

**PLANNING AND ZONING COMMISSION**  
**MEETING MINUTES**  
**October 20, 2016**

1. Chairman Gary Meredith called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Commission Members Wichmann, Damiano, Sharpe, and Smith were in attendance. Town Solicitor Eric Hacker, 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. **APPROVAL OF AGENDA**

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

3. **APPROVAL OF MINUTES**

A motion was made by Mr. Smith, seconded by Mr. Wichmann, to approve the September 15, 2016 minutes as presented. The motion carried unanimously 5/0.

4. **OLD BUSINESS**

**A. Application P-300 98 Central Avenue (PIDN: 059.000)**

Megan and Jeremy Smith were present to present an amended site plan. Mr. McMullen explained to the commission that they have chosen to build new and not refurbish the existing building. Because of this change in plans they have returned for approval.

*A motion was made by Mr. Damiano, seconded by Mr. Wichmann, to accept the revised site plan as presented. The motion carried unanimously 5/0.*

5. **NEW BUSINESS**

**A. Application P-304 15 & 11 Butler Boulevard (405.012 & 405.016)**

Mr. McMullen said property owners, Timothy & Elenita Yeager are requesting to combine two parcels of land to create one parcel on property zoned R-1, located at 15 & 11 Butler Boulevard (PIDN's: 405.012 & 405.016 - Sussex CTM#'s: 134-17.00-5.02 & 5.13).

A brief history of these parcels show that:

1. The applicants proposed subdividing the parcel in 2005, however there were issues with the proposed subdivision that required the applicants to apply for variances, which they did.
  - a) Application V-203 was submitted seeking a variance from Article III, §190-20-M of the previous zoning Code requiring that all lots be served from a publicly dedicated street. This variance application was approved by the Board of Adjustment (BOA) on November 6, 2006.
  - b) Application V-204 sought a variance from Article V, § 222-20-A of the previous zoning Code that required all lots to have a

minimum lot width of 75 feet which was denied on November 6, 2006.

- c) Application P-220 submitted for the subdivision of one parcel to two parcels was to be heard by the Planning and Zoning Commission (P&Z) on November 6, 2006, however the denial of V-204 negated the ability to do this and the Commission allowed the applicant to request a deferral so that he might provide a subdivision configuration that was compliant with the Code.
  - d) Application V-209 was submitted requesting a variance from Article VI, §222-31-1-C (2) of the previous zoning Code that required the distance from the water's edge of a pool to be no less than the required setbacks. The applicant required this variance be granted so that he could move forward with the proposed subdivision of the parcel as requested in application P-220. The first hearing of the application took place on March 15, 2007 and was deferred until April 5, 2007. On April 5, 2007 the BOA granted the portion of the variance requesting relief from the required rear yard setback however they denied the request for relief from the proposed side yard setback.
  - e) Application P-220 seeking a subdivision of the parcel from one lot to two lots was scheduled to be heard by P&Z on March 15, 2007 but because the variance request for the swimming pool was deferred the Commission also deferred a review of the subdivision application. On June 21, 2007 the Commission reviewed and approved application P-220, the subdivision of the parcel, with three conditions:
    - ✓ The applicant make the pool compliant with the Code by removing the portion of the pool that would encroach into the side yard setback.
    - ✓ Remove or relocate the existing garage because an accessory structure was not permitted on a lot without a principal structure.
    - ✓ Provide 10 foot drainage easements within each lot along all property lines.
2. The applicant recorded the approved subdivision in Sussex County on August 23, 2007 with the requirement that he meet the conditions as set forth by the Planning and Zoning Commission approval of application P-220 on June 21, 2007.
  3. On November 19, 2007 building permit # 8567 was issued to the applicant for the purpose of relocating the garage and removing the area of the pool that encroached into the side yard setback.
  4. Inquiries were received in August and September of this year from realtors inquiring about the possible purchase of the parcel and

whether everything was compliant with the Code brought about the applicants request to combine the two parcels into one.

I have reviewed the preliminary land development plan which 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, is required to comply with a number of L.U.D.C sections of the Code. I have reviewed the preliminary land development submitted by True North dated October 11, 2016 for Code compliance.

The site plan meets all of the Code requirements as outlined in Article XVI of the Land Use and Development Chapter of the Code (L.U.D.C.) with the following exceptions:

§140-103 Preliminary Development Plan:

E. Plan Contents:

19. Source of title;

Additional Comments:

- Dimension from water's edge to fence shows as being 4.7' near the current property line that divides the two parcels and appears to be somewhat less than that as it parallels the existing property line. §140-25-C (5) (c) [5] requires the fence to be a minimum of 5' from the edge of the pool. This will require the fence to be moved or the applicant to obtain a variance.
- Lot coverage, while shown in square footage should also be delineated in percentage as the maximum allowable lot coverage is 35%.
- The following note should be inclusive on the plan:
  - ✓ On April 5, 2007, the Ocean View Board of Adjustment granted variance application V-209 allowing the water's edge of the pool to encroach into the rear yard setback a distance of 11.5 feet at one end and 13.4 feet at the opposite end of the pool.

The proposed lot will comply with the dimensional regulations for R-1 zoning as stated in §140-28 of the L.U.D.C. by having setbacks of 25 feet in the front, 15 feet on the sides, 30 feet in the rear for the principal structure. The accessory structure will meet the requirement that all accessory structures be 5' from any other structures and not be within the required side and rear yard setbacks.

This application can also be reviewed and approved as a final land development site plan should the Commission so desire. If the Commission so chooses to approve as such, I would simply request that a condition of the approval be that the applicant provide a final land development site plan for recordation that includes the omitted information noted above.

Mr. Yeager was present to answer questions from the Commission about his request for the lot combination. Mr. Schrader asked Mr. Yeager how many water and sewer connections were on the property. Mr. Yeager replied just one of each. Mr. Schrader asked if the property was sold. Mr. Yeager replied yes. Mr. McMullen said the County is going to expedite the recording process for him so he can sell his property next week. Mrs. Sharpe asked whether the driveway will remain. Mr. McMullen said there is no need to remove it.

*A motion was made by Mrs. Sharpe, seconded by Mr. Wichmann, to approve as a final site plan with the requirements stated by Mr. McMullen. The motion carried unanimously 5/0.*

**B. P-305 An Ordinance to amend Ordinance 214/Item# 7**

Mr. McMullen offered an overview of the proposed ordinance amendment. He said the original Item# 7 in the residential planned community required that the recreational facilities, swimming pool and community building, shall be constructed and opened for use by the residents no later than the time of issuance of the 60<sup>th</sup> certificate of occupancy. The builder and developer are looking to change that number to 80. This will enable them to build an additional 20 properties before having to complete the recreational amenities facility. The indoor pool is no longer included in this recreational amenity group.

Mr. McMullen stated he received one letter of comment from a Ms. Robin Schlosser, 4 Old Orchard Blvd. He read her email to the Commission.

Ms. Dana Martin, 23 Old Orchard Blvd, stated she objects to the change. She says her HOA fees include these recreational facilities and does not want the change allowed.

Mr. Brian McManus, of K. Hovnanian Homes, and Mr. Zac Crouch, of Davis, Bowen and Friedel, was present to answer questions from the Commission. Mr. McManus stated that they have 38 building permits that have been issued, 33 CO's are spoken for and he is projecting to start another 24 homes in the next three months. Which will be approximately 57 CO's through the month of May 2017. He said he wants the clubhouse finished more than anyone because it helps sales.

Mr. Zac Crouch explained to the Commission that they were awaiting a check for \$40,000 for the building permits to begin work. He stated that earlier this year they increased square footage of the club house to 95,000sqft. The pool is bigger, the building is bigger. They had to completely redesign the plans which took some time, but are ready to start construction in November. Mr. Crouch said they are still expecting to finish the amenity facility in the summer of 2017.

Ms. Martin stated she wanted some kind of penalties assessed to the builder if the schedule slips. Mr. Schrader said a document named DUCIOA (Delaware Uniform Common Interest Ownership Act) creates obligations that the developer and builder

have to honor to home purchaser. He suggested Ms. Martin come to the Town Council meeting in December and express her opinions on this matter.

Mr. Smith asked if the recreational facility is finished before the 80<sup>th</sup> CO will it be opened for use. Mr. Crouch said it would be opened for use.

*A motion was made by Mr. Damiano, seconded by Mrs. Sharpe, motioned to recommend approval to Council. The motion carried unanimously 5/0.*

**6. ADJOURNMENT**

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

Respectfully submitted,  
Donna M. Schwartz