

PLANNING AND ZONING COMMISSION
MEETING MINUTES
June 20, 2019

1. Ken Sigvardson called the meeting to order at 6:00 p.m. with the Pledge of Allegiance. Commission Members Damiano, Nicholson, Liddle, and Amendt were in attendance. Planning & Zoning & Development Director Ken Cimino, Town Engineer James Lober, Town Solicitor Dennis Schrader, and Donna Schwartz were also in attendance. The meeting was held at 32 West Avenue.
2. **APPROVAL OF AGENDA**
A motion was made by Mr. Liddle, seconded by Mr. Damiano, to approve the agenda. The motion carried unanimously 5/0.
3. **APPROVAL OF MINUTES**
A motion was made by Mr. Nicholson, seconded by Mr. Liddle, to approve the May 16, 2019 minutes as presented. The motion carried unanimously 5/0.
4. **NEW BUSINESS**

A. P-325 39 & 41 Woodland Avenue (PIDN #179.040 & 179.050 /Sussex CTM# 134-12.00-556.01 and 556.00)

Mr. Jim Lober, Town Engineer read the overview. He said Application P-325 is a Land Development Site Plan submitted by the property owners Michael W. & Catherine A. Dorothy for a lot combination to combine two (2) parcels of land into one (1) parcel of land on property zoned R-1 (Single Family Residential District) located at 39 & 41 Woodland Avenue (PIDNs: 179.040 & 179.050 / Sussex CTM#s 134-12.00-556.01 & 556.00).

The existing pavers at the rear of the dwelling will require a variance to remain.

Mr. Lober stated the existing driveway width needs to be shown on the plan. It appears that the existing driveway may be greater than the 20-foot maximum allowable width at the right of way. If the driveway is greater than the 20-foot maximum allowable width at the right of way, the driveway will need to be modified or a variance will need to be granted.

All drainage easements along interior lot lines will need to be shown on the plan.

Show current and proposed lot coverage on the plan.

He also said all dimensions for each structure on the lot must be shown, including height. Once this information is provided, additional variances may be needed for these existing structures.

The Office of Planning, Zoning & Development recommends conditional approval of this site plan pending the submittal of the additional information requested above and the applicant receiving any and all needed variances for existing conditions.

Michael Dorothy owner of the properties spoke to the Commission. He told them he would like to combine the two lots into one lot.

A motion was made by Mr. Damiano, seconded by Mr. Nicholson, to approve the application with the condition the missing information is given to Mr. Cimino and the pavers are removed or given a variance. The motion carried unanimously 5/0.

B. P-323 1 Town Road (PIDN:284.090/Sussex CTM# 134-13.00-1101.00)

Mr. Lober read his overview, he said based upon our review, we have the following comments.

Special Exception

1. The parcel is zoned GB-1. The proposed use of Microbrewery is permitted within GB-1 zoning as a Special Exception as noted in Chapter 140 Land Use and Development - Attachment 1 Table of Permitted Uses and Structures. Special Exception approval was granted by the Board of Adjustment at their meeting of Thursday May16, 2019. Include a note on the plans referencing the special exception approval. Chapter 140 Article VI Additional Use and Dimensional Regulations - Section 140-45.1 Microbrewery, includes additional requirements specific to the proposed use of Microbrewery with which this project will be required to comply, in addition to all other applicable standards of the GB-1 zoning district.

2. The existing non-conforming use of Woodworking Shop is also permitted within GB-1 zoning as a Special Exception. At its May 16, 2019 meeting, the Board of Adjustment also granted Special Exception approval for the existing non-conforming woodworking shop currently operating on-site. This approval is good for the period of one (1) year. Include a note on the plans referencing the special exception approval that specifically outlines the conditions placed on the use by the Board. Chapter 140 Article VI Additional Use and Dimensional Regulations - Section 140-42.2 Woodworking Shop, includes additional requirements specific to the proposed use of Woodworking Shop, with which this project will be required to comply, in addition to all other applicable standards of the GB-1 zoning district.

Variiances

1. The following variances will be required based on the existing building and the currently proposed configuration of the parking lot. Approval of these variances by the Board of Adjustment will be required prior to proceeding with the land development plans.
 - a. The southeast corner of the building violates the front setback of 30 feet.
 - b. The parking spaces are shown at 9ft. wide by 18 ft. long. The code requires 10 ft. wide by 20 ft. long.

- c. The drive aisle provided along the east side of the building is approximately 20 ft. wide, and the drive aisle along the south side of the building narrows to as little as 16 ft. wide. The code requires a minimum of 24 ft.
- d. It is possible that the site exceeds the maximum allowable lot coverage of 50%. The lot coverage must account for all impervious surfaces. A lot coverage calculation is not currently provided on the plan. A variance will be required if the lot coverage does indeed exceed 50%.
- e. The code requirements specific to microbreweries prohibit access and loading bays from facing any street. The garage doors on the portion of the building being converted to the microbrewery and tasting room would need to be replaced or a variance would be required to allow them to remain.
- f. The code requirements specific to woodworking shop prohibit loading in any portion of the property abutting any residential district and within the required front yard. Given the residential property that abuts this site to the rear and the position of the building with respect to the front yard setback, there is no code compliant area available within which loading operations can be performed. A variance for relief from Section 140-42.2-D-1 or D-2 will be required in order for the woodworking shop to be permitted to function within the requirements of the code.

Floodplain

1. The site exists within a FEMA mapped Special Flood Hazard Area – Zone AE elevation 6' with no delineated floodway. Due to the fact that the site is currently developed and that the project does not propose any additional fill on site or building square footage, the flood carrying capacity protection requirements in the code will be considered to be met. If the scope of the project changes it may be necessary to revisit this interpretation at that point.
2. The site must be brought into compliance with the remaining requirements within Sections 116-4 and 116-5 of the Town Code. Any requirements that are unable to be met will require additional variances.

Generally

1. Provide an accurate assessment of the lot coverage on the plan.
2. Provide the height of the building on the plan.
3. Show any new utility connections for the proposed microbrewery use on the plan.
4. Show the location of all existing and proposed mechanical equipment on the plan.
5. For the purposes of this review it has been assumed that the tasting room will be characterized as a retail use that does not qualify as a restaurant due to the number of seats being less than the minimum 10 required for a restaurant. However, if it is intended that more than 10 seats will be provided, the tasting room will qualify as a restaurant use, which will require compliance with additional requirements within the code. Also, the parking

for the area of the building dedicated to the tasting room will be required to be calculated in accordance with the restaurant parking ratio.

6. Specify on the plan how the dumpster area will be screened.
7. The plan does not currently show any handicap parking spaces. Revise the plan to reflect the ADA required number of spaces.
8. The plan shows the entire parking lot as gravel. Provide a paved surface that provides ADA compliant parking as well as access to the building from the handicap parking spaces.

Stormwater Management

1. Due to the fact that the site is currently developed and that the project does not propose any additional disturbance on site or building square footage, the project will be deemed to be exempt from the requirements of the Delaware Sediment and Stormwater Regulations. If the scope of the project changes it may be necessary to revisit this interpretation at that point.

Mr. Joel Antonioli Sr. spoke to the Commission on behalf of himself. He said this was a concept plan. He stated he wishes to completely improve the front of the building by removing the garage doors and adding a storefront. Mr. Antonioli, who owns Superior Screen and Glass at the same location, said he wishes to start off small with maybe a 10-barrel system, which is 1/10th of what is allowed. Mr. Amendt asked about the garage doors. Mr. Antonioli stated he would need a variance in order to keep them.

Mr. Schrader noted that there are many moving parts to this endeavor. State and Federal Agencies, the Delaware Alcoholic Beverage Control Commission are just a few that would be involved.

Mr. Antonioli noted his original plan shows a variance was granted for the front setback in 2000. Staff will investigate this.

Public Comment:

Victoria Erickson, Central Avenue, questioned the wetland area in relation to the project.

Chuck Osher, Ocean Mist Drive, questioned how the tasting room will interact with the new mini golf and ice cream parlor and asked what the hours of operation would be for the brewery. Mr. Antonioli replied there would be no Sunday hours. He would open after 12 noon and close no later than 10pm.

Marian Osher, Ocean Mist Drive, stated she was concerned with traffic. She said a traffic light and a pedestrian crossing is needed.

Mr. Schrader reminded everyone that this is just a concept plan, and no votes would be taken tonight. It was the consensus of the Commission that the plan to move forward to a preliminary plan.

C. P-324 3 Atlantic Avenue (PIDN: 284.002/Sussex CTM# 134-13.00-30.00)

Town Engineer Jim Lober said The Kercher Group, Inc. (TKG) has reviewed the plans listed below. Contract Drawings for Ocean View Mini Golf – Adams Family Enterprises, LLC – Prepared by Rauch, Inc. - as revised through 6/7/19. Below are the comments from our Concept Plan review have been addressed as follows.

Generally

1. A portion of the items listed below were added to the plan. The outstanding items must be included with the next submission.
previous comment) Provide a complete site data column on the plan including but not necessarily limited to the following items
 - a. Zoning
 - b. Dimensional Requirements
 - c. Proposed Use
 - d. Proposed Gross Floor Area of all structures
 - e. Required number of parking spaces
 - f. An accurate assessment of the lot coverage proposed by the plan.
 - g. Water Service Provider
 - h. Sewer Service Provider
2. No height information has been included on the plan.
previous comment) Provide the height of the building and all elements of the golf course on the plan.
3. It does not appear that any mechanical equipment has been shown on the plan.
previous comment) Show the location of all existing and proposed mechanical equipment on the plan.
4. The dumpster as currently shown will be inaccessible if cars are parked in either of the two spaces that block the location. The dumpster should be located such that it can be freely accessed from the drive aisle.
previous comment) Show the proposed location of the dumpster area and specify on the plan how it will be screened.
5. Addressed
previous comment) Correct the BRL label on the front lot line setback.

Special Exception

1. Please include the note on the plan referencing the Special Exception approval as previously requested.
previous comment) The parcel is zoned GB-1. The proposed use of Miniature Golf Course is permitted within GB-1 zoning as a Special Exception as noted in Chapter 140 Land Use and Development - Attachment 1 Table of Permitted Uses and Structures. Special Exception approval was granted by the Board of Adjustment at

their meeting of December 20, 2018. Include a note on the plans referencing the special exception approval.

2. No Further Comment Necessary

previous comment) Chapter 140 Article VI Additional Use and Dimensional Regulations - Section 140-42.4 Miniature Golf Courses, includes additional requirements specific to the proposed use of Miniature Golf Course with which this project will be required to comply, in addition to all other applicable standards of the GB-1 zoning district.

VariANCES

1. Since the Concept Plan review and discussion at the Planning and Zoning meeting of April 18, 2019, we have taken into consideration your request to reconsider the characterization of the mini-golf course as a structure governed by the dimensional regulations of §140-31 of the Town Code. To that end we offer the following points.

- The title of the chart within §140-31 which lists the required setbacks is “Principal Buildings and Structures”. We believe that these setbacks apply to all structures as defined by the code unless specifically exempt elsewhere in the language of the Code.
- §140-152 defines structures as “a combination of materials that forms a construction for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water, including but not limited to buildings, sheds, outbuildings, fences.” We believe that the mini golf holes meet this definition.
- §140-38 specifically exempts fences, walls, hedges and shrubbery from the setback requirements. Although fences, walls, hedges and shrubbery may be used in part as elements of the golf course, they are simply pieces of a larger construction that when taken together form a structure. In this case, the structures that represent the primary commercial business use on the property.
- §140-74 states that for commercial developments “landscape plantings should be indigenous to local areas and should provide a soft visual buffer between the roadway and the commercial use.” Again, in this case, the golf course is the commercial use from which the code contemplates buffering the roadway. Although, in this instance, the golf course holes may incorporate landscaping, that doesn’t warrant their disqualification as structures as defined by the Code.
- Considering an alternative interpretation of the golf course holes as accessory structures to the proposed buildings, which in this scenario would represent the primary structures, the golf course holes would qualify as detached accessory structures. §140-32 lists the dimensional regulations for detached accessory structures. Detached accessory structures are not permitted within the front yard setback and are restricted to the same side yard setback as the primary structure. Therefore, the golf course holes would not be permitted to be constructed within the front or side yard setbacks.

- Considering an additional alternative interpretation of the elements of the golf course holes as decks or patios, which are listed in §140-33 as being permitted to project into required setbacks, leads to the requirements listed in §140-35. The allowances included in §140-35, as per the title of the section, only apply to decks and patios on residential properties. Therefore, decks and patios on commercial properties would not be permitted to project into the front or side yard setbacks.

For these reasons we believe our original interpretation to be correct, and the comments offered in our concept plan review will stand as presented. We recognize the revision to the plan moving “significant structural aspects of the course” outside of the setback areas, but given the interpretation presented above, all aspects of the golf course construction will need to be located outside of the setbacks areas or variances will need to be obtained from the Board of Adjustment for relief from the required setbacks.

previous comment) The elements of the miniature golf course construction qualify as “structures” as defined by Section 140-152 of the Town code. Section 140-31 of the Town code requires setback dimensions for buildings and structures. The elements of the golf course are required to be built in accordance with the required setbacks. The plan as currently designed shows golf course structures within the front and side setbacks. The golf course will need to be redesigned to move all elements behind the setback lines or variances will need to be obtained from the Board of Adjustment for relief from the required setbacks.

2. The building has been relocated and this encroachment is no longer proposed.
previous comment) There appears to be a small extension off of the back of the proposed building that encroaches into the 15 ft. building setback. This portion of the building will need to be removed, the building will need to be shifted away from the setback line or a variance will need to be obtained from the Board of Adjustment for relief from the required setback.

Floodplain

1. Please depict the floodplain limits on the plan and add the note as previously requested.

previous comment) The subject parcel lies within a FEMA Special Flood Hazard Area – Zone AE with no floodway, elevation 7 as shown on FEMA NFIP FIRM Panel 10005C0512K dated March 16, 2015. Show the floodplain boundary on the plan and add a note to the plan stating the floodplain information.

2. Submission has been made to FEMA for the appropriate approval. The proposed development in the floodplain will be reevaluated upon receipt of a response from FEMA.

previous comment) 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.

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

3. Future plan submissions will be reviewed to ensure compliance with this requirement once approval from FEMA has been obtained.
previous comment) Upon FEMA approval, 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.

Wetlands

1. Provide a copy of the wetlands report as previously requested. Include a note on the plan reflecting the findings of the report.
previous comment) Provide a wetland delineation report in accordance with Section 116-13 of the Town code.

Parking

1. The plan has been revised to include 24 parking spaces. No parking study or other justification for the number of spaces was provided. Of the 24 spaces provided, the 2 curved spaces shown on the outside circumference of the drive aisle and the 2 parallel spaces east of the proposed building in the rear are inaccessible and unacceptable. The remaining 20 spaces do not meet the 28 previously determined to be the requisite number of spaces for the proposed use. Revise the design to provide 28 spaces or provide some justification for providing fewer spaces for review and consideration by the Town.
previous comment) The code does not currently include a minimum number of required parking spaces for the proposed use. Section 140-59 paragraph B (3) notes that the required number of parking spaces for uses not specifically listed shall be the same as for a similar listed use. The listed use most similar to the proposed use of miniature golf course is restaurant.
The number of parking spaces required based on an estimate of the total proposed floor area of the buildings and the restaurant multiplier of 1 parking space for each 50 sq. ft. of floor area is 28. The plan currently includes 16 parking spaces. Revise the plan to provide 28 parking spaces or provide a parking study in accordance with Section 140-59 paragraph E (3) for consideration by the Planning and Zoning Commission to permit modification of the number of required parking spaces.
2. Addressed.

previous comment) The plan currently shows one handicap parking space. That space is not van-accessible. Revise the plan to provide a van-accessible space that complies with ADA requirements. Ensure that the total number of handicap spaces provided is in accordance with ADA requirements based on the required parking space calculation to be completed in conjunction with the previous comment.

Utilities

1. Addressed
previous comment) Show the location of the water main to which the proposed service will be connected.
2. Addressed
previous comment) Show the location of the existing water and sewer services to the existing building.
3. Provide approval from Sussex County Engineering with regard to the proposed sanitary sewer connection, wherever that connection ends up being made.
previous comment) Provide approval from Sussex County Engineering for the proposed grinder pump forcemain connection to the existing 10” forcemain.

Easements

1. A document entitled Amendment to Joint Driveway Agreement has been provided. This document has not been signed or recorded. Provide a copy of the Joint Driveway Agreement referenced in this document. The amendment will need to be recorded and referenced on the plan prior to final approval.
previous comment) A cross access easement agreement for ingress and egress will be required between the subject parcel and the adjacent parcel to the west. That easement will need to be recorded prior to approval of the final plan.
2. The easement has been shown across the southeast corner, however the document provided does not appear to have been signed or recorded. If this document has been previously recorded, please provide a copy of the recorded document and reference the recordation information on the plan. If this document has yet to be recorded it will need to be recorded and referenced on the plan prior to final approval.
previous comment) Show the easement associated with the canal path that crosses the south east corner of the subject parcel.
3. A document title Water Agreement has been provided addressing the existing water service to the property. This document does not appear to have been signed or recorded. If this document has been previously recorded, please provide a copy of the recorded document and reference the recordation information on the plan. If this document has yet to be recorded it will need to be recorded and referenced on the plan prior to final approval.
previous comment) Any utilities serving the subject parcel crossing the adjacent parcel to the west will be required to be covered by easements. These easements will need to be recorded prior to final plan approval.

4. Provide approval from Sussex County for the proposed construction within the easement. previous comment) The golf course construction is shown within the 20 ft. wide sanitary sewer easement.
Provide approval from Sussex County for the proposed construction within the easement.
5. The previous subdivision plan that created the parcel that is the subject of this application and reflects the 4,804 sq. ft. conservation area that was a condition of that subdivision approval, was recorded at the Sussex County Record of Deeds on July 11, 2008 at deed book 00121 page 00108. A copy of that plan is attached hereto for your use. Show the conservation area on the plan and ensure that the LOD remains outside of that area.
previous comment) Show the conservation area from the previous subdivision on the plan and ensure that the LOD remains outside of that area.

Stormwater Management

1. Addressed. The proposed paving associated with the parking lot encroaches into the stormwater management easement. Redesign the parking area to remove any disturbance from the stormwater management easement.
previous comment) The “ex. grass swale” shown on the plan is a stormwater management feature required in conjunction with previous development on the subject parcel and the adjacent parcel to the west. Revise the label for this feature to clearly delineate it as a “stormwater management area”.
2. No Further Comment Necessary
previous comment) Sediment and Stormwater approval for the project has been granted by the Sussex Conservation District.

Grading

1. A grading plan designed in accordance with requirements of the Town Code will be required to be reviewed and approved prior to final approval of the plan.
previous comment) Provide a grading plan in accordance with Section 140-100 of the Town Code.
2. Addressed.
previous comment) All of the grading proposed by the project needs to be designed and reflected on a plan signed and sealed by a certified Delaware professional engineer or land surveyor. The grading within the golf course area must be depicted on the plan and properly incorporated with the grading on-site outside of the golf course area.

Mr. Douglas Brown, of Rauch Inc., stated they have arranged a work session with Mr. Cimino and Mr. Lober for next week to review the many comments.

Mr. Schrader noted there were several pieces of correspondence included in file.

1. Meleck letter, 23 Ocean Mist Drive
2. Brandt letter, 1 Ocean Mist Drive

3. Johnson letter, 2 Ocean Mist Drive

Public Comments:

Tom Meleck, Ocean Mist Drive, stated he agreed with the plan for 28 parking spaces. He said the ice cream portion of the business is open and already busy. He showed pictures of six cars parked at the ice cream shop and said the ice cream shop would add to the parking problem. He said they will be pulling out all the asphalt means the rain will drain into the Assawoman canal. He feels the environmental folks should look at this. Mr. Meleck stated he is upset about losing an established vegetative buffer and the cutting down of mature trees. He said the trees produce needed oxygen.

Terri Meleck, Ocean Mist Drive, stated she agrees with her husband. She questioned whether employee parking was included in the 28 spaces. Parking is a big issue with her. She also questioned the hours of operation, clean-up and lighting.

Chuck Osher, Ocean Mist Drive, expressed concern for the commercial lighting. The height of the lights and the number of lights etc. He stated that light travels and can be disturbing to many.

Victoria Erickson, Central Avenue, stated she is very nervous about the traffic, and concerned about the mini golf being at the “front door” of Ocean View.

Brenda McIntyre, William Avenue, asked if there would be minutes from the working meeting. Ken Cimino explained the meeting process, and Mr. Schrader stated that they are not public meetings and no minutes are taken.

Marian Osher, Ocean Mist Drive, thanked the Commission for their concern for the traffic problems. She said that there is a need to interact with DelDOT, perhaps there needs to be a traffic light.

Mr. Cimino noted that a traffic study would need to be done before DelDOT would consider any crosswalks or signalization in that area. He noted, based on the data he has, that there have not been any crashes in that area in the last three years.

A motion was made by Mr. Liddle, seconded by Mr. Damiano, to table the application. The motion carried unanimously 5/0.

5. ADJOURNMENT

A motion was made by Mr. Damiano, seconded by Mr. Liddle, to adjourn the meeting at 7:30pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz, CMC