

Planning & Zoning Commission Meeting
October 26, 2023
MEETING HELD IN-PERSON & VIA TELECONFERENCE

The regularly scheduled meeting of the Planning & Zoning Commission was held at Delmar Town Hall and via teleconference. Those in attendance: Deputy Mayor Lenox, Vice Mayor Jones, Commission Members: Rochelle Outten and Beverly Wilson. Key personnel: Town Mgr. Fleetwood, Planning and Zoning Director Twain Evanson, CEO Liz Peek and Clerk of Council Vondell Spencer. Guests: Kyle Hughes, Margo McCarthy, Doug Marshall, Rodney & Chris Brown, Blair Carey and via teleconference Bill Krapf. Absent: Commission Member Shawn Johnson.

Called to Order:

Deputy Mayor Lenox called the meeting to order at 7:00 p.m. and led the pledge of allegiance.

Approval of Minutes –

A motion was made and seconded (Outten/Wilson) to approve the August 24, 2023 meeting minutes as circulated by roll call vote with 4 Ayes 1 Absent (Johnson).

Old Business –

None.

New Business –

- Margo McCarthy - Child Care Center - Altitude Trampoline Park, 30174 Foskey Ln., Delmar, MD** – Ms. McCarthy presented a child care center as referenced per the attached drawings. She explained the child care center is a full school facilitation service for families that want to home school, parents choosing the curriculum for students to get their work done in a place that is healthy, active, and social. Ms. McCarthy stated she runs a location out of Galaxy Gymnastics in the Twilley Center in Salisbury, MD.

She further stated she uses indoor athletic facilities that have all the space that sits empty through the week. Ms. McCarthy said she has to get a Child Care Center license to operate because she has other people's children in her care for 16 hours a week. Her hours of operation are Monday through Thursday. 8:30 to 12:30 and she works with school aged children. Deputy Mayor Lenox confirmed the license required is a State of Maryland license. Ms. McCarthy responded yes.

Deputy Mayor Lenox asked if there was a number of kids attached to the license. She answered the child care center people will visit the location and measure the space. Ms. McCarthy said she needed 35 sq. feet per child, so the rooms she has looked at she should be able to get about 10 kids into 2 rooms so probably about 20 kids in the program.

Deputy Mayor Lenox further confirmed the child care center entirely in the building with no exterior access. Ms. McCarthy responded yes.

Deputy Mayor Lenox asked if the hours of operation were the same as the trampoline park. Ms. McCarthy answered she may open a little earlier than when the trampoline park opens which she has discussed with the trampoline park owner and manager.

Vice Mayor Jones asked Ms. McCarthy if she was CPR certified. Ms. McCarthy answered yes and medication administration trained. Also, the teachers that she hires do the same certifications and training.

Deputy Mayor Lenox asked Ms. McCarthy if she ran summer camps. She answered no they only operate through the school year. Commission Member Wilson noted for the record the zoning is community business district that would allow for this kind of operation.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Commissioners for – Margo McCarthy – Child Care Center – Altitude Trampoline Park, 30174 Foskey Ln., Delmar, MD., per the attached drawings. A motion was made/seconded (Outten/Jones) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

2. **Jennifer Newton/Bill Krapf – New Construction/Townhouse (Ponds Edge) – 8763-8753, 8775-8765, 8787-8777, 8799-8789 Nicholas Circle, Delmar, MD** – Mr. Krapf presented new construction/townhouses as referenced per the attached drawings. Mr. Krapf explained and updated the Commission on the seven townhome buildings submitted and the delay.

Deputy Mayor Lenox said the site plan that was previously approved remains in place. He asked Mr. Krapf if the Commission was simply looking at the building elevations. Mr. Krapf answered that is correct. He further said there are other townhomes in Pond's Edge in the first phases. The design submitted appears better. Mr. Krapf responded they bought their own product in. Deputy Mayor Lenox asked if all the staircases were internal. Mr. Krapf answered that is correct.

Deputy Mayor Lenox asked P&Z Director Evanson if there were any concerns with permitting or anything the Commission needs to pay attention to other than the elevations. He answered the only concern he had was making sure every building is different.

Deputy Mayor Lenox confirmed there were no changes to the site plan and local fire department signed off on everything. He said he would like to get one final look from the fire department. Mr. Krapf responded they have already been to the fire marshal but he does not believe it has been put in front of the fire department yet. Once they have approval they will submit to the Town for full permits and the last time is when the fire department took a look at it.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Commissioners for – Jennifer Newton/Bill Krapf – New Construction/Townhouse (Ponds Edge), four buildings containing six units each, per the attached drawings with the condition that final review of the site be by the fire department. A motion was made/seconded (Wilson/Jones) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

3. **Doug Marshall – Rezoning – Royal Tern Dr., Delmar, MD** – Mr. Marshall presented rezoning of his property as referenced per the attached drawings.

Mr. Marshall stated 3-4 years ago they came for a zoning change and everyone was in a rush to stop the influx of houses coming to Delmar. At that time, they wanted to build another wedding center in the back of Heron Ponds. The zoning was changed from R-2 residential to highway commercial. A few years later they realized they might not want to build another wedding center. A few months ago, the concept of tiny homes and a tent wedding center were approved.

Mr. Marshall further stated after speaking with the HOA, residents, a few concerned citizens, and looking at the Comprehensive Plan they realized there may have been a mistake in changing it from R-2 to highway commercial. He said he and the Town were unaware there was a mistake that was overlooked. The Town was gracious enough to rezone to highway commercial.

Mr. Marshall said it is time to finish the project in 2023-2024. There was a lot of blow-back from the HOA and residents about the tiny homes and another wedding center back there and commercial activity. He said they are looking to revert the zoning back to R-2 residential that it was originally zoned back in 2001, 2002 or 2003. The goal is to cut the property into 7 to 8 large estate lots, sell those lots, topcoat the back, and finalize the project.

Deputy Mayor Lenox clarified the Commission is not looking at a subdivision, it is how Mr. Marshall would like to proceed at this point. Deputy Mayor Lenox said the background is very confusing.

P&Z Director Evanson explained the annexation and what the zoning was. He said he was unsure what year the annexation was but it was zoned R-2 in the early 2000's. In 2009 it was rezoned, 2012 rezoned to an R-4, 2020 it was rezoned to highway commercial. Deputy Mayor Lenox added 2009 the adoption of the Comprehensive Plan showed the entire 120-acre parcel as residential. A conversation ensued.

Mr. Marshall explained that highway commercial has not worked out because it is not an appropriate site for highway commercial uses because at the time everyone was worried about the school district between 2012 and 2014. So, they tried to eliminate all the homes coming to Town.

Vice Mayor Jones said the Town still has the EDU issue. Deputy Mayor Lenox said this rezoning does require a public hearing at the Mayor and Commissioners meeting.

Commission Member Wilson confirmed this is a concept submittal and not a plan approval. Mr. Marshall responded yes, for the eight lots. Town Mgr. Fleetwood asked Mr. Marshall if there is access for the eight lots. Mr. Marshall replied its existing. They are not adding anymore infrastructure or anymore growth. Commission Member Wilson asked Mr. Marshall whether there were eight or nine lots. Mr. Marshall answered eight or nine.

Mr. Marshall said the goal is to accept the entire 29-acre parcel as a preliminary approval to go back where it should be and they can deal with the lot sizes and figurations later. Commission Member Wilson clariid this is from the Comprehensive Plan that shows residential.

Commission Member Wilson commented the Comprehensive Plan that is currently existing is 2009. Commission Member Outten asked what the plan was for the revised updated Comprehensive Plan and has anyone from the Town or this body done any review to this point in this particular area. She said going back and forth, there needs to be one change that's it, that's all. So, a little more than a 15-minute discussion at this dais is warranted. A lengthy discussion occurred.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Commissioners for – Doug Marshall – Rezoning from Highway Commercial to R-2 Residential based on the criteria of the mistake in the recent rezoning – Royal Tern Dr., Delmar, MD, per the attached drawings. A motion was made/seconded (Wilson/Jones) and carried by a roll call vote of 3 Ayes 1 Nay 1 (Outten) Absent (Johnson).

Commission Member Outten clarified her vote was nay at this time because we need to stop jumping up and down and back and forth.

4. **Kyle Hughes/Kylan Barn – Storage Building – 30603 Dusty Lane, Delmar, MD** – Mr. Hughes presented a storage building as referenced per the attached drawings. Mr. Hughes stated Kylan Barn has absolutely no storage. The goal is to build a big building at the base of the amphitheater and work towards whatever he needs it to be and also putting a little cottage on the other side by the little round pond in the back. The cottage would be like a tiny house but this would be an amenity to Kylan Barn so it is not necessarily rented out to anyone. The renter/person has to be a part of Kylan Barn wedding or an event there in order to stay there.

Commission Member Wilson asked the zoning. Mr. Hughes answered it is highway commercial. She further asked if Mr. Hughes could get water and sewer back to the tiny home. He further answered there is a hydrant that sits next to it and Kylan Barn has four EDUs that were bought and paid for and he barely uses one.

Deputy Mayor Lenox asked Mr. Hughes if the storage building will be tied in as well. Mr. Hughes answered not at this time but if they decide to go that route he will come back and get approval. The actual system sits next to Kylan Barn so it would have to be bored underground so it would be a big undertaking. Commission Member Wilson asked Mr. Hughes if there were pictures of the storage building. Mr. Hughes answered he'll come back and figure out what they are going to design but it is basically a pole barn with doors on one side and doors on the other side with the overhang that will stick under there, it's simple as possible. The goal is to build what is going to work for what he needs. So, 5,000 sq ft is the maximum. The main thing is to just have the storage.

Commission Member Wilson said it is far away from where Mr. Hughes needed it. Mr. Hughes described where his sheds were on the site plan. Commission Member Outten asked Mr. Hughes the square footage of the tiny house. Mr. Hughes answered 200 sq ft. Basically, it will be a bed, half of a kitchen and a porch with gardens planted around it.

Deputy Mayor Lenox referred to the conditions on Mr. Doug Marshall's tiny homes. He asked Mr. Hughes if the tiny home would be rented as a separate facility. Mr. Hughes answered no and no long-term residency. Mr. Hughes further answered correct.

Commission Member Wilson stated she was concerned because Mr. Hughes said there is no way to get back and forth except golf cart to the tiny house. Mr. Hughes responded it's an amenity. So, if Kylan Barn is rented for the night whoever that rents it can go over and stay at the tiny home for the night. Someone can take the renter of Kylan Barn back and forth. Commission Member Wilson asked Mr. Hughes if he was going to have a gravel path. Mr. Hughes answered there is already one there that goes around the parking lot and a pathway that goes to the pond so there is a pathway. Mr. Hughes stated this has all been approved by the state, stormwater management, their DBF, etc.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Commissioners on the preliminary plan submitted by Kyle Hughes including the storage building and tiny home with the condition that building elevations be submitted for the storage building and that occupancy limitations be included as voted on the adjacent property – Kyle Hughes/Kylan Barn - Storage Building – 30603 Dusty Lane, Delmar, MD. A motion was made/seconded (Wilson/Outten) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

5. **Blair Carey – Final Approval – 2 N. Pennsylvania Ave., Delmar, DE** – Mr. Carey presented final approval as referenced per the attached drawings. Mr. Carey updated the Commission that he owns the easement that is on the property and it is now extinguished.

Mr. Carey stated his next steps would be to have the mechanical and engineer plans done to submit out for bids to formulate the best plan possible to begin construction. He said he would like to start early 2024. In his submittal he has to have someone look at the brick to try to preserve as much as possible to maintain the historical significance as possible and still have an energy efficient building.

Deputy Lenox asked Mr. Carey what he would need from the Town to make this happen. Mr. Hughes answered the permit once he gets a realistic budget on what it would cost.

Deputy Mayor Lenox asked P&Z Director Evanson if the uses were all allowed. Mr. Evanson answered yes. A conversation about parking ensued.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council for – Blair Carey – Final Approval – 2 N. Pennsylvania Ave., Delmar, DE, per the attached drawings. A motion was made/seconded (Outten/Wilson) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

6. **Chris Brown/Ryan Homes – New Home Build – Stillwater/Spruce/Elevation K - Lot 168, TBD, Delmar, DE** – Ms. Brown presented a new home build as referenced per the attached drawings. Commission Member Wilson noted this particular lot was brought before this Commission with a different house plan that has now been changed to Spruce. The setback lines fall within requirements. There is a vacant lot on one side and Silverbell Dr. on the other and Stillwater Parkway is a corner lot.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council for – Chris Brown/Ryan Homes – New Home Build – Stillwater/Spruce/Elevation K – Lot, 168, TBD, Delmar, DE, per the attached drawings. A motion was made/seconded (Outten/Jones) and carried by roll call vote of 4 Ayes 1 Absent (Johnson).

7. **Chris Brown/Ryan Homes – New Home Build – Stillwater/Hazel/Elevation K – Lot 8, 11707 Silverbell Dr., Delmar, DE** – Ms. Brown presented a new home build as referenced per the attached drawings. Commission Member Wilson noted there are vacant lots on either side of this property and the setbacks appear to be within guidelines.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council for – Chris Brown/Ryan Homes – New Home Build – Stillwater/Hazel/Elevation K – Lot 8, 11707 Silverbell Dr., Delmar, DE, per the attached drawings. A motion was made/seconded (Wilson/Outten) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

8. **Chris Brown/Ryan Homes – New Home Build Stillwater/Cedar/Elevation K – Lot 96, 38312 Stillwater Dr., Delmar, DE** – Ms. Brown presented a new home build as referenced per the attached drawings. Commission Member Wilson said the front setback is mismarked on the grid portion. It looks to be 20-foot setback but it states 22.5 provided. There are vacant lots on either side of this property. Deputy Mayor Lenox informed Ms. Brown before this submittal goes in front of the Council get the legend revised.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council for – Chris Brown/Ryan Homes – New Home Build – Stillwater /Cedar/Elevation K – Lot 96, 38312 Stillwater Dr., Delmar, DE, with the condition that the front setback and

the legend be changed to reflect the actual 26 feet. A motion was made/seconded (Outten/Wilson) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

9. **Chris Brown/Ryan Homes – New Home Build – Stillwater/Cedar/Elevation K – Lot 163, 11712 Silverbell Dr., Delmar, DE** – Ms. Brown presented a new home build as referenced per the attached drawings. Commission Member Wilson noted there are vacant lots on either side of the property and the setbacks appear to be within guidelines.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council for – Chris Brown/Ryan Homes – New Home Build – Stillwater/Cedar/Elevation K – Lot 163, 11712 Silverbell Dr., Delmar, DE, per the attached drawings. A motion was made/seconded (Jones/Wilson) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

10. **Chris Brown/Ryan Homes – Stillwater New Home Styles – Dogwood and Elder/Elevations K and L** – Ms. Brown presented new home styles as referenced per the attached drawings.

Deputy Mayor Lenox called for a favorable recommendation to the Mayor and Council on the inclusion of two-house types offered in Stillwater for – Chris Brown/Ryan Homes – Dogwood and Elder/Elevations K and L, per the attached drawings. A motion was made/seconded (Wilson/Jones) and carried by a roll call vote of 4 Ayes 1 Absent (Johnson).

Commission Comments –

Deputy Mayor Lenox stated he regretted to say he received a resignation from Commission Member Outten for her membership on this Commission. He expressed his personal appreciation for her many years of service. Not just his time here but the interaction that he had in his previous life, Commission Member Outten was always here. She has been a point of consistency and he appreciated that. He further stated the Commission has some notice so he understands that her last meeting will be the close of December. He said Vice Mayor Jones can convey that to the DE Mayor because that is a DE appointment. He thanked her for all she has done.

Commission Member Wilson commented she is sad to see Commission Member Outten go. She said she appreciated her expertise and it has been lovely having her on this Commission.

Vice Mayor Jones thanked Commission Member Outten for her years of service. He said we will miss her years of knowledge.

Public Comments –

1. Doug Marshall commented they are looking to annex the property behind Walgreen's on the corner of Old Stage Rd. and Rt.54 which is about 3 acres. It is zoned agriculture

currently and it is in Sussex County. Everything else around it has been annexed. We have to get a conditional use which they have been waiting for 13 months to get approval. Today his attorney was told by Sussex County that they are now being moved to the first part of 2024. Now they can wait on Sussex County or start the process with annexing like they did with the property of Oaked Restaurant that was also zoned agricultural.

He said he would like to explore that and they are not going to need a lot of EDUs. He said he did buy 242 EDUs in Yorkshire Estates of which he has only used 190 or so. They would like to annex that property on the corner because water and sewer does run there and they don't want to wait on Sussex County.

Deputy Mayor Lenox asked Mr. Marshall if he had gotten conditional use how would he had gotten services. Mr. Marshall answered in the Outer Banks they have produce markets that are 40 to 50 ft wide by 100 long and they have food trucks that flank them and that is what they want to do there, put one bathroom for the kitchen. The BBQ barn that they have sitting there which they are looking to use the existing bathroom so they do not need public utilities. They don't want to keep paying a \$5,000 mortgage on a property they cannot do anything with. They want to just start the process to annexing it into Town.

Vice Mayor Jones said to Mr. Marshall to read the DE Comprehensive Plan. Deputy Mayor Lenox added the DE Comprehensive Plan is more current than the MD Comprehensive Plan.

Commission Member Outten asked Mr. Marshall if he would like to zone it commercial. Mr. Marshall answered yes. They would like to build a 40 by 80 barn. She suggested for Mr. Marshall to get a traffic study and she recommend that be required. Mr. Marshall said he has already gone through that process for the entrance. She further suggested a traffic study be done for Rt.54 and Stage Rd.

Adjournment –

Deputy Mayor Lenox called for a motion to adjourn the meeting. The motion was made/seconded (Jones/Outten) and carried by roll call vote of 4 Ayes 1 Absent (Johnson).

Submitted by:

Vondell Spencer

Clerk of Council