

**Planning & Zoning Commission Meeting**  
**November 19, 2020**  
**Via Teleconference**

The regularly scheduled meeting of the Planning & Zoning Commission was held via teleconference. Those in attendance: Commission Members Eric Catellier, Donald Scholl, Rochelle Outten, and Beverly Wilson. Key personnel: Town Mgr. Sara Bynum-King, CDC William Hardin, CEO Liz Peek, and Clerk of Council Vondell Spencer. Guest: Brock Parker, Blair Carey, Patrick Angill, Jerry McClymont, Pamela Upshur, and Chris Brown. Absent: Chairperson William Boyan.

Commission Member Scholl, called the meeting to order at 7:00 p.m. He conducted a roll call of Commission members to confirm a quorum. Four of the five members were present and the quorum was established.

**Approval of Minutes:**

A motion was made and seconded (Wilson/Catellier) and carried to accept the October 22, 2020 meeting minutes as circulated by roll call vote with 3 Ayes, 1 Abstain and 1 Absent (Boyan).

**Old Business – None.**

**New Business-**

**1. Brock Parker/Parker and Associates on behalf of Blair Carey - Subdivide and establish Lots 1-24, Second Street & Old Racetrack Road, Delmar, DE** - Mr. Parker stated he is the surveyor and land planner for this project. Mr. Carey is the developer of this project. He mentioned that they held off on this project until the DE Comp Plan was amended. They are now confident with a new preliminary subdivision plat it will enable them to move forward with the final surveying, platting and all the final permitting. He said that they are aware of Delmar's limited sewer capacity and they are working with DBF. Town Mgr. Bynum-King and CDC Hardin have been working with them as well. Mr. Parker added that they are not proposing to develop until they get the greenlight from the engineering department and the Town as a whole. He said that Mr. Carey is proposing 24 Lots cut-off of 2<sup>nd</sup> Street and Old Racetrack Road.

CDC Hardin reminded Mr. Parker the zoning for the parcel has not been finalized. Until the process of getting the zoning changed and the Comp Plan approved there is no approval for that zoning and therefore, the project cannot move forward until such time. As this Commission considers making any recommendations to the DE Council, the only recommendation that can be made would be conditional upon approval of the updated Comp Plan.

Commission Member Scholl questioned Mr. Parker if the Commission was going to be voting on this or did he want their opinion? Mr. Parker answered the Commission could take a vote if it is

conditioned upon the residential zoning being effective. The final plat is still the Commissions last judgement to make and that wouldn't occur until that residential district is applied and is effective to this property.

CDC Hardin said as long as Mr. Carey understands it's still going to be at his risk if any decisions are made to do anything with the property prior to the approval of the Comp Plan. Mr. Parker responded Mr. Carey understands that risk.

Mr. Carey stated in talking with Town Mgr. Bynum-King the reason he waited is because he was getting the lots put in the Comp Plan and when that happened, the zoning would be officially changed. He added there is no setback as far as the zoning change it's the matter of the Comp Plan getting approved with the State of DE. CDC Hardin said that's not totally accurate representation. He said to say that the zoning is just waiting on state approval is to say that zoning until the Comp Plan is approved. The zoning is part of the DE State Comp Plan, until that happens you have no guarantee as to whether that zoning is going to be put in place. Therefore, that use cannot exist until that zoning is formally in place. Mr. Carey responded Town Mgr. Bynum-King told him timeline wise he would be looking at January/February 2021 by the time the Plan is finalized. CDC Hardin responded it may be longer. The only recommendation that can be made is a conditional recommendation which could be made contingent on approval of the Comp Plan. Mr. Carey replied he understood.

Commissioner Member Scholl mentioned the Waste Water System. He further mentioned he had a large concern along with some MD Commissioners that our school system is running about 125%-130% capacity, with the remaining buildouts currently on existing lots in several neighborhoods with between 150-200 houses. There is a big concern for several of the Town Officials about green lighting any new residential construction before there is a serious plan going forward for the approved residential units we have currently. Mr. Carey responded he is aware of the Waste Water concern. He said that after talking with the Town informally before he purchased the land it was to be subdivided into R-2 zoning to build houses. He was going off of positive encouragement he received at that time. Mr. Carey expressed his understanding that he might not be able to get EDU's for those lots until the problems are sorted out. He would still like to move forward with the understanding that once the R-2 zoning is in place and Waste Water issues are addressed he can actually have something there to develop.

CDC Hardin mentioned to Mr. Carey that an early spring timeframe is not realistic. There is a pending consent order imposed on the Town with the Maryland Department of the Environment which has established Waste Water Plant requirements as it pertains to capacity for DE and MD as a whole. CDC Hardin further mentioned to Mr. Carey, that his project has not been approved yet, and there are several other projects ahead of his. He added even as capacity frees up, he did not think there is a guarantee as to when Mr. Carey might have access to EDU's. CDC Hardin said he only wanted Mr. Carey to be fully aware of where things are for full disclosure moving forward. Mr. Carey responded he owns the land and he was fully invested. He said he could either get approval or own a piece of land that's going to sit in the Town like it is forever. He said he knew where Heron Ponds and Yorkshire are, he thought there is couple hundred lots awaiting approval. He asked if those developments have already been approved? CDC Hardin answered the projects are approved and there's a difference between approval of projects and the allocation of EDU's.

He stated Mr. Carey is talking about approved projects whereas the project has not reached the final approval stage. However, there are several projects in line awaiting sewer capacity and at that point the terms in which they were approved the EDU allocation would be considered. Mr. Carey said he understood. Mr. Parker said in that vein of sewer capacity they understand the state mandated levels of your treatment plant. The best way to secure their spot in that line is seeking preliminary approval. They will have to come back for final which won't be granted until these issues have worked themselves out.

Commission Member Scholl said for clarification my concern about the school system capacity was not in reference to the water treatment, it was student population capacity. He added he would like to see the school plan for capacity before increasing the number of residential lots.

Commission Member Wilson asked which side MD or DE is the proposed development. Mr. Carey responded DE side. Commission member Scholl said he can only speak for himself and MD Commissioners. Commission Member Wilson asked if DE Councils' opinion on the school issue was known? She said she was not opposed to the project plan however it would be years, if not longer, unless the school system and sewer system get fixed. She added there would need to be clear direction from the Commissioners and Council on putting a moratorium on any new building projects. Mr. Carey asked if there was one now? Would this be the first? Would the Commission do this to his project? Commission Member Wilson said she has not heard any conversation about a moratorium. Commission Member Scholl said he will not be voting on final approval because this is a Delaware proposed development, and the Delaware Council will give the final vote. He added he was bringing to the discussion concerns the Maryland Commissioners have expressed on the impact to the school system. Mr. Carey said presented his concept to the Delaware Mayor and Council informally, they unanimously liked the idea, he didn't understand what has changed. Commission Member Scholl said Maryland and Delaware are two separate Councils.

CDC Hardin stated again, the Town is ensuring that Mr. Carey have full disclosure and understanding of the time frame and capacity issues. Mr. Carey responded the reason his proposed project is still sitting in November is because he was informed by the Town Mgr. Bynum-King to wait for the approval of the Comp Plan. It was communicated to him the Comp Plan would be adopted by the end of October now its January or February 2021. Mr. Carey asked for clarification if there is a release of EDU's will he still have to wait for everyone else's project before his project could get EDU's. He asked is it whoever has the money to get the EDU's? CDC Hardin responded your right, in addition to everything else that has been discussed regarding Edu's and wastewater capacity. You would not be excluded unless availability is an issue. Mr. Carey replied that makes sense. He still requested to move forward to get a preliminary approval.

Commission Member Outten said when looking at the subdivision part of the lots are on Racetrack Road which is DelDOT jurisdiction. She questioned if there has been any communication with DelDOT? Mr. Parker replied that would be their next step. She further questioned if lots 5-9 which is the parcels on the north side are currently in the Town of Delmar? Mr. Parker responded all the lots being proposed are currently in the Town of Delmar, DE.

Motion for favorable recommendation to the Delmar, DE Mayor and Council for the approval of Brock Parker/Parker and Associates-Subdivide and establish Lots 1-24, Second Street & Old Racetrack Road, Delmar, DE, per the attached drawings, upon the condition of zoning changes from industrial to residential as part of the Delaware Comp Plan amendment. A motion was made/seconded (Outten/Wilson) and carried by roll call vote of 3 Ayes, 1 Nay Scholl, 1 Absent.

**2. Brock Parker/Parker and Associates-Bridgewood Estates-Addition on existing house-Lot 18, 9142 Newbridge Drive, Delmar, MD-** Mr. Parker presented a proposed addition to an existing house as referenced on the attached drawing. Mr. Parker said he is the surveyor and Mr. Patrick Angill is the architect representing the homeowner. Mr. Angill informed the Commission that he was with Desmond Architects and representing Mr. George Patel the property owner. He said the owner is proposing to put an addition to the rear of the home. The addition will include a sunroom, screened in porch, and room on the second floor.

Motion for favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of - Brock Parker/Parker and Associates - Bridgewood Estates - Addition on existing house - Lot 18, 9142 Newbridge Drive, Delmar, MD, per the attached drawings. A motion was made/seconded (Wilson/Catellier) and carried by roll call vote of 4 Ayes 1 Absent.

**3. Jerry McClymont-Novacare-Channel letters Installation – New Sign at 38552 Sussex Highway, Delmar, DE** - Representative Mr. Jerry McClymont presented for letter installations per the attached drawings on behalf of Novacare. He explained to the Commission that the letters are standard and will be installed on top of the unit. Commission Member Scholl noted that the letters appear to have an easy fit into the size limitations.

A motion for favorable recommendation to the Delmar, DE Mayor and Council for the approval of - Jerry McClymont – Novacare - Channel letters Installation - 38552 Sussex Highway, Delmar, DE, per the attached drawings. A motion was made/seconded (Catellier/Outten) and carried by roll call vote of 4 Ayes 1 Absent.

**4. Pamela Upshur-New Signage-409 E. East Street, Delmar, MD-**Ms. Pamela Upshur presented new signage per the attached drawings. Commission Member Scholl asked Ms. Upshur did she have any intent on making this sign permanent or continue to use the same sign. Ms. Upshur responded this is the sign she will be using permanently. She added since posting the sign, she has one new client. Commission Member Catellier mentioned usually permanent signs are deemed sturdier so they will not blow away or does not move. He added that the sign's base is normally made of material that is sturdier, the sign presented this evening is more in line with a temporary sign. CDC Hardin said the language talks about durability. He said he was unsure if there is any prohibition against that kind of sign unless it becomes dislodged which could be the business owner's responsibility to sustain the sign. Commission Member Catellier and CDC Hardin had a lengthy discussion regarding their interpretation of the code. Commission Member Wilson added she believed the sign is more like a temporary sign and because this is a new home business the Town would not want to set precedence. She asked CDC Hardin, what is the timeframe for a temporary sign. CDC Hardin responded one month with one extension.

Commission Member Wilson offered that since Ms. Upshur is a new business owner perhaps a possible six-month grant to enable additional time to obtain a more permanent sign could be recommended. Commissioner Member Catellier said he would agree with granting six months so a permanent sign could be secured. Commission Member Wilson asked Ms. Upshur if she would be agreeable to the six-month grant for the temporary sign until she is able to get a permanent sign. Ms. Upshur said that she would be agreeable.

A motion for favorable recommendation to the Delmar, MD Mayor and Commissioners for - Pamela Upshur - Temporary Signage - 409 E. East Street, Delmar, MD, per the attached drawings on the condition that it can be posted as presented for six months. At the end of six months the temporary sign is removed and any permanent sign will come back before the Commission for approval. A motion was made/seconded (Catellier/Wilson) and carried by roll call vote of 4 Ayes 1 Absent.

**5. Chris Brown/Ryan Homes – Woodcreek - Lot 339, 9371 Mulligan Way, Delmar, MD -** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier stated that this lot meets the side setbacks, but the lot does not meet the front or rear setbacks. He further added that there were several of the items to be reviewed that did not meet the current set back requirements for an R-2 zoning classification. There was a lengthy discussion regarding the validity of the proposals as presented. Commission Member Catellier inquired if CDC Hardin was aware of any special exceptions or if he had a copy of the approved subdivision plat. CDC Hardin replied he did not have any recollection at that moment of special exceptions other than some recent correspondences regarding the zero lot lines for the Townhouses. He was sure he has seen the approved subdivision plat but could recall the particulars about it. Commission Member Catellier said the Commission could not review or offer a recommendation with the items as presented because a review of many items presented by Ms. Brown were inconsistent with the Town's zoning code, with lot sizes and the setback requirements. Commission Member Wilson added that we are going to need to table these agenda items until the needed information was available. Commission Member Catellier asked Ms. Brown if she had any information about the raised matters of concern and she did not.

Town Manager Bynum-King added that there has to be an explanation, because she finds it difficult to believe that Ryan Homes would present all of the site plan this evening incorrect. She mentioned she felt sure there was a special exception for the entire subdivision but could not be for certain without having the ability to properly research the records. She mentioned it would have been very helpful if staff had the opportunity to research any of the Commission members concerns prior to the meeting because with the teleconference meetings there is no way to find the answers to the questions this evening. She suggested that the Commission proceed forward with a recommendation contingent staff's research prior to the Maryland meeting to support the documents as presented. She further suggested if there is no such documentation, then Ryan Homes will have to resubmit to this Commission next month. Commissioner Scholl mentioned that to move forward without having to delay Ms. Brown/Ryan's recommendations, the Commission should include, a conditional exception upon staff's review of each agenda item

presented that is inconsistent with the Town's code and/or is granted authorization by a special exception. The consensus of the Commission was in favor of handling the matter as mentioned by Commissioner Scholl.

Motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of - Chris Brown/Ryan Homes – Woodcreek - Lot 339, 9371 Mulligan way, Delmar, MD, per the attached drawings, under the condition of a pre-existing setback exemption for the R-2 is in place. The motion was made/seconded (Wilson/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**6. Chris Brown/Ryan Homes-Woodcreek-Lot 340, 9369 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier said the building is built on the property line. He further said the building is 10 ft on the left and 0 ft on the right.

Motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of - Chris Brown/Ryan Homes-Woodcreek-Lot 340, 9369 Mulligan Way, Delmar, MD, per the attached drawings, under the condition of a pre-existing setback exemption for R-2 is in place. The motion was made/seconded (Wilson/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**7. Chris Brown/Ryan Homes-Woodcreek-Lot 344, 9361 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier said this lot doesn't meet any of the setbacks. Commission Member Scholl said 10 ft on the left setback and 0 ft on the right setback.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of-Chris Brown/Ryan Homes-Woodcreek-Lot 344, 9361 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Outten/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**8. Chris Brown/Ryan Homes-Woodcreek - Lot 349, 9351 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier stated this lot meets the side setbacks but the front and rear setbacks do not comply. He further mentioned just for clarification about setbacks, he is talking the rear setbacks. If they meet the side setbacks, they don't meet the front and rear setbacks. If they meet the front and rear, they don't meet the sides. Some of them don't meet the sides or the rear.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of-Chris Brown/Ryan Homes-Woodcreek-Lot 349, 9351 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Outten/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**9. Chris Brown/Ryan Homes-Woodcreek-Lot 395, 9358 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier said the front porch violates the front yard setbacks. 23.5 front setback and 25 ft yard setback.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of-Chris Brown/Ryan Homes-Woodcreek-Lot 395, 9358 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Wilson/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**10. Chris Brown/Ryan Homes-Woodcreek - Lot 396, 9360 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier said this lot does not meet on of the side yard setbacks or one of the front rear setbacks.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of - Chris Brown/Ryan Homes –Woodcreek - Lot 396, 9360 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Wilson/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**11. Chris Brown/Ryan Homes-Woodcreek-Lot 399, 9366 Mulligan, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Catellier stated this lot violates the side and front setbacks.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of-Chris Brown/Ryan Homes-Woodcreek-Lot 399, 9366 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Outten/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**12. Chris Brown/Ryan Homes-Woodcreek-Lot 400, 9368 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings.

Commission Member Catellier stated this lot is set on the right setback and violates the front setback as well.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of Chris Brown/Ryan Homes-Woodcreek-Lot 400, 9368 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Outten/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**13. Chris Brown/Ryan Homes-Woodcreek-Lot 401, 9370 Mulligan Way, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings. Commission Member Caterllier stated this lot violates the side and front setbacks.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of Chris Brown/Ryan Homes-Woodcreek-Lot 401, 9370 Mulligan Way, Delmar, MD, per the attached drawings, under the condition that a pre-existing setback exemption is in place. The motion was made/seconded (Wilson/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**14. Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 281 A, 9529 Song Sparrow Circle, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 281 A, 9529 Song Sparrow Circle, Delmar, MD, per the attached drawings. The motion was made /seconded (Catellier/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**15. Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 299 A, 9572 Song Sparrow Circle, Delmar, MD-** Representative Chris Brown presented a new home build as referenced per the attached drawings.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 299 A, 9572 Song Sparrow Circle, Delmar, MD, per the attached drawings. The motion was made/seconded (Catellier/Outten) and carried by roll call vote 4 Ayes 1 Absent.

**16. Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 301 A, 9578 Song Sparrow Circle, Delmar, MD-**Representative Chris Brown presented a new home build as referenced per the attached drawings.

A motion for a favorable recommendation to the Delmar, MD Mayor and Commissioners for the approval of-Chris Brown/Ryan Homes-Heron Ponds Subdivision-Lot 301 A, 9578 Song Sparrow Circle, Delmar, MD, per the attached drawings. The motion was made/seconded (Catellier/Wilson) and carried by roll call vote 4 Ayes 1 Absent.

**17. Chris Brown/Ryan Homes-Woodcreek-New Prototype-Adrian Model on crawl Elevations (A), (C), (K), (2) Story-**Representative Chris Brown presented a new home build as referenced per the attached drawings.

Motion for favorable recommendation to the Delmar, MD Mayor Commissioners for approval of-Chris Brown/Ryan Homes-New Prototype-Adrian Model on crawl with Elevations: (A), (C), (K), (2) Story; per the attached drawings. A motion was made/seconded (Wilson/Outten) and carried by roll call vote of 4 Ayes 1 Absent.

## **Public Comments –**

Town Mgr. Bynum-King mentioned we have gone through our Plus Process with the State of DE and other state agencies that have comments regarding the DE Comp Plan. Any comments regarding the plan I encourage each commission member to submit them in writing to CDC Hardin or myself. The Town's DE Comp Plan consultant, Chris Jakubiak, will be on this bodies next meeting which is December 17, 2020. Please have your comments submitted by December 10, 2020 which is also the day our workshop meetings are scheduled for as well. Once the Plan leaves Planning and Zoning the next meeting the Plan will be presented to will be the DE council meeting for their final review and disposition. After the DE Council meeting the Plan will be submitted to the Governor's Office for certification.

Commission Member Wilson questioned if there is an updated plan? Town Mgr. Bynum-King replied the most current draft is on the Town's website. Commission Member Wilson further questioned Town Mgr. Bynum-King if the DE Council will not see the Plan next until the January meeting. She replied no. In December the next body that will review the Plan will be a Public Hearing at the DE meeting and that meeting could be as soon as January or the latest February 2021. CDC Hardin described to Commission Member Wilson where the Plan is located on the Town's Webpage under Community Development. Commission Member Wilson asked if she needed to attend the DE Council meeting due the absence of Chairperson Boyan. Town Mgr. Bynum-King replied if she would like to, however if she opted not to, the Delaware agenda items can be presented by staff.

Hearing no further Public Comments, Commission Member Scholl called for a motion to adjourn the meeting. The motion was made/seconded (Catellier/Wilson) and carried with a vote 4 Ayes and 1 Absent.

Vondell Spencer  
Clerk of Council