

New Castle City Planning Commission Meeting  
Minutes  
August 29, 2022-- 6:30 p.m.  
1 Municipal Boulevard, New Castle, DE

Members Present: Gail Seitz, Chair  
Brie Rivera, Vice Chair  
Matthew Lovlie  
Kristin Zumar  
Cynthia Batty  
Vera Worthy  
George Velitskakis  
Tamara Stoner  
Keaira Faña-Ruiz

Also Present: Chris Rogers, City Planner

Ms. Seitz called the meeting to order at 6:31 p.m. Roll call followed and a quorum to conduct business was declared.

### **Minutes**

**A Motion to approve the Minutes of the July 25, 2022, meeting as presented was made, seconded and unanimously carried.**

### **Public Comments**

Ms. Seitz announced that public comments will be limited to 3 minutes on Agenda Items only. Ms. Seitz stated the items on the Planning Commission Agenda and gave a brief explanation of what the Commissioners would discuss relative to Agenda Items. All public comments should be directed to the entire Commission and not to individual Commissioners.

#### Phil Gross – 1301 13<sup>th</sup> Street

Mr. Gross opined that by limiting the time for public comment the Commission is channeling what residents can discuss.

Mr. Gross referenced the 17<sup>th</sup> anniversary of Hurricane Ida in 2005 and flooding that occurred in Louisiana, noting they were not prepared for the devastation; and opining that the developments being proposed in the Gateway will add more people on an evacuation route that cannot handle the current population. He stated that the sooner you stop it [*development*] the sooner residents will be safer. Mr. Gross added that three Legislators found it ironic that the Planning Commission Agenda included development building and sea level rise issues on the same Agenda. Mr. Gross opined that the Planning Commission should request that City Council impose a one-year moratorium until a definitive plan on the environment and natural habitats has been developed.

Karen Igou – 621 Cherry Street

Ms. Igou stated her concern regarding the proposed development and submitted a written statement of her concerns to City Council. She stated that she would like the Sea Level Rise Task Force to submit a recommendation to the Planning Commission to not allow the proposed zoning change, noting that every square inch of unused, undeveloped land is necessary to take in the water. Ms. Igou noted that the water in Jackson, Mississippi, is 10' higher than what a normal flood would be considered. Ms. Igou stated that the situation is real and the last thing that should be done is to cover up more pristine land. She urged the Planning Commission to say “no” to the proposed development, opining that we do not need another multi-use housing development.

Bill Emory – Baldton

Mr. Emory stated there is a tremendous problem with flooding in New Castle, and noted that the City has done nothing but cover ground in the last 10-15 years. He stated that runoff has to be controlled and filtered to guarantee it is not polluting the river. He opined that WILMAPCO is not solving the problem and the people of New Castle are being fed information and led down a path that will not help them. Mr. Emory opined that the proposed plans are nothing but problems, noting that flooding and water control, as well as utility and public services will be impacted. He noted that the County demands infrastructure studies and opined they were not being done.

**The Flats at River Edge, 130 & 150 Lukens Drive**

Ms. Seitz stated that the Planning Commission has seen the Concept Plan and received PLUS comments. She noted that the change to the Comprehensive Plan needs to be addressed first, and the next step is to hold a public Workshop to address the merits of changing the Comprehensive Plan from Light Industrial Office Park to Mixed Use. AECOM will lead the Workshop. Ms. Seitz was informed that AECOM can be ready for the Workshop in a few weeks, and she will forward several proposed dates to the Commissioners for consideration. Mr. Lovlie asked if feedback from the public regarding the date of the Workshop could be obtained before scheduling. Mr. Rogers noted that by law the Workshop will be duly advertised, but suggested that additional time for advertising the Workshop could be provided when scheduling.

Shawn Tucker, Esquire, stated that the Applicant has focused on the Concept Plan over the past several months and they have not focused directly on the Comprehensive Plan (CP); noting that the Applicant would welcome the opportunity to participate in the Workshop and focus predominantly on CP changes and offer testimony as to the logic and benefit of proposed changes.

Ms. Batty questioned the process, noting that the project is very complex and asking if the Commission could see a plan for the Workshop, what data is being covered, and what information needs to be gathered. Ms. Batty noted that many topics have come up over the time the project has been considered, and asked that the Commission also receive information on the larger timing and plan for what the Planning Commission is supposed to do in order to make a recommendation. Mr. Rogers stated AECOM will be prepared with background data appropriate for the Commission’s consideration. He noted that the Workshop is designed to review the pros

and cons of this type of use in that location. He added that some of the information being requested is site-specific relative to a site plan and rezoning, and although AECOM can be prepared to have that data available, he recommended that the Planning Commission avoid recommending anything specific to the site plan. Mr. Rogers gave a number of examples of the type of information that will be provided. He opined that a Traffic Impact Study will not be available at the Workshop, but they will have an idea of the average daily traffic emanating from the site as well as some information on the ownership of Lukens Drive; and they will have answers to some of the Commissioners' questions. Mr. Rogers stated that this is a significant amendment to the CP, and there is no given process except that it has to be reviewed and approved and passed on to City Council.

Mr. Lovlie asked for background on how often and why CPs may be changed. Mr. Rogers explained that he was planning on having a "Comprehensive Plan Primer" that would explain, in part:

- What is a Comprehensive Plan;
- Where is it articulated in State Law;
- How is it implemented at the local level; and
- History of the New Castle current and previous Comprehensive Plans.

Ms. Batty asked if the Commission's role is to look solely at the CP, or does it also include looking at the project. Mr. Rogers explained that the Ordinance that was first read at City Council is a rezoning ordinance that ties the rezoning to a specific site plan; and if the rezoning is approved, then the CP is amended to make it consistent to the rezoning. AECOM disagreed with that and recommended that the Planning Commission consider the CP first, and that would guide the Planning Commission on the rezoning and site plan. Ms. Seitz noted that the City Zoning Code begins with "Any amendment to zoning shall be in accordance with the Comprehensive Plan", noting that the first PLUS comment was that the Comprehensive Plan be amended first. In response to a question from Ms. Batty, Mr. Rogers stated that the Planning Commission will either agree or disagree with the Comprehensive Plan change. Relative to the scope of the Planning Commission, Mr. Rogers explained the background of the project, noting that:

- The Applicant requested a zoning change from Light Industrial Office Park to R-3 and General Commercial, and it was tied to a specific concept plan.
- City Council must consider all requests for rezoning.
- Ordinances are always written in the affirmative, and the Ordinance states the zoning is, first, to be changed from X to Y in accordance with a site plan and, second, the Comprehensive Plan is being amended as necessary to make this possible.

Mr. Rogers reiterated that AECOM is recommending that the Planning Commission consider the Comprehensive Plan first and consider the rezoning second. AECOM will assist with that in a Workshop setting, with a high-level look at the pros and cons of this type of use in this location. State Law requires that all zoning be consistent with the Comprehensive Plan, and that is why applications for rezoning that are inconsistent with the CP also have to amend the CP. Mr. Rogers added that if the Planning Commission feels the CP amendment has merit, then the merits of the rezoning and site-specific issues will be considered. If the Planning Commission does not feel the CP change has merit, then those issues may become moot.

Ms. Batty asked that the Planning Commission receive an Agenda with detail for the Workshop prior to the scheduled date, as well as definitions and a workflow chart.

Ms. Seitz asked who owns and maintains the roadways. Mr. Mario Gangemi with Parkway Gravel explained the roadways that Parkway Gravel currently owns and noted that their ownership will revert to the City of New Castle once the surface course of asphalt has been added. Cherry Lane to the railroad is owned and maintained by DelDOT. Buttonwood Road is owned and maintained by the City.

Mr. Tucker noted that he plans to review the recordings of prior meetings and pull out comments and questions and will come to the Workshop prepared to answer those questions. Mr. Tucker asked that if anyone has other questions that they provide them to Mr. Rogers, who can then pass them on to him. Mr. Tucker also noted that the Applicant is prepared to do a Traffic Analysis; however that comes after the CP process. Mr. Tucker will endeavor to answer all questions at the Workshop, or explain why questions cannot be answered at this stage.

Regarding PLUS Comments, the updated version was received by the Applicant and the delay in responding relates to some sea level and height potential worst case scenarios comments that were made. They are looking at what land can be added to the property outside the flood plain that would help provide a buffer that exceeds Code. Also, some of the modeling used by DNREC should not be used for site specific analysis and they want to respond thoughtfully in order to be as accurate as possible. Mr. Tucker assured the Commission that responses to PLUS Comments will be available prior to the Workshop. Mr. Tucker also noted that he reached out to the Office of State Planning regarding a comment from DEMA that any land adjacent to the flood plain should not be developed. He explained that comment was removed because it would constitute a taking and would be a compensable occurrence. The Applicant also asked that the County standard for buffers be removed.

Ms. Batty volunteered to engage with AECOM to develop the Workshop.

Ms. Zumar asked when the Workshop Agenda would be available. Mr. Rogers stated he would work with the Chair and the Agenda should be available one week prior to the Workshop. Mr. Rogers also noted that Workshops of a Plan are very organic; and he will endeavor to gather the information being requested by the Commission and provide it prior to the Workshop.

Mr. Tucker responded to comments from the Public:

Comment to “stop it” – Mr. Tucker noted that the land is already zoned for development (IOP) and one of the logical uses is a warehouse facility, which could be built under Code subject to setbacks and height and other regulations. Mr. Tucker offered that stopping development of a mixed-use project will not stop development of the site. He added that the Applicant wishes to develop the site in a responsible and Code-compliant way.

Comment of “pushing the project” – Mr. Tucker noted that the Application is moving very slowly and they are still just getting started. He added that the City also wishes to take time to thoroughly and carefully examine the project, which makes sense for a project of this scale.

Comment that “Lukens Drive is a disaster” – Mr. Tucker stated that his client is not aware of any instances of flooding on Lukens Drive that has put any of the existing sites or parking lots under water, and there is no history of flooding on Lukens Drive. Mr. Tucker added that the Applicant is looking at DNREC’s comments very carefully and if the project goes forward they plan to build significantly above the current Code requirements. They are trying to be careful and responsible.

Concerns about Traffic – Mr. Tucker stated the Applicant has hired a Traffic Engineer and the results of her study should be available shortly and they will have as much information as possible available at the Workshop. Mr. Tucker added that although DelDOT does not have jurisdiction over the site, the Applicant will model a DelDOT Traffic Study and make necessary improvements.

Concern about water quality – Mr. Tucker noted that DNREC regulates water management and all City and DNREC regulations will be compiled with.

Mr. Tucker reiterated that the project is at the start of the process and only if the CP changes are approved by City Council would the project move to the second step of rezoning and site plan and there is no rush to move the project forward.

Mr. Tucker also noted that at the previous meeting an allegation was made that Parkway Gravel has previously illegally filled wetlands at River Bend. Mr. Tucker stated emphatically that is not true and that Parkway has never been found to have illegally filled wetlands and has never been charged with illegally filling wetlands. He added that someone was charged and found guilty of illegally filling wetlands; however, that was not Parkway Gravel.

#### **427 W. 7<sup>th</sup> Street – Review of Concept Plan for Recommendation to Board of Adjustment for Special Exception**

Ms. Seitz stated the project is mixed use and zoned as Downtown Gateway; however, the Code specifies that multi-family and/or mixed use developments are permitted by Special Exception. The Planning Commission can recommend that matter to the Board of Adjustment.

Mr. Robert Snowberger, Principal of 9<sup>th</sup> St Development Co. (9DSC) and Mr. William F. Wendling of MidAtlantic Engineering Partners made a presentation of the proposed project. Mr. Snowberger provided a brief summary of his experience and background, and Mr. Wendling described the project.

- The site is approximately 2.6 acres currently developed with a macadam parking lot and a liquor store.
- The intent is to raise the site to be out of the flood plain, and to construct a structural wall along the perimeter on both sides and a natural barrier along the rear.
- The Fire Chief has approved the emergency access design.

- The project will consist of 152 rental units in two buildings with parking and one commercial space on the “first floor”.
- 228 parking spaces are planned, including full and compact spaces.
- Water runoff will be treated and directed toward the river.

In response to a question from Ms. Seitz, Mr. Wendling explained that The Garrison is contiguous to the site.

In response to a question from Ms. Rivera, it was explained that some additional land will be paved.

Mr. Rogers addressed procedural/administrative from his letter of August 24, 2022:

- Per Ordinance 507, multi-family and/or mixed use developments are permitted in the DG zone by special exception following a review and recommendation by the Planning Commission. The Planning Commission will review the Plan and make a recommendation to the Board of Adjustment, who has the final say on special exceptions. If the special exception is approved, the Planning Commission will review the site plan.
- Ordinance 534 establishes criteria for all special exceptions. The Planning Commission can recommend additional conditions, considerations, studies, etc., in furtherance of establishing the application’s consistency with the criteria of all special exceptions.
- AECOM recommends that after review and prior to review by the Board of Adjustment that the plan be submitted to PLUS, and that the Applicant not proceed to the Board of Adjustment until PLUS Comments are received in writing and responses are provided by the Applicant.
- If the special exception is approved AECOM recommends that a full site plan be resubmitted to the Planning Commission for review and approval in accordance with Ordinance 535.
- The Plan notes the need for four zoning variances, and while this does not require a recommendation from the Planning Commission to the Board of Adjustment, the Planning Commission may discuss those variances as part of its normal review. The zoning variances are:
  - In the DG Zone the building footprint shall not exceed 40,000 square feet. The proposed footprint exceeds that limitation by 12,057 square feet.
  - The minimum area for a proposed parking space is 9’x18’, and the Applicant is requesting 35 compact spaces that are less than the minimum.
  - The Applicant is requesting a reduction in the number of required parking spaces.
  - The Applicant is requesting a reduction in the number of required loading spaces.
  - There also appears to be a need for an area variance pursuant to §230-57.C of the Zoning Ordinance.

Mr. Rogers reiterated that the role of the Planning Commission is to make a recommendation to the Board of Adjustment.

Mr. Wendling responded to technical comments from Mr. Rogers letter of August 24, 2022:

Comments 1 and 2:

*§230-21.1.C(1)(a) / §230-57.C – The development is being proposed as mixed use and the density equates to approximately 36 units/acre.*

*§230-21.1.C(1)(a) – The building footprint shall not exceed 40,000 square feet.*

Originally the first floor was going to be considered an “amenity area” which is not included in the maximum density equation. Three of the four variances are directly tied to the fact that there is 3,000 square feet of commercial space in the plan. Adding the commercial space was based on the fact that The Garrison was asked to have commercial space; and the Applicant felt having commercial space was in keeping with, and the intent of, the Downtown Gateway. If the proposed project were purely residential it would comply with the Code. Without the commercial space the project would not be required to have (*1<sup>st</sup> Variance*) a building dock, (*2<sup>nd</sup> Variance*) a loading dock, or (*3<sup>rd</sup> Variance*) a reduction in the number or size of parking spaces. If the Board of Adjustment does not approve those variances, the commercial space can be eliminated from the plan.

Mr. Snowberger explained that they hoped to retain the liquor store in the planned commercial space; however, that is dependent on whether the tenant can retain its liquor license for that location.

Mr. Rogers added that the DG Zone stems from the 2009 Comprehensive Plan that calls for a multi-family and mixed use land use district on the northern and southern Gateways and that was carried forward in the 2019 Comprehensive Plan. While there is a density cap for true mixed use, there is no density cap for pure multi-family use; and the fact that there is retail use on the first floor is consistent with the Comprehensive Plan. The Board of Adjustment will determine whether or not that rises to the level of granting a variance. Mr. Rogers urged the Planning Commission to continue to ask for the density variance.

Mr. Snowberger added that the main variance is for the building footprint which is 40,000 square feet, and the proposed plan is for 52,057 square feet. Mr. Snowberger explained the reason for that is the earthwork that needs to be done to raise the site.

In response to a question from Ms. Seitz, Mr. Wendling explained that under the Clean Water Act §404 wetland delineation is regulated by the Corps of Engineers and it will not be disturbed.

Mr. Lovlie asked if The Garrison had similar variances and went through the same process. Mr. Rogers noted that the variances are a true Board of Adjustment issue. He explained that when The Garrison was built multi-family mixed use was permitted by right and they were approved solely by the Planning Commission. The Zoning Ordinance has since been amended to only allow multi-family mixed use in the DG Zone by special exception approved by the Board of Adjustment.

Mr. Robert Herrera, Principal of 9DSC, commented that their understanding is that The Garrison (*first floor*) was built as an amenity space and that it was changed to retail during the process. Mr. Rogers noted his understanding that during the planning review process The Garrison indicated the first floor space would be amenity space and he could not speak to what that space is today; and that is why he recommends the Planning Commission continues to ask for a density variance.

Mr. Rogers noted the Planning Commission does not have a role in variances; however, if the Planning Commission feels there are too many units for the site, they can make that part of its recommendation to the Board of Adjustment.

Comment #3:

*§230-21.1.F(7) – The maximum building height in the DG zone is 45 feet.*

In response to a question from Ms. Zumar, Mr. Wendling stated the proposed building is within the 45' height requirement

In response to a question from Ms. Rivera it was noted that the parking area would be raised above the flood plain. Relative to water runoff to adjacent properties the design will channel water runoff to a controlled system to the back of the property and the river.

Ms. Batty noted that raising communities to bring them out of the flood plain has been done for a long time.

Comment #4:

*§230-21.1.G – Architectural and Design Standards in the DG Zone.*

Architectural renderings have been submitted. Mr. Rogers added that one of the unique features of the DG Zone is that it goes beyond the typical requirements, i.e., one design standard is that “All primary entrances shall be accentuated. Entrance accentuations may include recess or protruding entrances and/or the use of canopies, porticoes or overhangs.” Mr. Rogers noted the comment asks that the Applicant provides sufficient information to the Board of Adjustment to show they are adhering to the DG Zone requirements.

Comment #5:

*AECOM recommends that a Traffic Impact Study be prepared and reviewed by DelDOT and the City prior to the Board of Adjustment's consideration.*

A Traffic Engineer has been contracted by the Applicant to conduct a Traffic Study.

Comment #6:

*Discuss the one story metal and masonry offices and garages building adjacent to Parcel 2A-2.*

The Applicant understands this is the original building. There is a party wall along one side.



Comment #7:

*Vulnerability Assessment and Adaptation Plan / Sea Level Rise Task Force*

7<sup>th</sup> Street is currently below the flood plain. The Applicant proposes raising the site out of the flood plain. The tops of the side walls will be above the flood plain by approximately 1.5'-2'. The back wall will be a more natural structure. The Pump House will not be touched. There is a relatively steep driveway to access the parking spaces. It is expected that the property will be at the projected 2050 flood plain. Mechanical for the commercial site can be raised. It was noted that the Applicant would not have been granted bank funding without meeting the stringent Federal standards. Ms. Zumar noted that the "first floor" could be in the flood plain prior to 2100.

Mr. Rogers stated that the Planning Commission can suggest that the Board of Adjustment consider elevations above today's flood plain elevation. Mr. Wendling noted that emergency access has been approved and raising the building higher may impede that access. Mr. Rogers noted that non-residential in the flood plain can be flood proofed and does not need to be elevated to the height of the first residential floor.

Comment #8:

*The proposed building is located in close proximity from a sewage pump station and the Application should contact the County regarding measures to mitigate potential odors from the pump station.*

The Applicant will meet with New Castle County Special Services to review the proposed plans.

Comment #9:

*Intent of the proposed subdivision to create lots A and B.*

Lot A is a non-touched wetlands area.

In response to a question from Mr. Rogers it was opined that a conservation easement was not placed on the leftover land of The Garrison.

Comment #10:

*An easement exists across the subject parcel "for ingress egress and regress and for the purpose of preserving, installing, maintaining and replacing utilities and related appurtenances." This should be discussed with the City Attorney, and it would be advisable to obtain feedback from the City Council as to potential extinguishment of said easement prior to consideration by the Board of Adjustment.*

The Applicant has reached out to the City Solicitor, who will discuss this with the City Engineer.

Comment #11:

*Non-Structural Retaining Wall surrounding the proposed development*

The non-structural retaining wall in the back will not be a concrete wall, but will be more natural. The actual construct of the wall has not yet been determined. In response to a question from Mr. Rogers, it was noted that high tide is well below the height of the retaining wall.

Comment #12:

*Comment from emergency service providers should be sought prior to consideration by the Board of Adjustment.*

The Applicant submitted the plan relative to emergency service and it was approved by the Fire Chief.

**Discussion:**

Ms. Seitz explained the role of the Planning Commission and stated that the Commission could make a recommendation to the Board of Adjustment with these considerations, including submitting plans to PLUS and receiving PLUS comments.

Mr. Rogers explained that the role of the Planning Commission is to make a recommendation to the Board of Adjustment, noting the Commission could:

1. Recommend disapproval to the Board of Adjustment for the following reasons;
2. Recommend approval to the Board of Adjustment for the following reasons and maybe with the following conditions;
3. Find this consistent with the Comprehensive Plan and here are the things that we think need to be addressed prior to going to the Board of Adjustment

Mr. Rogers recommended that the Planning Commission move forward with #3.

A Motion was made to find the proposed development consistent with the Comprehensive Plan. In addition, the Planning Commission recommends that the Applicant provide the following prior to proceeding to the Board of Adjustment:

1. Submit plans to PLUS and address PLUS comments.
2. Provide elevation and floodplain data specific to the proposed development for end-of-century sea level rise projections as established in the 2018 Vulnerability Assessment.
3. Provide architectural plans demonstrating compliance and commitment to the Downtown Gateway design standards contained in §230-21.1.G of the Zoning Ordinance.
4. Prepare a Traffic Impact Study for review by DelDOT and the City Engineer.
5. Obtain comments from New Castle County regarding the proximity to the existing sewage pump station.
6. Obtain feedback from the City Attorney and/or City Council regarding the extinguishment of the easement on the property.
7. Obtain comments from the City Fire Marshal.
8. Provide additional information regarding the nature and purpose of the Non-Structural Retaining Wall.

9. Confirmation on the methodology used to measure Building Height.
10. Obtain feedback from the City and/or City Council regarding proposed Lots A and B.
11. Provide information regarding the nature of filling and wetlands impact.

The Motion was seconded and unanimously carried.

### **Special Projects**

WILMAPCO Transportation Plan – Ms. Seitz noted that the Management Team, including DelDOT, made comments and edits to the Plan. The WILMAPCO Public Advisory and Technical Advisory Committees have reviewed the Plan and it will be reviewed by the WILMAPCO Council on September 8, 2022. Thereafter it will be reviewed by City Council and the Public.

Sea Level Rise Task Force – Ms. Seitz stated that the Task Force has been researching funding sources. Funding that would cover 100% of the project costs is being pursued through the Natural Resource Conservation Service in the Department of Agriculture. City Council voted to request that the agency do a feasibility study to see if the City qualifies.

The Task Force is also working with Kevin Donnelly from the New Castle Conservation District.

### **Comments From Commission Members**

Ms. Seitz asked if the Historic Area Commission is addressing EV Charging Stations in the Historic District. Mr. Lovlie stated he would ask about EV charging options in front of homes in the Historic District at the next HAC meeting.

Ms. Zumar noted that Good Will Fire Company does not service all areas of the City, and that Holloway Terrace services Lukens Drive.

Mr. Lovlie thanked residents who attended and made comments. He also thanked Mr. Rogers for his input and advice.

Ms. Batty asked if there could be a projection on how long the meetings will take. Mr. Rogers stated that when there are applications you cannot predict the length of a meeting.

### **Public Comment**

#### Dorsey Fiske

Ms. Seitz read a statement from Ms. Fiske urging the Planning Commission to consider the impact of new developments on flooding to protect the citizens of New Castle.

**A Motion to adjourn was made and seconded. The Motion was unanimously carried and the meeting adjourned at 8:40 pm.**

Respectfully submitted,

Kathleen R. Weirich  
City Stenographer