

PLANNING AND ZONING COMMISSION
MEETING MINUTES September 17, 2015

1. Chairman Gary Meredith called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Commission Members Meredith, Wichmann, Damiano, Smith, and Sharpe were in attendance. Town Solicitor Dennis Schrader, Town Administrative Official Charles McMullen and Town Clerk Donna Schwartz were also present. The meeting was held in the Ocean View Town Hall, 32 West Avenue. .

2. **COMMISSION BUSINESS** – none

3. **APPROVAL OF AGENDA**

A motion was made by Mr. Smith, seconded by Mr. Wichmann, to approve the agenda. The motion carried unanimously 5/0.

4. **APPROVAL OF MINUTES**

A motion was made by Mr. Wichmann, seconded by Mr. Smith, to approve the July 16, 2015 minutes as presented. The motion carried unanimously 5/0.

5. **NEW BUSINESS**

A. Application P-294 – 3 & 5 Captain's Court

Mr. Meredith read the public notice for this application. He said it was a Preliminary Land Development Plan on Application P-294, submitted by Elton Murray on behalf of the property owner Joseph S. Maggio Jr., to have a minor subdivision of land for the purpose of combining the subdivided portion with another parcel of land on properties located at 3 & 5 Captains Court (PIDN: 152.003 & 152.002/ Sussex CTM#'s 134-12.00-592.03 & 134-12.00-592.02) Zoned R-1.

Mr. McMullen read his overview to the Commission. He said the Commission is being asked review a Preliminary Land Development Plan submitted by Elton Murray on behalf of the property owner, Joseph S. Maggio Jr., to have a minor subdivision of land for the purpose of combining the subdivided portion with another parcel of land on properties located at 3 & 5 Captains Court zoned R-1. The purpose of this request is to rectify a surveying error that was recently discovered during the platting of the Assawoman Canal Trail. The subdivision known as Captains Place was granted approval by the Planning and Zoning Commission of Ocean View on November 17, 2005 under application P-196. The record plat for the four lot subdivision, with roadway, was recorded at the Recorder of Deeds office in Sussex County on December 9, 2005. Two of the lots have been improved while the other two, those before the Commission, remain unimproved.

Surveys conducted during the planning of the Assawoman Canal Trail found that the rear lot lines for lots 2, 3, and 4 of this subdivision were actually on the lands of the State of Delaware. This error caused the lots to fall below the minimum 14000 square foot area required by the Code and on lot 4, which was improved, it caused the existing house to encroach into the required 30' rear setback. The deficiencies on

lot 4 were addressed recently by the Board of Adjustment when they granted V-303 to allow for a reduced lot area and a rear yard setback of 28’.

To avoid requesting an additional variance the applicant is requesting that the Commission approve a minor subdivision lot combination between Lots 2 & 3. The plat proposes to subdivide a portion of Lot 2, which has a lot area of 22,294sqft, so that the severed portion of Lot 2 can be added to lot 3 thus increasing the area of Lot 3 to 14,004sqft which would be compliant with the Code.

A motion was made by Mr. Smith, seconded by Mrs. Sharpe, to approve the application as presented. The motion carried unanimously 5/0.

B. Application P-295 – Ordinance to amend Article III, Chapter 187

Mr. Meredith read the public notice for this application. He said the Commission will review an Ordinance to amend Article III, Chapter 187 of the Town Code entitled Streets and Sidewalks. The purpose of this amendment is to clarify the effective date and applicability of the maintenance provisions of sidewalks, paving graveling and curbing as they apply to the Town of adjacent property owners.

Mr. McMullen read his overview. He said this Ordinance was introduced by Town Council on June 9, 2015 and will be returned to Council with the Commission’s recommendation.

A motion was made by Mr. Wichmann, seconded by Mr. Smith, to recommend approval of this ordinance amendment to Council. The motion carried unanimously 5/0.

6. OLD BUSINESS

A. Application P-282 – S/RD 361 Parcel B and SW Corner SRD’s 363 & 364 Muddy Neck and Double Bridges Roads.

Mr. Meredith read the public notice for this application. The Commission will review a Preliminary Land Development Plan on Application P-282, submitted by The Evergreene Companies on behalf of the property owners Raze Properties, LLC and Sigurd Berzins – Trustee, to create a community with fifty (50) single family lots and an area set aside for future commercial development on land zoned MXPC (Mixed Use Planned Community), located at S/RD 361 Parcel B and SW Corner SRD’s 363 and 364 – Muddy Neck and Double Bridges Roads (PIDN: 410.000 / Sussex CTM#: 134-17.00-30.03 and 134-17.00-30.04)

Mr. McMullen read his overview of Application P-282. He said the applicant is before the Commission this evening for the review of a preliminary land development plan for a parcel located at the corner of Muddy neck and Double Bridges Roads. The parcel was annexed into the Town on March 9, 2011 by Ordinance 271 that became effective April 11, 2011. It was zoned Mixed Use Planned Community (MUPC) that allows for a mix of commercial and residential as

outlined in §140-49. The Commission reviewed the Concept Plan for this project on July 18, 2014 at which time the applicant proposed the following:

- 51 Townhomes
- 30 Single family homes
- 1 lot for amenities
- 1 lot for a commercial site

The plan has changed from what was proposed during the concept plan and I have confirmed through the Office of State Planning that they require no additional review. The applicant is now proposing:

- 50 single family lots
- 1 lot for amenities
- 1 lot for commercial use

A preliminary land development plan is defined as “*a detailed map showing the proposed layout of a site, parcel, tract, land, property, or residential planned community submitted for preliminary approval.*”

It is required to comply with a number of the Land Use and Development Chapter of the Town Code (LUDC) sections of the Code. A review of each section is included below indicating those requirements that have not been addressed:

E. Plan Contents – The preliminary development plan shall include the following:

- (5) The current names of all abutting landowners or subdivisions, and the names of the owners of all adjacent unplotted land;
- (9) Location and elevation of the datum used shall be known, established USC&G benchmark;
- (10) All existing water lines, fire hydrants, utility transmission lines, culverts, bridges, railroads, watercourses, easements, rights-of-way and other significant man-made or natural features within the proposed subdivision and within 100 feet outside the boundaries of the proposed subdivision or land development;
- (13) Proposed development, including:
 - a) Location and width of all streets and right-of-way, with a statement of any conditions governing their use; (*note for minimum 50' ROW should be provided*)
 - b) Suggested street names. These should be in conformance with the provisions of §185 and coordinated with Sussex County 911 Addressing and Mapping Department;
 - c) Utility easement locations;
 - g) A statement of the intended use of all nonresidential lots and parcels and acreage of such lots or parcels;
 - h) Sanitary and storm sewers (and other drainage facilities), with the grades, size and material of each indicated, and any proposed connections with existing facilities;
 - i) Parks, playgrounds, and other areas dedicated or reserved for public use, with any conditions governing such use;
 - j) Stormwater management plan, and erosion and sedimentation control plan;
 - k) Proposed landscaping and lighting;
 - l) Proposed sidewalks and walkways;
 - m) Demarcation of existing vegetation “to remain” or “to be removed.” MAY NOT EXIST

- (19) Source of title;
- (20) Total site gross and net acreage;

F. Supplemental Data – The preliminary plan shall be accompanied by the following information.

- (1) Preliminary Improvement Construction Plan, containing the following data.
 - a) A preliminary plan for the surface drainage facilities of the tract to be developed including stormwater runoff calculations for the water shed and entire property being developed, and showing the proposed method of accommodating the anticipated runoff, all soils mapping and soil data.
- (2) Wetlands report – Wetlands delineation and wetlands mitigation plan prepared by a Delaware registered engineer, surveyor, biologist, or other environmental scientist with experience and qualifications in wetlands delineation prepared pursuant to Article II, §116.
- (3) Floodplain Delineation and Management Plan – A plan for the management of special flood hazard areas defined under “Flood Damage Reduction” in §116.
- (4) Such plan shall comply with the applicable standards in §116.
- (5) Source Water Protection – An Environmental Assessment Report prepared pursuant to Article III, §116. *If applicable*
- (6) Traffic Study – Operational analysis report prepared by a Delaware registered engineer with experience and qualifications in the preparation of operational analysis and traffic impact studies. *Required by DelDOT letters dated 02/04/15 & 02/11/15.*
- (7) Title Search – Title Search of the pertinent property that included at least ownership of the property, easements, deed restrictions and other similar information.

G. Additional Information – The Planning and Zoning Commission may request any additional needed to make an informed decision.

H. Referrals to Other Agencies – Each preliminary development plan shall be referred to the following agencies and departments:

- (1) Sussex Conservation District – *required to provide approved plan prior to final review;*
- (2) Water provider; *required to provide approved plan prior to final review;*
- (3) Sewer provider - *required to provide approved plan prior to final review;*
- (4) DelDOT – *Letter of No Objection required;*
- (5) Sussex County 911 Addressing; *will be completed prior to final review*
- (6) State Fire Marshal’s office; *sign off for site required*
- (7) Electricity provider; *DPL provided a willing able to serve letter during annexation*
- (9) DNREC;
- (10) Army Corp of Engineers; *letter noting whether the Corps has jurisdiction*
- (11) Town Engineer; *Report provided.*

I. Review and Approval.

- (1) Before taking action on a Preliminary Development Plan, the Planning and Zoning Commission shall allow sufficient time the Office of State Planning Coordination, departments, and agencies to comment on the plan.

- (2) The Planning and Zoning Commission may approve a preliminary development plan with conditions.
- (3) The applicant is responsible for demonstrating, to the satisfaction of the Planning and Zoning Commission, compliance with conditions as a prerequisite to sending a preliminary development plan to the Town Council for final development plan approval.

The Code allows for a maximum of four (4) dwelling units per gross tract area and requires minimum open space of 40% of the gross tract area. The proposed lots for dwelling units presented in this preliminary plan are well within the maximum allowable and the open space exceeds the minimum required by .9%, although the applicant should provide clarification of the numbers shown in the site data on the cover sheet. These parcels lie within the AE-6 flood zone with a LIMWA (limited wave action) as delineated on the current FEMA maps dated March 16, 2015. This should be inclusive in the exiting Flood Zone Note.

A point noted with the concept plan that has not been addressed us:

- Access to the community from Double Bridges Road

The Town Engineer has provided a review that is included with this overview as well as applicable copies of the Code.

Additional comments and requirements:

- Please explain compliance with §140-51 of the LUDC;
- Wetlands delineated as running through lots 7, 8, 9, 10 and adjacent roadway as well as lots 24 and 25;
- Delineation of 25' wetland buffer;
- Wetlands certification signature block required;
- Interconnectivity between residential and commercial;
- Please explain ability to develop required commercial area that includes extensive wetlands;
- Please explain abandonment of 50' easement that runs behind lots 33 to 35 and out to Muddy Neck Road;
- Required parking (2per dwelling unit in addition to garage space) should be indicated in notes;
- Overflow parking in residential developments as required by §140-59-E(2) not shown;
- Compliance with §140-73, §140-74, §140-75, §140-79 and Article XIII of the LUDC required;
- Compliance with §187 required;
- Passive open space.

Following his overview Mr. McMullen read the detailed report of Mr. Lober, of Kercher Engineering. Mr. Loper stated that based upon their review they find the preliminary plan acceptable and offered the following comments to the Planning and Zoning Commission

:

Floodplain

1. The entirety of the site lies within a FEMA –zone AB – 100-year floodplain – elevation 6. The project will be required to comply with Sections 116-3, 4 and 5 regarding environmental protection of floodplains.
2. The interpretation has been made that the existing watercourses on-site are considered to be “man-made”, and therefore do not qualify as “natural channels”. Therefore the following comment from our concept review letter is no longer applicable.
 - a) Section 140-79-B-2 requires all natural channels to be located in public open space and covered by an easement sized to encompass the limits of the 100-year floodplain. This requires that public open space be created for all of the natural channels that traverse the site and an easement created to cover the 100-year floodplain. Only the area outside of the easements, and, therefore, the floodplain, maybe subdivided into lots. As the entire site lies within the floodplain, the current layout shown on the plan is unacceptable. Two alternatives exist.
 - i. The developer may pursue a conditional letter of map (CLOMR) in accordance with FEMA requirements. A subdivision plan reflecting a revised 100 year floodplain boundary and appropriately sized easement based on an approved CLOMR could then be reviewed by the Town; or
 - ii. The developer may pursue a variance from the Town Code for relief of the easement requirement.

Until one of those two options is completed, the plan cannot be deemed code complaint.

Drainage

1. The property is bordered to the south by the Little Bay tax ditch. Information regarding the easement specific to that portion of the tax ditch should be obtained from DNREC and incorporated into the plan.
2. Provide design calculations in accordance with the code for all of the drainage systems on-site, including both open and piped conveyance networks and the culvert under the proposed entrance. (Sections 132-6, 132-7, 132-8 & 140-104)

Grading

1. The minimum slope on paved areas and roads is 0.5%. The minimum slope on pervious surfaces in 1%. (Sections 132-2-F & 140-104)
2. Provide grading plans including all of the required detail as outlined in §132 of the Town Code.

Stormwater Management

1. Provide a full stormwater management analysis and design report, including design details for all stormwater management facilities in accordance with code requirements. (Section 140-104)

Streets and Sidewalks

1. Provide street and sidewalk design in accordance with §187.

Miscellaneous

1. Ensure that the open space provided meets the requirements of Section 149-71.

Mr. Josh Mastrangelo, Evergreene Companies, spoke on behalf of Raze Properties and Sigurd Berzins Trustee. He responded to some of the items Mr. McMullen listed as missing or incomplete and updated the Commission on the project. He said one of the changes on this plan is there are less units than the previous plan. Now there are 50 single family units and no townhomes. He also said that they succeeded in avoiding the wetlands. The project will be done in phases.

Mr. Mastrangelo stated they prefer not to include an entrance from Double Bridges Road to avoid use as a shortcut. He said they have an approved sewer concept plan and will have to build a “shared use” path on Muddy Neck Road. The development will have sidewalks on both sides of the street and privacy because the houses will back-up to open space.

Mr. Mastrangelo said there will be 18 different facades to choose from. He said there will be no commercial at this time, it will be a future phase. Open space accounts for 40% including recreational areas. He said there will be buffers around the entire community. Each unit will have two parking spaces and there will be overflow parking near the recreational center.

Mr. McMullen asked if there was any planned inter-connectivity between the commercial and the residential sections. Mr. Mastrangelo said they were still working on some sort of connectivity.

Rick Seifert, Clearwater, questioned whether the drainage outflow would be maintained. He also questioned when the plan would be available a final site plan. Mr. Mastrangelo stated there were no proposed plans to change the outflow.

A motion was made by Mr. Wichmann, seconded by Mr. Smith, to approve the preliminary site plan with the conditions that Mr. McMullen’s comments and Kercher Engineering’s comments as noted be addressed. The motion carried unanimously 5/0.

7. ADJOURNMENT

A motion was made by Mr. Damiano, seconded by Mr. Smith, to adjourn the meeting at 8:00pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz