

PLANNING AND ZONING COMMISSION
MEETING MINUTES
June 21, 2018

1. Chairman Wichmann called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Commission Members Damiano, Liddle, Amendt and Sigvardson were in attendance. Town Manager Dianne Vogel, Town Solicitor Eric Hacker, Town Engineer Jim Lober and Town Clerk Donna Schwartz were also in attendance. The meeting was held at 32 West Avenue.
2. **COMMISSION BUSINESS** – Mr. Ken Sigvardson and Mr. Norman Amendt were sworn-in by Mr. Eric Hacker.
3. **APPROVAL OF AGENDA**
A motion was made by Mr. Damiano, seconded by Mr. Liddle, to approve the agenda. The motion carried unanimously 5/0.
4. **APPROVAL OF MINUTES**
A motion was made by Mr. Damiano, seconded by Mr. Sigvardson, to approve the May 17, 2018 minutes as presented. The motion carried unanimously 5/0.
5. **NEW BUSINESS**
Town Officials were sworn-in by Mr. Hacker and the application was advertised and posted.
 - A. **P-311 3 Town Road (PIDN: 284.080/Sussex CTM# 134-13.00-1100.00)**
Preliminary / Final Plan Review – 3 Town Road Tax Map ID: 1-34-13-1100
KEI Project #15-1107M. Final Land Development Site Plan – 3 Town Road, Prepared by The PELSA Company, dated 8/19/15

Mr. Lober said, based upon our review, we have the following comments.

Floodplain

1. The project has received a Conditional Letter of Map Revision Based on Fill from FEMA. This approval permits the fill within the floodplain shown on the plan. This approval is conditional and will need to be finalized with FEMA in accordance with their requirements once construction on-site is complete.
 - pc) Section 116-5-E2 of the Town code- Development in areas with base flood elevations but no floodways, states:
 - a. For development activities in a flood hazard area with base flood elevations but no designated floodways, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.
 - b. The proposed development activity may be permitted if the analyses demonstrate that the cumulative effect of the proposed development activity,

when combined with all other existing and potential flood hazard area encroachments will not increase the base flood elevation more than 1.0 foot at any point.

This comment was addressed by submission to FEMA and the presenter has received a conditional letter of map revision based on fill from FEMA. This approval permits the fill within the flood plain as shown on the plan and is conditional and will only be finalized with FEMA in accordance with their requirements once construction onsite is complete.

2. Addressed

pc) Until items a and b have been satisfied, no plan for development on-site can be considered code compliant.

3. FEMA approval has been obtained. Construction plans for the site and the building must comply with all applicable sections of 116-4 and 116-5 of the Town Code.

pc) Assuming that FEMA approval can be obtained, any plan for the site will be required to comply with all applicable aspects of Sections 116-4 and 116-5 of the Town Code.

Generally

1. Addressed

pc) Provide plans in accordance with the requirements of Town code section 140-100.

Grading

1. The finished floor of the building is required to be at or above flood elevation plus 2.0 ft. In this case the finished floor must be at least elevation 8.0. Raise the finished floor elevation to at least elevation 8.0 and provide revised grading around the perimeter of the building.

pc) Provide grading in accordance with the requirements within section 116-5-C.

2. Ensure that the grading within the hand-cap parking space and the van accessible area does not exceed 1:48. This slope applies to the entire area of the parking space and the van accessible space.

pc) Ensure that grading within the handicap parking space and van accessible area are ADA compliant.

Stormwater Management

1. Addressed

pc) Provide stormwater management in accordance with the Delaware Sediment and Stormwater Regulations. Provide copies of all stormwater management design calculations and plans. The Town will require approval of the stormwater management design from the Sussex Conservation District prior to final plan approval.

Drainage

1. Addressed

pc) The proposed grading directs runoff from a significant portion of the impervious surface off-site to the east. The receiving area does not appear to have the slope necessary to properly drain and no easement is depicted on the adjoining property to

cover drainage conveyance. Provide conveyance to the appropriate drainage outfall on-site or provide an easement off-site to permit the conveyance of runoff. Provide grading and hydraulic calculations for all drainage elements verifying appropriate design and capacity.

Utilities

1. Addressed

pc) Show all utility locations and proposed tie-in points.

Sidewalks

1. Addressed

pc) Provide sidewalks along the entire frontage of the site in accordance with Town code section 187-9.

Mr. Hacker stated that all but two items have been addressed at this point. With respect to the grading issue Mr. Lober recommended the finished floor elevation of the building needs to be raised to elevation 8. Code requirement is that finished floor be flood plain elevation plus two feet. The grade is only at flood plain plus 10 inches. The grade needs to come up. The building has at grade access with garage doors along the one side. The grading on the outside of the building will have to follow that finished floor up. The parking lot would become steeper. The steepness of elevation needs to not affect the handicap parking spaces. Mr. Hacker inquired if this should be addressed now or as an as-built. Mr. Lober said he would not be able to recommend for approval until the grading plan is revised. With respect to the floodplain, Mr. Lober said if the grading plan changes then the revision to the plan will possibly have to be resent to FEMA for approval.

Julian Pelligrini, of Pelsa Company Newark, DE, was sworn-in by Mr. Hacker. He said they have received a fair amount of approvals so far, and are currently waiting on only two approvals; the Town Planning and Zoning Commission and the Town engineer's approval of the project review. He said they had received an approval letter from FEMA removing a portion of the property from the special flood hazard area. Mr. Pelligrini said he interpreted this to mean they do not have to comply with the finished floor elevation of elevation 8 as suggested by Mr. Lober. Mr. Pelligrini said the project currently sits at 6.88 finished floor elevation with a 3% slope on the driveway. He said his client would like to keep things the way they are. He repeated his interpretation of the FEMA letter as not needing to comply with the Town Code on elevation. Mr. Pelligrini said the latest plans show a finished floor elevation of 6.88, if they raised the slope to elevation 8 that would give them a 7% driveway slope. He passed out the latest plans to the Commission Members and Mr. Lober. He said the only difference shown are some thicker triangles around the perimeter of the building.

Mr. Lober clarified that he does not see this as an issue that can be worked out with Mr. Pelligrini. He stated he sees this is a Code written requirement, a hard and fast rule that says the finished floor must be raised to elevation 8. Mr. Pelligrini stated he believes both interpretations are correct. He claims the FEMA approval letter removes part of the property from special flood hazard area

Mr. Hacker said this is a conditional approval letter based on fill dirt. Mr. Pelligrini agreed with Mr. Hacker that the fill dirt has not been added yet, and they are still in that flood plain.

Mr. Liddle asked Mr. Lober a question. He said that they are not in compliance with the Code even with the extra fill. Mr. Lober agreed with that description.

Mr. Hacker stated Mr. Lober's interpretation of the Code is that where you start off the project has to be two feet, if you start off in the flood plain. The applicant is telling us that their interpretation is that if they can present to FEMA that they will add in enough fill during the course of the project they are no longer in the flood plain they don't have to comply with that part of the Code. The applicant is saying that this is something they can work out or give additional information on so that Mr. Lober or Mr. Schrader would be convinced that this will comply with the Code. Mr. Hacker said part of Mr. Lober's concern is that we have to comply with these sections of the Code, and our Code matches certain regulations so we fall under FEMA's flood insurance so that adherence to the Code is important thing in this case.

Mr. Pelligrini said he was happy to comply with the regulations and does not want the application tabled. Mr. Lober noted the Code required flood plain regulations that are a series of requirements that any development project in this area needs to comply with. One of them is you must go to FEMA for a CLOMER to prove to them what you are proposing will not significantly or adversely affect the flood plain, the second one is when you build within the flood plain you must be 2 feet above the flood plain with your finished floor of your structure. He said compliance with the first one doesn't remove compliance with the other. They are all in effect for a reason. They provide assurances that the structures you build aren't eventually flooded out. Mr. Lober stated he cannot interpret this any other way.

Mr. Sigvardson asked if they could add enough fill to meet the Code. Mr. Pelligrini replied it will take a long time to go back to FEMA with changes to add additional fill. He said it will be a hassle to meet the Code.

A motion was made by Mr. Damiano, seconded by Mr. Sigvardson, to approve as a final site plan with the conditions that they comply with Mr. Lober's recommendations of the floodplain and grading of the property, and comply with handicap parking space requirements. The motion carried 4/1. Mr. Liddle voted against the motion.

B. P-313 14 Betts Avenue (PIDN: 127.000/Sussex CTM#: 134-12.00-320.00)

Ms. Schwartz stated this application was advertised and posted.

Application P-313 is before the Commission this evening for a concept plan review. The applicants are seeking the subdivision of a single lot, zoned R-1, to create five (5) lots, zoned R-1, on property, located at 14 Betts Avenue (PIDN: 127.000 / Sussex CTM#: 134-12.00-320.00).

§ 140-102. Concept Plan

- A. Definition - A drawing of a development plan of sufficient accuracy to be used for discussion only.
- B. Prior to submitting a Preliminary Development Plan, a concept plan shall be submitted to the Planning & Zoning Commission to be used as the

basis for discussion and to receive direction on preparation of the preliminary plan, but not for approval or disapproval.

The Concept Plan provided is fairly detailed and could suffice for a preliminary plan however, the Code requires a Concept Plan review as the first step in Land Development process. The plan has been reviewed by myself and the Town Engineer whose comments will be inclusive with this overview.

A plan for this proposed subdivision was originally received by the Town in March 2017. Because this proposed land subdivision has an existing improvement it also must be reviewed for compliance with the current Code, which is the Land Use and Development Chapter (L.U.D.C.). If there are non-compliant issues on the lot being created where existing improvements are located, they must be addressed before the Preliminary Land Development review (e.g. – the Code does not permit detached accessory structures in the front yard where the garage is located, and this will require the structure to be moved or acquire a variance from the Board of Adjustment).

To ensure that the applicant can package all required variance requests into one application some issues that must be clarified before a determination can be made about necessary variances are:

1. Pool w/ dimensions should be delineated within the pool decking area.
2. Is the pool inground or above ground?
3. Distance from water's edge to the structure adjacent to the deck and pool area as well as the distance from the dwelling unit to the water's edge should be provided.
4. Distance from driveway edge to property lines at the N & W property lines.
5. Width of driveway at its widest point thru the ROW.
6. Distance to dock from side lot line.
7. Lot coverage (to include all buildings and structures).
8. Provide the height of the existing dwelling and garage.

This plan was reviewed both as a Concept with some comments directed toward Preliminary site plan due to the extent of the information provided. This review information should further assist the applicants as they move forward with the preparation of the Preliminary Land Development Site Plan which is the next step in the process. Should the applicants return with a Preliminary site plan, that is all inclusive, it is possible that the Commission could approve the site plan as a final site plan because there are no roads being created.

1. Under Site Data make the following revisions:
 - Building Restriction Line (B.R.L.)
 - A – Front and side lot line abutting a street = 25'
 - Total No. of Lots: Change to 5 and remove residual
 - Proposed use is not a use. Please remove this bullet
2. Label lot to be created where improvements exist as Lot NO. 5
3. Provide the current names of all abutting landowners or subdivisions (lots 1 thru 3 in the adjacent Winding Waters subdivision).
4. Distance to Powell Lane and Betts Avenue.

5. Identify location of Benchmark used.
6. Identify sewer location for what should be labeled as LOT NO. 5.
7. Identify Powell Lane as PRIVATE with a Variable ROW.
8. Source of Title to be provided.
9. Wetlands Delineation and signature block for Wetlands Specialist.
10. Signature block for Town Approval.
11. All required outside agency approvals as noted in §140-103-H.

There are many requirements set forth in Articles XI, XII, XIII and XVI in the Land Use and Development Chapter (140) of the Code that will be beneficial in the preparation of the preliminary land development site plan.

Mr. Lober added some additional comments to the overview. He said the subdivision of the parcel potentially creates non-conformities on lot #5 of the existing improvements. We are currently dealing with one large property with a house, garages, pool and driveway and as we cut that large piece of property into 5 smaller pieces of property. The property lines that are created create non-conformities based on what exists on lot #5. The applicants must show all non-conformities being corrected and/or get variances obtained prior to the plan moving forward.

Mr. Lober also said, there is a swale that runs across the northeast corner of the property which exists currently carries drainage from along Betts Avenue to along Powell Lane. The swale cuts across what will become lot #1. That swale needs to be either moved into the 10ft drainage easement that is proposed paralleling the proposed property lines or an easement needs to be fitted to accommodate the existing radial path of the existing swale that drainage is contained within a drainage easement and not across private property. Mr. Lober demonstrated on the site plan the area he was referring to. He also noted some of the non-conformities being created by the subdivision.

Mr. Timothy Tribbitt, Hickman Avenue, was sworn-in by Mr. Hacker. Mr. Tribbitt said the problem with moving the swale is that there is a transformer that accommodates Winding Waters in the way, so they had to create a swale further in on the property. He asked Mr. Hacker what has changed to make them need variances. Mr. Hacker said the preliminary plan proposes to create a lot that has several non-conformities. Mr. Hacker stated they need to go to someone (an architect, engineer or attorney) to help identify these non-conformities. He did say Mr. Lober identified there are at least three areas of concern with lot #5: the garage, the driveway, and total lot coverage. Mr. Hacker told Mr. Tribbitt that the Town can't tell him what to do, we can only tell him if what he is proposing complies with Town code. There are several issues with this site plan that do not comply with the Town code and could prevent the Commission from approving the plan. Mr. Hacker again repeated that Mr. Tribbitt needs to go to a private company and have the site plan reviewed.

Laura Hickman, Bethany Loop, was sworn-in by Mr. Hacker. Ms. Hickman stated she doesn't understand all the conflicting information and asked how long it takes to get a variance. Mr. Hacker explained the process to her, the Board of Adjustment

meets monthly and he said most of the time the application would be heard within a month or two.

Mr. Hacker told the Commission Mr. Lober's recommendation is that they table this application until the applicant can seek the variances they need. All lots should be conforming before any approval is given for a sub-division.

A motion was made by Mr. Amendt, seconded by Mr. Liddle, to defer the application until a later date to allow the applicant time to seek the variances they need for this application. The motion carried unanimously 5/0.

**C. P-314 44 Atlantic Avenue (PIDN: 805.000/Sussex CTM#: 134-12.00-657.00)
Site Plan Review – Lands of D&B Ocean Gateway, LLC. Tax Map ID: 1-34-12-657**

Ms. Schwartz stated this application was advertised and posted.

- Plan for Location Approval – Lands of D&B Ocean Gateway, LLC – Prepared by Simpler Surveying - dated 5/9/18

Mr. Lober said this plan proposes to take existing square footage at the rear of the site that is currently unoccupied and put an ice cream parlor in there. It is a relatively large site with a number of other buildings and other uses. There is some asphalt and gravel parking. The last known approved application for this parcel is the plan being revised tonight from 1988. Essentially there are no details being provided as to the existing gross floor area of those buildings, the current use of the buildings or how parking is addressed for those buildings. Mr. Lober said, based upon our review, we have the following comments.

Parking

1. Provide an assessment of the existing gross floor area on-site including the specific uses and the total gross floor area associated with each.
2. Provide a required parking calculation for each existing use.
3. Provide a separate calculation for the proposed use for the dwelling shown at the rear of the property.
4. Provide parking on site to satisfy the total number of spaces required as determined by the analysis described above. All parking will need to be code compliant in both total number of spaces provided as well as geometric dimensions of each space.

Grading

1. Provide a grading plan in accordance with Code Section 140-100 for any additional paving and walkways.
2. Ensure that grading is ADA compliant for all handicap parking spaces and walkways.

Stormwater Management

1. Provide Sussex Conservation District approval for any proposed disturbance and/or additional impervious cover.

Mr. Hacker asked if the applicant received a copy of the overview. Mr. Lober replied that he was not aware whether the Town shared the overview or not.

Keith Gordon, Brush Hook Ct, was sworn-in by Mr. Hacker. He stated he submitted site plans and wants to do everything by code. He said safety is his number one concern. Mr. Gordon questioned how many parking spaces are needed for an ice cream shop. Mr. Hacker replied that those requirements are stated in the code. Mr. Lober also replied that they need to go to a professional to help them with their application to determine how many parking spaces are needed. Mr. Gordon stated that they do not sell ice cream in the winter, and stated he was disappointed he did not know about Mr. Lober's comments in advance. Mr. Lober stated that this letter has only been in the file for two days, and the purpose of the meeting tonight is to deliver this info to the applicant.

Mr. Hacker said he understands that he is frustrated with the process but the process isn't any different for him. The process is set forth in the Town code and this body meets once a month. When you choose to handle the process yourself you sometimes have to do things over. The process is to let the commission see your plan and let the engineer review your plan and give you feedback. The town engineer is recommending the applicant take the application back to Simpler (or other legal representative) and sit down and address the items on Mr. Lober's overview.

Bonnie Cunningham, Brush Hook Ct., was sworn-in by Mr. Hacker. She stated she had been in touch with the Town office and was not aware of the overview which existed for two days. Mr. Hacker repeated that the problem is the site plan does not meet legal requirements of the Town code or show certain information that is needed for review. Mr. Hacker noted that they have submitted a plan for legal approval however, the engineer has identified problems with the plan and recommends they have the application reviewed by a professional who knows the code. Ms. Gordon asked if the professionals did it wrong. Mr. Lober stated that the survey they presented is not wrong, it doesn't include information to review on the items created by the new use in that square footage. We cannot just look at the building they want to use. The overall parcel code compliance comes into review.

David Long, Hudson Avenue, was sworn-in by Mr. Hacker. He said he has owned the property since 1950. He expressed upset with the process and with the Town of Ocean View.

Dave Long, Longview Drive, was sworn-in by Mr. Hacker. He asked if there was a copy of the letter he could have. Mr. Long will come in the morning and pick up a copy of the overview.

Dave Long III, Longview Drive, was sworn-in by Mr. Hacker. He noted that this is not a restaurant it is a retail shop. He asked how many parking spaces they need. Mr. Lober said he could not answer the question tonight. Mr. Long was unhappy with a suggestion to table the application.

A motion was made by Mr. Damiano, seconded by Mr. Amendt, to defer the application to allow the applicant to address the missing information in the Mr. Lober's overview. The motion carried unanimously 5/0.

6. ADJOURNMENT

A motion was made by Mr. Damiano, seconded by Mr. Amendt, to adjourn the meeting at 8:21pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz, CMC