

Planning & Zoning Commission

October 26, 2017

The regularly scheduled meeting of the Planning & Zoning Commission was held at Town Hall on October 26, 2017. In attendance were Chairman Boyan, Commissioner Scholl, Commission Members Catellier and Wilson, Community Development Coordinator Hardin. Absent: Commission Member Morgan and Code Enforcement Officer Bounds. Guests: Chris Brown, Tucker Ellis, Alan Perry, Chris Gilkerson, Tim Glasgow and Roger Waters.

Call to Order

Chairman Boyan called the meeting to order. The Commission performed the Pledge of Allegiance. He asked anyone who would be addressing the Commission to sign in at the podium and that anyone with a cell phone to either turn it off or put it in silent mode.

Chairman Boyan informed everyone that the November Planning and Zoning meeting date has been moved to November 16th since Thanksgiving falls on the normal Planning and Zoning meeting date. Town Hall will be closed on November 23rd and 24th for the holiday and on November 21st, the Town will hold the Maryland General Election.

Approval of Minutes

Sept. 2017- Commission Member Catellier made a motion to approve the September, 2017 minutes as circulated. Commission Member Wilson seconded the motion which passed with 4 ayes and 1 absent.

July 2017-These minutes will need to be tabled since there was not a voting quorum this evening.

Old Business

Chris Gilkerson- Devreco, Inc.- Preliminary/Final Plat Approval for Delmar Business Park, Delmar, DE

Commission Member Catellier stated that he was part of the design team on this project. While he will be involved in discussion on the project he will be abstaining from voting.

Mr. Chris Gilkerson said that they have been moving along with the civil and architectural drawings. They still need DelDot approval. Mr. Glasgow said as far as the permitting process, he has spoken with Josh Taylor at DB&F and he is doing the final wrap up on the site plans. The Town should be getting a letter shortly from DB&F with their comments.

They have sent Sussex County their final submittal. They have a pending review with DelDot for their adjusted plans for the resubmittal for construction and to be recorded. They will be issuing a Letter of No Objection.

Community Development Coordinator Hardin stated that the Town Manager has noted that they will also need a Public Works Agreement. So any approvals given will need to be contingent of at least the Public Works Agreement achieved.

There was discussion on the landscaping and parking. Both were found to be adequate.

Motion for favorable recommendation to the Mayor and Council for Devreco, Inc. for preliminary and final plat approval for the Delmar Business Park, contingent that the proper permits, licenses and compliances from DelDot, the Public Works Agreement with the Town and addressing any of the Town's Engineering comments was made by Commissioner Scholl and seconded by Commission Member Wilson and passed with 3 ayes, 1 abstaining and 1 absent.

Alan Perry- Pond's Edge Apartments, Phase II, Delmar, MD- Extension Request

Mr. Perry said that he knows that the Town's approval for Phase II of Pond's Edge is close to expiring. He is here requesting an extension. There have been some unexpected issues that have slowed down the project.

Mr. Perry said about a week ago, he received the final approval from MDE for the second entrance. He has been working with MDE for quite a while. They could have started that apartment side of the project but not the commercial side without that approval.

Commission Member Catellier brought up the subject of the Delmar School District percentage in Pond's Edge. Mr. Perry responded that in the beginning, Phase II was originally in the Delmar School District. Now, with Wicomico County redistricting, Pond's Edge is no longer in the Delmar School District. That along with the costs and supply of materials due to the hurricanes and tornados that have affected parts of the country, building supplies are being funneled to those areas and are scarce and the prices have risen dramatically.

Motion for favorable recommendation to the Mayor and Commissioners for an 18 month extension for Pond's Edge Apartments, Phase II as of the date of final approval was made by Commission Member Wilson and seconded by Commission Member Catellier. The motion passed with 4 ayes and 1 absent.

New Business

Roger Waters- 3 Sign Approvals for Delmar Little League, Delmar, MD

Mr. Waters stated that he is looking for approval to place 3 State Championship signs; 1 on the back end of the concession stand and 2 on the big baseball field press box.

When asked about the dimension of the building, Mr. Waters stated that he believed it was 40 by 20.

Community Development Coordinator Hardin stated that the Town does not have any provisions in the Code for this type of sign. It could be under billboard but it is not advertising. It is more of a display sign.

Mr. Water said that the 1997 and 2016 signs will go on either side of the press box and the 2017 girls' championship sign would be on the rear of the concession stand closer to the softball field. He said he was trying to separate them; baseball and softball.

Commissioner Scholl made a motion for favorable recommendation to the Mayor and Commissioners for 3 State Championship signs to be placed at the Delmar Little League, Delmar, MD. The 1997 and 2016 signs will be placed on either side of the press box and the girls' 2017 sign will be placed at the rear of the concession stand closer to the softball field. Commission Member Catellier seconded the motion which passed with 4 ayes and 1 absent.

Donald Ellis- Property Line Change- Variance request for a property line change, 103 & 105 Jewell Street, Delmar, DE

Mr. Ellis stated that he lives at the 105 Jewell Street property. His driveway is next to his house and he wants to widen that portion of his property so that 2 cars can be parked.

He provided the Commission with a survey but the survey did not show the house on the 103 Jewell Street property. Mr. Ellis said that he was just going to change the property line as a straight line to stretch from the north point to the south point. He estimated that it would average about 3 feet.

He stated that he was going to be getting a notarized letter from the property owner and have the deed changed after the approval but a letter he received from the Community Development Coordinator informed him that he needed more than that.

Community Development Coordinator Hardin informed the Commission that for Mr. Ellis to move the property line between his house and his neighbor's he will have to go before the Delmar, Delaware Board of Adjustments asking for a variance. The reason the variance is needed is that when the property line is moved, it will change the shape of the 103 Jewell Street property and the side setback will be out of compliance. It will be reduced from 10 ft. to 6 ft.

Mr. Ellis is here this evening for a recommendation to the Delmar, Delaware Board of adjustments for a variance request to allow the reduction of the side setback allowance on the other house.

The other property is owned by 2 individuals, one of which should attend the meeting with a notarized letter from the other owner, giving him power of attorney to speak on his behalf. The other property owners would have to understand the burden of proof. CDC Hardin said that he did write a lengthy letter to the property owners so they should have some sort of understanding. There would also have to be a conveyance of the deed.

Commission Member Catellier informed Mr. Ellis that the survey he provided shows the proposed property line change but does not properly convey the abandonment of the existing property lines involved in the change. Additionally, while it does show the house at 105 Jewell Street it doesn't show the house at 103 Jewell Street. The survey should show the dimensions of both properties along with the current property line and the proposed line change. Both properties should be on the survey showing all the setbacks. Mr. Ellis was also informed that the requirements for survey submissions are noted in a list on the P&Z application. Mr. Ellis was directed to address all items on that list with the exception of "signs" which is not applicable.

Commission Member Wilson made a motion for favorable recommendation for the variance request from Mr. Ellis to the Delaware Board of Adjustments for the proposed property line change between 103 and 105 Jewell Street, Delmar, DE. It is required that at least one of the other property owners be present at the meeting. Mr. Ellis will provide a revised site plan to show all items noted on the P&Z application list, with the exception of "signs". The motion was seconded by Commissioner Scholl and passed with 4 ayes and 1 absent.

Chris Brown- Ryan Homes- Yorkshire Estates, 36427 Carriage Walk Lane, Lot 91, Home Style 2203, Delmar DE

When asked if these were spec homes, Mrs. Brown responded that these homes have been sold.

Commission Member Catellier stated right before any discussion could take place that he has a real concern that 2 of these houses being presented this evening are the same home-style right next to each other. Mrs. Brown said that one style is Elevation B with a roof over the entrance while the house next to it is Elevation A and does not have the roof over the entrance. The color combinations of all the new houses are different.

Commission Member Catellier said that just last month, Doug Marshall, who was present at that meeting, was made aware of the concern of similar home styles next to each other. Mr. Marshall said at last month's meeting he was unaware that there was a prior discussion on not having the same home style next door to each other or even across the street from one another. But he knew after that meeting.

Commission Member Catellier asked Community Development Coordinator if the Town had any authority over this issue. CDC Hardin replied that yes, in Section 3- General

Provisions of the Planning and Zoning Regulations, it does state that the Commission does have the right to review and approve all architectural components of the structures to be constructed or altered. This review and approval process shall apply to all new construction and all remodeling projects that significantly change the external appearance of any primary structure. This provision covers aesthetics, size, style, color, roof pitches, etc. as is appropriate for the district and surrounding areas. The Commission, by majority, retains the discretion and right, when exercised in accordance with applicable law, to reject any petition seeking approval under, or change to, the Planning and Zoning Regulations.

Commission Member Catellier said that since this was brought up last month, he still wants to make an objection. This month is the same situation as last month, we approved the same home-styles next to each other because they were already sold. The same situation has occurred this month, as these homes and Lots have already sold. These homes are not Spec homes.

Mrs. Chris Brown said that they must have thought that with the colors and elevations being different, then it would be okay with the Commission. She also stated that an email sent out by Doug Marshall indicated that changing the color and elevation for same home styles that were next to each other would be acceptable.

CDC Hardin said that also in Section 3- under General Provisions it states that the property owners and developers shall take care to ensure that all provisions are met.

Commissioner Scholl said that if it is the house style that the owners chose and it is the color that they pick out, then he sees no reason not to allow them to buy it. It was suggested that the two lots where the houses are similar to be tabled until the buyers are notified of the situation.

Commission Member Catellier stated in the Wood Creek Development, where he lives, there are over 200 homes and there is not any of the same next to each other. Once a model is picked, then it is taken off the table for an option for the neighboring lots.

There was discussion of tabling the 2 lots that have the same home style on them which is Lots 92 and 93. Then it was discussed to move forward and go with a vote.

With regard to Lot 91, which does not present the issue of neighboring the same model, Commissioner Scholl made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 2203, on Lot 91, 36427 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commission Member Catellier seconded the motion which passed with 4 ayes and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36429 Carriage Walk Lane, Lot 92, Home Style 1918, Delmar, DE

There was discussion about tabling Lots 92 and 93 until more information is available that the 2 buyers are in agreement that they are neighbors to another house just like theirs. Commission Member Catellier said that if the developers come back with a letter from the buyers it would affect their decision. Maybe they can keep the home style but move to a different lot.

Commissioner Scholl made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 1918, on Lot 92, 36429 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes, 1 nay and 1 absent. Commission Member Wilson wanted it put on the record that this lot is next door to a lot that has the same home style.

There was conversation with CDC Hardin in reference to who was responsible. CDC Hardin said the construction and development is ultimately the responsibility of the property owner. Chairman Boyan said that maybe he should write a letter to the property owner expressing the Commission's concern that what was originally agreed to is not being adhered to. CDC Hardin said that he would draft the letter expressing the Commission's concerns. He will include the discussions this evening and indicate that if they continue to not follow the suggestions from the Planning and Zoning Commission, they run into difficulty in getting favorable recommendations.

Commission Member Wilson suggested that at least for the Mayor and Council that Ryan Homes present written communication, signed but without requiring a notary, that the 2 buyers are aware that their neighbor has the same style home.

Commission Member Wilson made a motion to amend the motion for Lot 92 to include the stipulation that both property owners have knowledge of the same home-style in the lot adjacent to theirs. Commissioner Scholl seconded the motion which passed with 3 ayes, 1 nay and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36433 Carriage Walk Lane, Lot 93, Home Style 1918, Delmar, DE

Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 1918, on Lot 93, 36433 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings with the stipulation that both buyers are made aware that they are choosing the same home- style as their neighbor. Commissioner Scholl seconded the motion which passed with 3 ayes, 1 nay and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36434 Carriage Walk Lane, Lot 114, Home Style 1918, Delmar, DE

Commission Member Wilson wanted it put in the record that this home-style is between 2 home-styles that are not similar. Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 1918, on Lot 114, 36434 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commission Member Catellier seconded the motion which passed with 4 ayes and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36436 Carriage Walk Lane, Lot 115, Home Style 1296, Delmar, DE

Commission Member Wilson wanted it put in the record that this home-style is between 2 home-styles that are not similar. Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 1296, on Lot 115, 36436 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commissioner Scholl seconded the motion which passed with 4 ayes and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36440 Carriage Walk Lane, Lot 116, Home Style 2203, Delmar, DE

Commission Member Wilson wanted it put in the record that this home-style is between 2 home-styles that are not similar. Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 2203, on Lot 116, 36440 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commissioner Scholl seconded the motion which passed with 4 ayes and 1 absent.

Chris Brown, Ryan Homes, Yorkshire Estates, 36442 Carriage Walk Lane, Lot 117, Home Style 1918, Delmar, DE

Commission Member Wilson wanted it put in the record that this home-style is between a storm water pond and home-style 2203. Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for a new home build of home-style 1918, on Lot 117, 36442 Carriage Walk Lane, Yorkshire Estates, Delmar, DE, per the attached drawings. Commissioner Scholl seconded the motion which passed with 4 ayes and 1 absent.

Commission Comments

Chairman Boyan stated that he has observed properties in Town, one of which is at the State Line Plaza, where a lot of the store fronts are either covered up with advertisements of just tinted or covering the view. It is something he wants to bring up before the Council and the Delmar Police Department. He stated that he thinks it would be perceived as a safety issue, not being able to see inside a store. The businesses are open to the public, they are not private.

CDC Hardin said on behalf of the Administration, it has been brought to the Town's attention. He has sent an email to the Town Manager and contacted both the Town's

Attorneys. He has received a proposed ordinance from the Delaware Attorney and is still waiting for guidance from the Maryland Attorney.

The current concerns are on the Delaware side. The regulations state that no more than 50% of the window front can be blocked by advertisement. It should be amended to prevent any kind of blockage. The comments from the Delmar, Delaware Attorney was that there was not enough in the current regulations to prevent the tinting of the windows. While it is not an advertisement, it may be a safety concern.

Chairman Boyan said that there are several properties that have more than 50% of their windows covered by advertisements. This just needs to be enforced.

Chairman Boyan spoke on how some signs come before the Planning and Zoning Commission and others don't. It is his understanding that signs that are just replacing the face don't have to come before the Commission. If that is the case, then the Commission is not aware of the types of businesses that are coming into Town.

CDC Hardin informed the Commission that all new businesses are required to obtain a business license. Unless the business is not specified for that zone, it would come before the Planning and Zoning Commission. Most all of the new businesses put up new signs. But going forward, the Planning and Zoning Commission can propose any changes to the regulations. If there are concerns about things that they would like to see in the upcoming revisions, he will compile those concerns and share with the Town Manager and both Town Attorneys.

CDC Hardin said that to just replace the face of a sign is not spelled out in the regulations. As it is now; all signs need to be approved by Code Enforcement to give a permit or it will need to come before the Planning and Zoning Commission. Chairman Boyan said that he felt every new business should come before the Planning and Zoning Commission. CDC Hardin said that would have to be done by an ordinance. He said that in 2010 a revision was done to the P&Z regulations and that was not included in the revisions. He is thinking that it was temporary signs that needed only to go before the Code Enforcement Officer. Chairman Boyan asked why the Oddz and Endz sign did not come before the Planning and Zoning Commission. CDC Hardin responded that they did not come before the Commission because they just changed out the face. A regulation would need to be spelled out on what should go before the Code Enforcement Officer and what needs to come before the Planning and Zoning Commission.

CDC Hardin said that concerns about solar panels had been brought up before and it never was put in the revisions of the zoning regulations. The Town has no authority to stop anyone from having solar panels installed at their homes. Code Enforcement Officer Bounds does do the inspections for the building permits for the installation but there is nothing specific in any Codes that stipulates that solar panels can only be installed on roofs.

CDC Hardin said that there are a lot of ordinances on the books now that haven't been changed in forever. They need to be addressed for current times. He suggested that the Planning and Zoning Commission members start thinking about scheduling work sessions and try to identify areas in the regulations that they want changed.

Adjournment

Commissioner Scholl made a motion for adjournment which was seconded by Commission Member Catellier and passed with 4 ayes and 1 absent.

Submitted by:

Cindy Fisher
Clerk of Council