

## ***Planning & Zoning Commission***

***April 25, 2019***

The regularly scheduled meeting of the Planning & Zoning Commission was held at Town Hall on April 25, 2019. In attendance were Chairman Boyan, Commission Members Wilson and Outten, Code Enforcement Officer Peek, Community Development Coordinator Hardin. Absent: Commission Members Catellier and Commissioner Scholl, and Clerk of Council Fisher. Guests: Chris Brown, Greg Johnson and Craig Holmes.

### ***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.

### ***Approval of Minutes***

Commission Member Wilson made a motion to approve the March, 2019 minutes as circulated. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

### ***Old Business***

Lisa Baid- Placement of a 12 x 14 garden shed on right side of front yard, at 11496 Buckingham Drive, Delmar, DE along with the placement of the patio

Community Development Coordinator Hardin informed the Commission that Mrs. Baid had informed the Town Manager that she would not be available to attend this meeting. At the March Planning and Zoning Commission meeting, the only concern was that she did not provide a certified site plan for total consideration of the patio pavers, the fire pit along with the shed. He said if there is a need, they have the ability to make a conference call to her if a question arises.

Commission Member Wilson stated for the record that the site plan provided is incomplete without the seal and doesn't have the sizes of the patio pavers and not any distances shown from the property lines. From the paperwork provided, it is hard to know what percentage of the yard is taken up. It doesn't appear to be over the allowed percentage. She recommends that the site plan be amended prior to the Council meeting. She did say that there is a letter from the HOA stating their approval of the placement of the shed.

Community Development Coordinator Hardin stated that the Clerk of Council might have the signed and sealed site plan and it could be a condition that an amended certified site plan be made available prior to the Council meeting.

Commission Member Wilson made a motion for a favorable recommendation for a 12 x 14 shed to be placed on the right side of the front yard at 11496 Buckingham Drive, Delmar, DE, contingent that prior to the Delaware Mayor and Council meeting, a complete site plan be provided to include the seal and specify the size of the patio and the

distances from the property lines for the patio and the fire pit. CDC Hardin said that the fire pit could be handled through the Code Enforcement procedures. Commission Member Outten seconded the meeting which passed with 3 ayes and 2 absent.

***New Business***

Greg Johnson- Special Exception request for a repair facility at 8999 Ocean Highway, Delmar, MD

Mr. Johnson stated that he is asking to operate a service repair facility at the old G&M Sales building. His business is called All Mobility Solutions. They will be having a retail space that sells the mobility scooters and will be retro-fitting, repairing and doing oil and brake jobs, inspecting the lifts and equipment that are hand controlled. The vans that they bring in will already have the conversion kits installed. There are a number of accessories that they will add to the vans. They will not be working on any transmissions. The company has been around for about 20 years in the Industrial Park in Fruitland.

Mr. Johnson said that they will be warehousing some of the brand products. They will not be taking over the whole building but are leasing about 1,000 sq. ft. They will be in the front unit closest to the highway. The unit does have a dock but he wants to install garage doors once they receive a Special Exception. They can apply for a Commercial Building Permit for the garage doors at any time after the approval. There is a large truck repair service at the other end of the building along with 2-3 other businesses.

CDC Hardin spoke of parking and the regulations speak to having one parking space for each 200 sq. ft. of floor space excluding retail sales area. They do meet what is specified, plus one space for each employee; of which he is sure that there is adequate parking.

Commission Member Outten made a motion for favorable recommendation for Greg Johnson and All Mobility Solutions to be located at 8999 Ocean Highway, Delmar, MD to move forward to the Maryland Board of Zoning Appeals, for a Special Exception to allow for a repair facility for handicapped vehicles for the repair and maintenance of handicapped scooter and vehicles. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

CDC Hardin explained the burden of proof put on the petitioner for a Special Exception at the Board of Adjustments meeting.

Chris Brown- Heron Ponds- Lot 119 at 9539 Mourning Dove Way, Delmar, MD- Homestyle-“Sienna” Two Story , Elevation A

Commission Member Wilson notated that there are no issues with the neighboring houses being the same style. After reviewing the documentation, and there being no questions, Commission Member Outten made a motion for a favorable recommendation to the Mayor and Commissioners for home-style “Sienna”, two-story, elevation A to be built on Lot 119 at 9539 Mourning Dove Way, Heron Ponds, Delmar, Maryland, per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Heron Ponds- Lot 133 at 30730 Spoonbill Court, Delmar, MD, Homestyle “Alberti Ranch” One-story, Elevation A

After reviewing the presented documentation and having no questions, Commission Member Wilson made a motion for favorable recommendation to the Mayor and Commissioners for home-style “Alberti Ranch”, one-story, elevation A to be built on Lot 133 at 30730 Spoonbill Court, Delmar, MD, per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Heron Ponds- Lot 180 at 9512 Royal Tern Drive, Delmar, MD, Homestyle “Sienna” Two-story, Elevation A

Commission Member Wilson noted that the rear Lot line is exactly 30 ft., but within Code. After reviewing the presented documentation and having no questions, Commission Member Outten made a motion for favorable recommendation to the Mayor and Commissioners for “Sienna” home-style, two-story, elevation A to be built on Lot 180 at 9512 Royal Tern Drive, Delmar, MD, per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- New House Plans- Homestyle # 1280, Elevations A&B

Commission Member Wilson stated that there was a stoop and the roof line on this style is different than most. Commission Member Wilson noted that the rear Lot line is exactly 30 ft., but within Code. After reviewing the presented documentation and having no questions, Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for new home style #1280, elevations A&B to be an approved house style for Yorkshire Estates, per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 50 at 11777 Buckingham Drive, Delmar, DE- Homestyle #1680- Two-story, Elevation A

After reviewing the presented documentation and having no questions, Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for home style #1680, two-story, elevation A to be built on Lot 50, located at 11777 Buckingham Drive per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 131 at 11657 Buckingham Drive, Delmar, DE- Homestyle #1918- Two-story, Elevation A

After reviewing the presented documentation and having no questions, Commission Member Outten made a motion for favorable recommendation to the Mayor and Council for home style #1918, two-story, elevation A to be built on Lot 131, located at 11657 Buckingham Drive per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 135 at 11669 Buckingham Drive, Delmar, DE- Homestyle #1296- One-story, Elevation B

Commission Member Wilson noted that there is a vacant Lot next to this Lot. After reviewing the presented documentation and having no questions, Commission Member

Outten made a motion for favorable recommendation to the Mayor and Council for home style #1296, one-story, elevation B to be built on Lot 135, located at 11669 Buckingham Drive per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 135 at 11669 Buckingham Drive, Delmar, DE- Homestyle #1296- One-story, Elevation B

Commission Member Wilson noted that there is a vacant Lot next to this Lot. After reviewing the presented documentation and having no questions, Commission Member Outten made a motion for favorable recommendation to the Mayor and Council for home style #1296, one-story, elevation B to be built on Lot 135, located at 11669 Buckingham Drive per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 137 at 11681 Buckingham Drive, Delmar, DE- Homestyle #1440- Two-story, Elevation A

The petitioner asked for this agenda item be withdrawn.

Chris Brown- Yorkshire Estates- Lot 139 at 11687 Buckingham Drive, Delmar, DE- Homestyle #1918- Two-story, Elevation A

After reviewing the presented documentation and having no questions, Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for home style #1918, Two-story, elevation A to be built on Lot 139, located at 11687 Buckingham Drive per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 175 at 11638 Buckingham Drive, Delmar, DE- Homestyle #2203- Two-story, Elevation A

After reviewing the presented documentation and having no questions, Commission Member Wilson made a motion for favorable recommendation to the Mayor and Council for home style #2203, Two-story, elevation A to be built on Lot 175, located at 11638 Buckingham Drive per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 179 at 11656 Buckingham Drive, Delmar, DE- Homestyle #1296- One-story, Elevation B

After reviewing the presented documentation and having no questions, Commission Member Outten made a motion for favorable recommendation to the Mayor and Council for home style #1296, one-story, elevation B to be built on Lot 179, located at 11656 Buckingham Drive per the attached drawings. Commission Member Wilson seconded the motion which passed with 3 ayes and 2 absent.

Chris Brown- Yorkshire Estates- Lot 181 at 11670 Buckingham Drive, Delmar, DE- Homestyle #1296- One-story, Elevation A

Commission Member Wilson notated that there is a vacant Lot on both sides of this Lot. After reviewing the presented documentation and having no questions, Commission

Member Wilson made a motion for favorable recommendation to the Mayor and Council for home style #1296, one-story, elevation A to be built on Lot 181, located at 11670 Buckingham Drive per the attached drawings. Commission Member Outten seconded the motion which passed with 3 ayes and 2 absent.

***Public Comments***

Mr. M. Craig Holmes introduced himself as being a Delmar, DE resident living at 11766 Buckingham Drive in Yorkshire Estates. He said that he believes that Yorkshire Estates is zoned R-1 Residential which has the minimum Lot size requirements of 7,000 sq. ft. He said his and some other residents of Yorkshire properties have less than 7,000 sq. ft. He said that the original buyers in Yorkshire didn't have the minimum Lot size of 7,000 sq. ft. He wants to know if there is some way the Planning and Zoning Commission could correct this mistake. He is also asking how he can still be governed under the same restrictions as property owners with at least 7,000 sq. ft. of property when he only has around 5,000 sq. ft. of property. He stated that his and his neighbor's properties do meet the 50 ft. width requirement. That makes the total of his property a total of 5,000 sq. ft.

Mr. Holmes stated in the past the property owners did not have to go to Town Hall and get a permit as long as the accessory structure was not attached to the house. It was called a temporary structure and no permit was needed. The structure is not on a slab and was already built when the structure was brought in. He is now finding out that they were supposed to get permits for those structures. He is asking the Commission if there is anything he could do instead of going through the whole process of getting a variance. He feels that he is being penalized because the previous owners gave them bad information.

Commission Member Wilson stated that she sees a minimum of 2 issues. Her understanding is that the subdivision is not part of the general guidelines now in place. The Lot sizes were approved with the sub-division development plan. Even though Mr. Holmes is quoting the lot sizes from the 2015 Planning and Zoning Regulations, they may not necessarily be what the sub-division plan was approved for.

Community Development Coordinator Hardin stated that the Lot sizes Mr. Holmes is quoting is correct. Yorkshire Estates at one time was modified to be 5,000 sq. ft. lots. Mr. Holmes' contention is that the minimum Lot requirement set for an accessory structure to be 5 ft. from the rear property line and 3 ft. from each side should have been modified for properties that are under 5,000 sq. ft. such as his and his neighbors. They have not been modified in the Regulations. CDC Hardin stated that there have been conversations with Mr. Holmes explaining to him that the only way that his concern could be addressed is in a revision of the Planning and Zoning Code in the future by means of modifying the Code to accommodate such occurrences otherwise at this present time, it would require a variance. CDC Hardin stated that he doesn't believe this Commission has any mechanism to accommodate Mr. Holmes in the way he wants other to make a recommendation to the Delaware Board of Adjustments for a variance.

Mr. Holmes said that that is the reason why he is here this evening. His problem is that he, as a resident, doesn't feel like he should pay for anything to go before the Board of Adjustments because of an error made by the Elected Officials.

Commission Member Wilson said that the Commission would not comment on that. CDC Hardin stated that Mr. Holmes can present to the Delaware Council and if the Council chooses to waive those fees, they could do so. The fees for the meeting include the \$75.00 filing fee, a fee for the public hearing notice that the Town is mandated to put in the Daily Times, and then the attorney fees. Those fees would then be bore by the Town that normally would be paid by the petitioner. But the Council would be the body to make that decision.

Mr. Holmes begged the Commission to see that everyone being elected sees that a grave mistake took place when this sub-division was first opened. He stated that no one thought that while we have these existing ordinances, that they don't do justice to smaller properties. If you force us; he and his neighbors, to adhere to the current ordinances, there will be nothing left of their back yards.

Mr. Holmes said because of the modifications to the zoning setbacks have not been done for the smaller properties, it's not his fault and they should not have to pay to move along with the variance process.

CDC Hardin stated again that it is the Mayor and Council's call whether to waive the fee. This body may be able to make a recommendation but the waiver has to come from the Council.

Commission Member Wilson informed Mr. Holmes, that typically he would come before the Planning and Zoning Commission with an application to do whatever he wanted to do. This body does not have the authority to make any final decisions. We can only make recommendations to the Council or Commission. Since Mr. Holmes is here in the "Public Comments" portion of the meeting, it's hard for her to say this is your property and this is what you want to do since there is no application to be placed on the agenda. They cannot make any final decisions as to what should be done to the sub-division as a whole in regard to making adjustments to allow accessory structures without going through the process.

CDC Hardin said that when the proposal for the revisions of the P&Z regulations are in the process, this body can make any recommendations along those lines they wish to make. The proposed revisions go back and forth between the Council and Commission for their recommendations before it goes to both attorney's for their review for legality concerns. CDC Hardin also stated that in the 2015 revisions, a residential R-4 district was established which accommodates small Lot sizes. Those Lot sizes are 4,000 sq. ft. and the requirements for accessory structures for rear and side setbacks are the same as in the R-1 zoning districts. CDC Hardin stated that he and the Town Manager agree that this is something that needs to be revised in the Regulations. CDC Hardin stated that Mr. Holmes also asked whether the group of the residents could do a "class action". After

conversation with our Delaware Town Attorney, he indicated that it could not be done as a “class action”. Each property owner is responsible for coming forward with their own requests, which was communicated in writing to Mr. Holmes. Normally, Mr. Holmes would have made a request to be placed on the Planning and Zoning agenda requesting a variance and just like any other variance, this body would make a favorable recommendation to the Delaware Board of Adjustments to modify the minimum setbacks for accessory structures.

Mr. Holmes said that he came before this body in the “Public Comments” portion of the meeting to get feedback from the Commission first before he puts anything on paper. He wants to make sure he does his paperwork correctly the first time.

CDC Hardin informed the Commission and Mr. Holmes that there is no fee to appear before the Planning and Zoning Commission, nor is there a fee to appear before the Mayor and Council. The fee structure comes in when you wish to appear before the Board of Adjustments. The filing fee is \$75.00, the legal notice fee could run as much as \$350.00 and then there are the attorney’s hourly rate fees for being at the hearing. In total it could possibly be as much as \$1,000.00. The Board of Adjustments is a quasi-judiciary hearing where the records are maintained. If Mr. Holmes feels that the Board rules in a way that Mr. Holmes feels is not just- he has a right to go before a Court of competent jurisdiction and handle it as a law suit.

CDC Hardin stated that this issue came about because the Lot behind Mr. Holmes was sold by Ryan Homes. Upon inspection of the newly sold property, Ryan Homes became aware that Mr. Holmes’ shed and the shrubbery he planted was encroaching the other person’s Lot. The Town had to request that all his accessory structures and his shrubbery be moved. In doing so, the Town had to enforce the regulations which were in place in regards to the setbacks for the shed. Mr. Holmes said that all the original home buyers are being told that their existing accessory structures are encroaching on the lands Ryan Homes are selling. CDC Hardin stated that he actually did a wheel measurement of Mr. Holmes’ property to show where the 100 ft. was. Mr. Holmes did comply by moving the shed and his shrubbery to be in conformance.

Mr. Holmes stated that he feels that whatever happens in Heron Ponds should also happen in Yorkshire since it is owned by the same development company. He read from the P&Z Regulations that Open Space should be at a minimum of 20% of the entire subdivision for the common use for all the residents of the development. The Open Space areas of the development shall be planned as an intricate part of the development. Of that 20% at least half of it has to be deemed to be “Active” Open Space such as playgrounds, jogging paths, picnic areas, soccer fields, etc., as determined by the Planning and Zoning Commission.

Mr. Holmes said that there is no Open Space in Yorkshire Estates There is no room for any Open Space. He doesn’t understand how Ryan Homes keeps coming to Planning and Zoning to get approvals and no one has raised that question.

CDC Hardin stated that a developer, just like when Ryan Homes took over Yorkshire Estates, comes in and presents their plans to the Council, they modified their Lot sizes, could have modified other provisions in the Regulations at the time their plan was approved. Everything that is being done in Yorkshire Estates to date, has previously been approved and is on file in Sussex County. The development plan went through a concept review, a preliminary review and then final approval. CDC Hardin suggested that it might be a question Mr. Holmes would want to ask the Council at the next Mayor and Council meeting.

Commission Member Wilson asked who the developer was for Yorkshire Estates. CDC Hardin replied that Doug Marshall is the owner of the development and Ryan Homes buys Lots from Doug Marshall to build the homes on. Ryan Homes had nothing to do with the development plan.

Mr. Holmes said that the original development plan was approved between 2005 and 2006. No one could answer at that moment if there had been any updates or changes to the original plans. CDC Hardin said that if it is a concern before the Council or the Town Manager, the Clerk of Council could review the records and get a history for Yorkshire Estates.

Chairman Boyan said that before he became Chair of the P&Z Commission, he remembers something was put into the Regulations about future developments being required to have Open Space. He said that there are several developments now that have nothing for Open Space.

Mr. Holmes said that he is bringing this up because Doug Marshall is installing an HOA and part of the fees are for the maintenance of the common areas, and there are no common areas. The HOA paperwork specifically speaks to the Ponds. There is no access to the Ponds because there are houses surrounding it. Ryan Homes is charging \$5,000 extra to home buyers to live around the Pond. They are also charging an additional \$3,000 for property where the trees aren't blocking the farm. Even if the Pond is considered Open space, it is not accessible because it is surrounded by private property. Both Commission Member Wilson and CDC Hardin said that not all Open Space has to be accessible to all residents.

There were some locations, such as on Buckingham Drive, that could be Open Space. CDC Hardin stated that without researching the records, he could not speak of all the Open Space areas in Yorkshire Estates.

Mr. Holmes stated that he was told to file for that information through the Public Information Act. He said that it is something that everyone knows needs to be corrected and should be corrected. CDC Hardin said in response to the Open Space; that is something that he doesn't know right now what has been approved.

CDC Hardin stated that if there are violations to the current approved plan then there are legal remedies for that.

CDC Hardin informed Mr. Holmes again, that he could not go by the 2015 Planning and Zoning Regulations since the development was established prior to that date. Also, the developer at the time may have gone before the Delaware Board of Adjustments for any variances or special exceptions that they may have requested at the time.

CDC Hardin said that once the shed was moved along with the shrubbery because they were sitting on someone else's property, Mr. Holmes had to meet the current guideline restrictions. Mr. Holmes now is saying that he is questioning the property lines, since all the houses in the old, original area are set the same. Commission Member Wilson said that it could be a surveyor issue.

CDC Hardin informed Mr. Holmes and the Commission Members that there are Lots in Yorkshire Estates that sit on a drainage and maintenance easement that is 40 ft. deep. We have approved fences for those properties based on the fact that because if you meet the easement requirements so you don't encroach on the easement

***Adjournment***

Motion for adjournment was made by Commission Member and was seconded by Commission Member. The motion passed with 4 ayes and 1 absent.

Respectfully submitted,

*Cindy Fisher*  
*Clerk of Council (from audio recording)*