

FINAL
MINUTES - BUSINESS MEETING
NEW CASTLE COUNTY PLANNING BOARD
87 READS WAY, NEW CASTLE, DELAWARE
March 17, 2015

The Business Meeting of the Planning Board of New Castle County was held on Tuesday, March 17, 2015 in the New Castle Room of the Government Center Building, 87 Reads Way, Corporate Commons in New Castle, DE.

The meeting was called to order by Sandra Anderson, Acting Chair, at 9:06 a.m.

The following Board members were present:

Sandra Anderson
Richard Killingsworth (9:08)
David Sheppard (9:10)
Ruth Visvardis

Leone Cahill
Linda Porras-Papili (9:10)
Robert Snowden
Arthur Wilson

The following Board member was absent:

William McGlinchey

Planning Board Attorney, Department of Law

Monica Horton

The following Department of Land Use employees were present at the meeting:

Eileen Fogarty
Valerie Cartolano

George Haggerty
Antoni Sekowski

Public in attendance:

Robert McDowell
Sophia Tarabicos
Stephen Jaffe

Mark Radel
Michael Hoffman

MINUTES

On motion by Mr. Snowden, seconded by Ms. Cahill, the Board voted to approve the minutes of the January 20, 2015 business meeting as written. The motion passed by a vote of 5-0-4 (Yes: Anderson, Cahill, Snowden, Visvardis, Wilson; No: none; Absent: Killingsworth, McGlinchey, Porras-Papili, Sheppard).

DEFERRALS -

App. 2014-0736-T. To Amend Chapter 40 of the New Castle County Code (also known as the Unified Development Code - UDC), Article 33 (Definitions) Regarding Parking Structures. **Ord. 14-127 is a text amendment to encourage the use of parking structures by excluding the parking structure gross floor area from the definition of a minor land development plan and requiring that the landscape surface ratio (LSR) increase by at least twenty-five percent over the required LSR.** CC Sponsor Joseph Reda.

BUSINESS -

App. 2014-0486-S/Z. Northwest side of DuPont Boulevard (US 13) and northeast side of Hessler Boulevard. Exploratory Minor Land Development Plan, Rezoning and PLUS review for **Dollar Tree, Hessler Boulevard.** The purpose of the plan is to revise the previously approved and recorded plan for Minquadale Starbucks (2006-0455-S/Z) and to reconfirm the CR rezoning approved by County Council in February 2007 by Ord. 06-131. Former *New Castle County Code* Section 40.31.114 requires that all subsequent land development plans to a previously recorded rezoning plan be in strict conformity with the development shown on the approved preliminary plan that was relied upon when County Council granted the rezoning. This plan proposes to construct to construct a 9,180 square foot retail store replacing the 1,840 square foot restaurant. **Ord. 14-134 will approve a revised exploratory plan to supersede the existing record plan (2008-0110-0002424) and reconfirm the rezoning of 1.023 acres from I (Industrial) to CR (Commercial Regional).** CD 10.

The Department of Land Use considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal. The Department of Land Use recommended **APPROVAL** of Ordinance 14-134.

The Planning Board considered the recommendation offered by the Department of Land Use. On a motion by Mr. Sheppard, seconded by Ms. Visvardis, the Board voted to recommend **APPROVAL** of Application 2014-0486-S/Z (Ordinance 14-134). The motion was adopted by a vote of **6-2-1** (YES: *Anderson, Cahill, Killingsworth, Sheppard, Visvardis, Wilson*; NO: *Porras-Papili, Snowden*; ABSENT: *McGlinchey*).

In discussion preceding the vote the following comments were offered:

Although Ms. Porras-Papili was not present at the hearing, she declared that she had read the application materials and was prepared to participate in the review of this application.

Ms. Anderson asked if this application is a complete rezoning and whether the Starbuck's plan expired. George Haggerty, Assistant Land Use Manager, said this is an example of a plan that was not executed, so the new plan has to go through the complete rezoning process. Since rezonings are tied to a recorded plan, when a plan is proposed to change, it must be reviewed as a rezoning.

Ms. Cahill asked if the zoning reverts back to the previous category when a plan based on a rezoning expires. Mr. Sekowski, Department Planner, said the zoning district would not revert back, but it would then be a zoning district without a valid plan tied to it, so nothing could be built until the zoning review process for a new plan was completed and the plan recorded.

Mr. Snowden said the rezoning from I to CR seems to make sense in light of the surrounding uses, but this plan proposes far too much development on this small parcel.

Mr. Killingsworth agreed with Mr. Snowden's comments and also raised the issue of pedestrian access. He noted that many Dollar Tree stores tend to attract customers from nearby residential neighborhoods where people would walk. He was disappointed with a lack of pedestrian access to this site and said this situation is not aligned with the intent of the Comprehensive Plan, which promotes pedestrian mobility. It was noted by others that there is a sidewalk on the perimeter of the site and on part of the Route 13 frontage on adjoining commercial properties, but no access to this location from the nearest residential neighborhoods and no crosswalk on Route 13. Mr. Killingsworth was not opposed to the commercial retail use of the site, but was concerned that the project is not designed to incorporate human activity. It appears to be designed solely for automobile traffic; there is no pedestrian infrastructure. Other board members observed that the nearby segment of Route 13 is not pedestrian friendly and given the scale of the highway, there is little potential for this being changed. Mr. Killingsworth agreed, but said Dollar Tree stores usually tend to draw customers from local neighborhoods and people will try to walk there anyway. While he was not opposed to this plan, he said it is imply the same kind of plan that we always see.

App. 2014-0604-Z. West side Greenbank Road, north of Kirkwood Highway (SR 2) and south of Orsini Lane. This is a proactive rezoning to change the zoning of two parcels at **711/713 Greenbank Road** to reflect the historical and existing commercial use of these two interconnected parcels and to restrict the structures to no additional GFA and with an increase in the current landscaping and buffer area. **Ord. 14-132 will rezone 0.33 acre from NC6.5 (Neighborhood Conservation) and 0.21 acre from CR (Commercial Regional) to CN (Commercial Neighborhood)**

The Department considered the Standards for Zoning Map Amendment in Section 40.31.410, A through E of the New Castle County Code, the goals and objectives of the New Castle County Comprehensive Plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal. However, this approval is not without concerns for the potential for adverse impacts on the neighborhood. As noted earlier in this report, the property owner has suggested that no changes are proposed to the existing structures; and that what is contemplated is a continuation of the current office uses within the current buildings onsite and with one added apartment. The uses put forward will be further limited by the deed restrictions put in place when the 713 parcel was rezoned in 1976.

The Department views these proposed uses as appropriate for the area and likely to cause little to no adverse impacts on the existing residential areas. However, once rezoned to CN, the potential and desire for this owner or a new owner to propose and seek approval for much higher impact uses through Board of Adjustment variances or via a change to the existing deed restrictions could have other adverse impacts to the community. The neighborhood has coexisted with the

day care use of this property for many, many years, but a change in zoning without restrictions could alter this balance. Any high impact commercial use more appropriately located on Kirkwood Highway could have significant impacts to this area.

As a result, the Department recommended **CONDITONAL APPROVAL** of Ordinance 14-132 as introduced and recommended that the sponsor require a declaration of restrictions to be recorded in the Office of the Recorder of Deeds at the time of rezoning to include:

- 1) a prohibition against the tear-down of existing principal structures;
- 2) a prohibition against outside façade changes that could adversely impact the residential character of the area;
- 3) use restrictions at 711 Greenbank Road to mimic use restrictions on 713 Greenbank Road;
- 4) restrictions against addition GFA and impervious cover beyond what is already on site;
- 5) enhanced landscaping buffer adjacent to the residential area to the north.

The Planning Board considered the analysis and reasoning offered by the Department of Land Use in its recommendation. On a motion by Mr. Sheppard and seconded by Ms. Anderson, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 14-132, subject to the conditions outlined by the Department. The motion was adopted by a vote of 8-0-1 (*YES: Anderson, Cahill, Killingsworth, Porrás-Papili, Sheppard, Snowden, Visvardis, Wilson; NO: none; ABSENT: McGlinchey*).

The following discussion occurred prior to a vote on the motion.

Mr. Killingsworth asked how Condition #2 would be administered and how we would qualify residential character and decide whether or not to approve changes on the premises. Ms. Cartolano said the review of such changes would be triggered by a building permit application. Mr. Sekowski noted some minor changes do not require permits, such as signs posted inside windows and installation of window awnings, but that changes requiring a permit are reviewed by the Department. Mr. Haggerty said the Department would not approve a change it believed was not in residential character and if the applicant disagreed, it could appeal the Department's decision to the Planning Board or the Board of Adjustment, both of which are public bodies. Mr. Killingsworth said he understands what the Department is trying to accomplish, but did not think the intent is clear. Mr. Haggerty said it is as clear as the Department can make it currently and the applicant has offered to retain the residential character of the two buildings. He reminded the Board that this applicant is just trying to make the zoning compatible with the way the buildings have been used for many years. The deed restrictions were suggested because the kinds of restrictions being discussed go beyond the scope of the UDC.

Mr. Sheppard asked how the review process would be administered. Mr. Haggerty said the Department will need to tag this tax parcel number in the data system as having a restriction on

it. Then, any permit application will trigger an additional review to address the character restriction.

Ms. Anderson asked what happens if the applicant doesn't like these deed restrictions. Mr. Haggerty said the Department's recommendation is that the applicant must incorporate these deed restrictions or the Department will give a negative recommendation on the rezoning application, which will then require a super majority vote of County Council to approve the rezoning.

Ms. Cahill suggested that the wording of Condition #5 be clarified to say that the increase in enhanced landscaping between the proposed commercial area and the adjacent properties, instead say: the adjacent residential area to the north. Mr. Haggerty agreed this clarification should be made to the Department's stated condition. (This revision is now reflected in the Department of Land Use Recommendation above.)

Mr. Snowden expressed concern that the restriction on changing the building facades might prevent improving them and making them more attractive. He observed that one of the buildings probably was residential originally, but a later addition to it does not look very residential now. He would not want to restrict the owner from having the ability to improve the appearance of this building. Ms. Cartolano said there is no intention to prevent improvements. Mr. Snowden also asked if the restriction on demolition is too restrictive, or is it necessary to maintain the residential character. Mr. Haggerty said if the owner ever wants to tear down the buildings he will have to submit a plan and meet the intent of the design restriction to maintain a residential look.

Mr. Snowden also suggested that landscaping be added to the front of the property to improve its appearance. Mr. Sheppard wondered if this detailed level of concern with design is overstepping the bounds of the rezoning process. Mr. Snowden said he was just noting it as a concern.

OTHER BUSINESS

None.

REPORT OF COMMITTEES

No report.

REPORT OF GENERAL MANAGER

Eileen Fogarty updated the board on the recent completion of the Department's Operational and Efficiency Plan and a Fee Assessment Study. She announced a public meeting scheduled for March 26, 2015 regarding the planned update of the Unified Development Code and encouraged Planning Board members to attend.

REPORT OF CHAIRMAN

Richard Killingsworth announced DE HEAL will make a presentation at the Next business meeting.

Mr. Killingsworth thanked Robert McDowell for his long and dedicated service to the Planning Board, and then read the tribute to Mr. McDowell that was granted by the County Executive.

OTHER BOARD MEMBER COMMENTS

New board member Linda Porrás-Papili was welcomed.

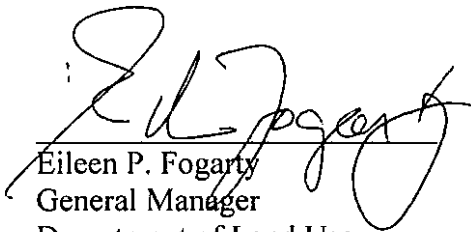
COMMENTS FROM THE PUBLIC

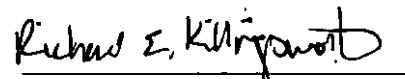
None.

ADJOURNMENT

The Board voted to adjourn the meeting at 10:42 a.m.

ATTEST:


Eileen P. Fogarty
General Manager
Department of Land Use


Richard E. Killingsworth
Chairman
Planning Board