motor vehicles". At night and when the business is closed, the expectation is to have the cars inside the building. Normally a fenced in area separates the property from other properties.

CDC Hardin wanted to address the business license. Mr. Alberti said that when he sold his business, he sold the name as well. He needs to liquidate the inventory from Delmarva Refrigeration and pay the new owners, so his business is now called DRI Inc., so the money will go directly into the account of the new owners.

Commission Member Wilson informed Mr. Alberti that P&Z wants to provide him the easiest route to have his vehicles outside and still go through the legal necessities. Mr. Alberti said that he has titles to all the vehicles but they are not tagged or insured. There was discussion of the abandoned vehicle definition and if Mr. Alberti has any vehicles in any state of repair. Mr. Alberti said that he has vehicles that are dismantled, and there are parts of vehicles on the property. Commission Member Catellier asked if it is still considered an abandoned vehicle if it is actively being sold? CDC Hardin said that if the vehicle remains in one location for 10 days or more it is considered to be abandoned. Commission Member Wilson said that the Town could give a time period or put conditions on how soon the property would need to be in compliance. Mr. Alberti said that for the salvage scrap in the back, it will be no problem to clean that up, but he cannot move all the vehicles into the building.

Commission Member Catellier said for Mr. Alberti to rezone the property and for him to ensure that every business at the location get a business license.

CDC Hardin and Commission Member Catellier agreed that there are standards that Mr. Alberti needs to meet. The Town always has the opportunity to put conditions on approvals.

Mr. Alberti kept speaking of his past operations at this building being grandfathered in. CDC Hardin said that if the past operations at the building were not legal, then they are

not allowed to be grandfathered. Additionally, if there was a legal non-conforming use and it was discontinued for one year, then the grandfathered use is lost.

Commission Member Wilson said that she appreciated the efforts that Mr. Alberti is doing to make things right. The fact remains is that Delmarva Refrigeration is no longer operating out of that building. When the business ceased to exist in that location, then his use for the license ended as well. The problem with the repair garage is that it does not fall under the same zoning as Delmarva Refrigeration.

The Town will not penalize Mr. Alberti any more about this location until this issue is resolved. Mr. Alberti said that he would be in the next day to pick up the paperwork needed to move forward with the rezoning of this property.

Adjournment

Upon hearing no public comments, Commission Member Catellier made a motion for adjournment which was seconded by Commission Member Wilson. The motion passed with 3 ayes and 2 absent.

Respectfully submitted,

Cindy Fisher

Clerk of Council