

New Castle City Planning Commission Meeting  
Minutes  
December 19, 2022—7:00 p.m.  
New Castle Senior Center, New Castle, DE

Members Present: Matthew Lovlie, Chair  
Brie Rivera, Vice Chair  
Cynthia Batty  
Margo Reign  
Timothy Gibbs

Absent: Vera Worthy  
Keaira Faña-Ruiz  
Tamara Stoner  
Kristin Zumar

Also Present: Chris Rogers, City Planner  
Jeff Bergstrom, City Building Officer

Mr. Lovlie called the meeting to order at 7:00 p.m. The assembly rose for the Pledge of Allegiance. Roll call followed and a quorum to conduct business was declared.

Mr. Lovlie reported a change in the order of the Agenda.

### **Minutes**

A Motion to approve the Minutes of the November 28, 2022, Planning Commission Public Hearing and the November 28, 2022, Planning Commission Regular Meeting as presented was made by Ms. Batty, seconded by Ms. Rivera and unanimously carried. Ms. Reign and Mr. Gibbs abstained from voting.

### **Public Comments**

Mr. Lovlie stated that Public Comment will be limited to three minutes and should be directed to the Commission as a whole, not at or to any specific Commissioner.

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

Mr. Gross stated his support for Item 6 on the Agenda (*the proposed re-subdivision of 37 and 39 West 3<sup>rd</sup> Street*).

Mr. Gross expressed his understanding that the City and the Developer have agreed in principal to accept more public input on Ordinance 536, adding that some project of some scope should be approved.

#### Bob Novack – 7 Arbutus Avenue

Mr. Novack expressed his concern that he will be unable to conduct an existing small business from his property located at 7 Arbutus Avenue under Ordinance 537. Mr. Rogers stated he would address Mr. Novack's concerns later in the meeting.

Sam Latham – Bear, DE

Mr. Latham rebutted criticism that has been directed against Croda Atlas Point, stating that Croda is a great company and a good neighbor.

Written Comments Submitted

Ms. Batty recommended that the Commission consider instituting a Policy that written comments should not name or attempt to intimidate individual Commissioners. She stated her preference is that if written comment names or attempts to intimidate Commissioners the comment be returned to the sender to be rewritten and resubmitted to be read at the next Planning Commission meeting. Mr. Lovlie stated that comments are always welcome; however, attacks will not be accepted. He added that the City Solicitor will be consulted on how best to address unacceptable comments.

**Possible Motion, Discussion and Vote on the Planning Commission's Recommendation on Ordinance 537**

Mr. Rogers addressed Mr. Novack's concerns, stating that the property is proposed to be rezoned from Retail Commercial to Residential and any lawfully existing business can continue to operate as a non-conforming use under the rezoning Regulations. If the rezoning is approved by City Council, the business would become a legally existing non-conforming use, and non-conforming uses can continue in perpetuity. He further explained that the non-conformity runs with the land as long as there is no interruption of business.

Mr. Rogers stated that the role of the Planning Commission is to make a recommendation to City Council.

A Motion to make a favorable recommendation of Ordinance 537 to City Council was made by Ms. Rivera, seconded by Mr. Gibbs, and unanimously carried.

**Re-subdivision - 37 West 3rd Street and 39 West 3rd Street: Parcel21-015.30- 195 (37 West 3rd Street) and Parcel21-015.30-196 (39 West 3rd Street) DeAscanis Homes, Inc. (No action needed)**

Mr. Lovlie asked Mr. Rogers to comment. Mr. Rogers explained that the minor re-subdivision is to adjust the lot lines. There is no new development potential created as the result of the re-subdivision. Mr. Rogers explained that revisions were made to the subdivision regulations to create a re-subdivision, and the Code provides a process where these types of subdivisions can be approved administratively by the Building Official. As this was the first re-subdivision of its kind under the new regulations, Staff felt it would be beneficial to bring it to the Planning Commission. No action is necessary by the Planning Commission. Mr. Rogers explained the subdivision.

Ms. Batty opined that there appears to be confusion around jurisdiction that should be clarified city-wide.

### **Discussion of Additional Studies in Regard to Ordinance 536**

Mr. Lovlie read a written comment from Dorsey Fiske in opposition to Ordinance 536 into the Record.

Mr. Lovlie stated that AECOM's opinion was presented at the November meeting and Mr. Rogers made a recommendation of additional studies that the Commission might wish to request. A letter was also received from Mr. Tucker, representative for the Applicant. All Commissioners received and had an opportunity to review the information provided to them.

Mr. Rogers stated that the role of the Planning Commission is to make a recommendation to City Council, noting that according to the Zoning Ordinance, when the Commission considers making the recommendation on amending the Zoning Map that "such decisions be accompanied by such maps, charts, sketches, rationale, and other information as the Planning Commission reasonably deems necessary for the proper and effective consideration of such proposal."

Mr. Rogers restated that the Planning Commission is allowed to request such information from the Applicant, and noted that the Applicant has waived any time limitation on the consideration of this additional information.

In response to a question from Ms. Rivera, Mr. Rogers stated that the Applicant was copied on his letter, adding that the Planning Commission should identify which additional information and/or studies it wishes to receive from the Applicant.

Mr. Lovlie invited Mr. Tucker, representative for the Applicant, to address the Commission. Mr. Tucker stated that the Applicant is committed to working with the City on the project and any reasonable studies that may be requested. He added that the Applicant waived the 90-day Rule contained in the Code to report back to City Council; however the Applicant did not agree to what Mr. Rogers indicated in the Record, which is the time to request studies. He stated that the Code is clear that studies should have been requested prior to the Public Hearing held in November. Mr. Tucker added the May 19<sup>th</sup> letter from AECOM to Mr. Barthel states "... the applicant has acknowledged the city's need to review the Comprehensive Plan for potential revisions to accommodate the proposed rezoning and ultimate development of the subject properties. In recognition of this, the applicant has waived the time limitations within which the Planning Commission must make a recommendation to City Council on rezonings." Mr. Tucker reiterated that the Applicant did not waive the requirement of when the report must be presented, which should have been last month.

### Discussion

Mr. Lovlie and Ms. Rivera identified the reports they are interested in reviewing to be:

- Fiscal Impact Analysis
- Provision of the Emergency Services
- Traffic Analysis

Mr. Lovlie stated he would also like clarity on Lukens Drive.

Ms. Batty stated she is interested in:

- Provision of the Emergency Services

Ms. Batty opined that it behooves the Planning Commission to understand what is happening to the space and suggested that the City provide data on:

- All businesses in the Industrial Park and their nature. Ms. Batty noted that the Industrial Park is evolving and trending toward mixed use and many of the businesses are not Light Industrial (i.e., LabCorp and the Charter School); adding there are others that one might see in an office park vs in an industrial park.
- The number of houses in neighboring developments (Buttonwood and Collins Park). Ms. Rivera noted that Collins Park and some of the business are not part of the City and the City might not maintain information on those areas. Mr. Rogers added that the area from Cherry Lane to the Railroad Tracks is outside the City Limits. During discussion it was noted that a list of Business Licenses could be obtained; however, not all that information is readily available to the City.

Relative to a question from Ms. Reign regarding the Fiscal Impact Analysis, Mr. Rogers explained that the Applicant would hire a qualified financial expert to do the Fiscal Impact Analysis. He added that getting that information prior to the January meeting would depend on the Applicant's and the City's ability to accommodate a scoping meeting and review the information.

Relative to a Traffic Analysis, Mr. Tucker estimated that it would take at least 60 days for a full analysis, and opined that the Commission could receive a midway update on findings in 30 days. Mr. Tucker reiterated that DelDOT standards will be followed, and although DelDOT will not review a study that is outside their jurisdiction, there are outside firms approved by DelDOT that can do a review. Mr. Tucker will confirm if a full report can be completed in 60 days.

Relative to a Fiscal Impact Analysis, Mr. Tucker stated that based on previous data accumulation and review, he was able to provide estimated annual tax revenues on 451 units:

City of New Castle - \$270,000  
New Castle County - \$67,000  
NCC Vocational - \$500,000  
Colonial School District - \$893,000  
Impact Fees - \$2.7M (assuming \$6,000 per unit)  
Total Estimated Tax Revenue: \$4M

Mr. Tucker added that the Applicant has also agreed to provide private trash pick-up in perpetuity embedded in title; and is prepared to discuss the impact on the Police Department with the Chief of Police. The Applicant is also prepared to share the financial analysis with the City.

The Applicant feels the majority of the development would be rental. In response to a question from Ms. Reign, Mr. Tucker explained the breakdown of the various types of units.

In response to a question from Mr. Gibbs, Mr. Tucker stated they did not do an analysis of potential revenue to MSC. Mr. Gibbs stated that he is interested in reviewing Emergency Services and Traffic.

Mr. Tucker stated that the Applicant would meet with Mr. Bergstrom in his capacity as City Fire Marshall regarding safety issues. Mr. Bergstrom noted that sprinklers were required in the River Bend development, which lessened the pressure on the Fire Department. Ms. Rivera stated that response time and the ability of people to exit the area in the event of an emergency is a concern as well. Mr. Bergstrom explained that emergency services have access to the area via Buttonwood Avenue. Mr. Tucker stated that the Applicant has voluntarily agreed to install an electronic system that would allow emergency access. After installation the system would be turned over to the City for maintenance.

Ms. Batty asked about next steps after the requested reports are provided to the Commission. Mr. Lovlie stated the Commission would move forward to a vote on a recommendation to City Council. In response to Ms. Batty's concern that the Commissioners may need assistance reviewing the requested reports Mr. Rogers noted that the City would provide input on the reports. He added that City Council is responsible for ensuring the project is fiscally sound and having the Fiscal Impact Analysis in the packet the Planning Commission presents to them will facilitate the process. Mr. Rogers opined that it would not be necessary for representatives of the City to testify on the reports to the Planning Commission. Relative to the Fiscal Impact Analysis Mr. Rogers explained that the City Administrator will meet with the Applicant to determine the parameters of a Fiscal Impact Analysis and whether the information available at that time is sufficient or if more expert opinion is needed on providing the taxable income that would be generated by the project. Mr. Rogers opined that the most important thing would be to have a discussion with the Police Chief regarding any additional police needs as a result of the project, and that information would be provided to City Council as well. City Council will review the information provided to them, determine if it is valid, and report back to the Planning Commission.

Mr. Lovlie opined that the Commissioners would be able to understand the reports sufficiently to make a recommendation to City Council. Ms. Rivera added that they should be able to determine what kind of stresses will be put on City resources and how that is offset by tax revenues.

Mr. Lovlie stated that the Commission has identified the reports to be provided by the Applicant and the Commission would like to review the reports at the January meeting.

Mr. Tucker stated that the Traffic Analysis will probably take 60 days to complete. He also explained what the Traffic Engineer reviewed in preparing the basic data previously presented to the Commission and explained what additional data the Traffic Analysis will contain.

A Motion was made by Mr. Gibbs to request that the Applicant provide a Fiscal Impact Analysis, Provision of Emergency Services Report, and a Traffic Analysis.

Ms. Batty stated that the Motion should also include the request for the City of New Castle to put together a report of all businesses in the Industrial Park, the number of houses in Buttonwood including rentals, and whatever closest neighborhoods that may be impacted by the project. Mr. Lovlie recommended that the request to the City be a separate Motion.

The Motion on the floor was seconded by Ms. Rivera and was unanimously carried.

Mr. Rogers noted as a point of order that discussion of a Motion is typically conducted after the Motion has been seconded.

A Motion was made by Ms. Batty that the City of New Castle put together (1) a report that identifies all businesses in the Industrial Park and the lead-in to the Industrial Park that includes the name and nature of the business, and (2) a report on the number of houses in Buttonwood and the closest neighborhoods to the proposed project, and the ratio of rentals vs ownership.

Ms. Rivera noted that the Commission can make a decision even if the City cannot provide the requested reports in a timely manner. Ms. Batty concurred, and suggested that the Planning Commission move the January meeting out one week.

Ms. Reign seconded the Motion.

Mr. Lovlie asked Ms. Batty if she wanted to add business licenses to the Motion. Ms. Batty amended the Motion to read:

A Motion was made by Ms. Batty that the City of New Castle put together (1) a report that identifies all businesses in the Industrial Park and the lead-in to the Industrial Park that includes the name and nature of the business, (2) a report of Business Licenses for companies in the Industrial Park, and (3) a report on the number of houses in Buttonwood and the closest neighborhoods to the proposed project that includes the ratio of rentals vs ownership. The Motion was seconded by Ms. Reign and unanimously carried.

### **702 & 706 Delaware Street - Review of Concept Plan for Recommendation to Board of Adjustment for Special Exception**

Mr. Rogers stated that the Concept Plan is for a multi-family development in the Downtown Gateway Zone (DG). The role of the Planning Commission is to make a recommendation to the Board of Adjustment on the merits of a Special Exception. If the Special Exception is approved by the Board of Adjustment AECOM would recommend that the matter be returned to the Planning Commission for review of the site plan.

Mr. Tucker, representing the Applicant, stated that the Concept Plan will be presented to PLUS on Wednesday, December 21<sup>st</sup>. Mr. Tucker introduced Mr. Mark Ziegler from McBride & Ziegler, Inc., to explain the project.

Mr. Ziegler explained the location of the proposed project, noting that there are two existing dwellings on the property. The Applicant is proposing a three-story apartment building with 32

apartments comprised of 2- and 3-bedroom units. Forty-eight parking spaces are planned to the rear of the building (1.5 spaces per unit). The rendering shows a DelDOT right-of-way taking. The project will eliminate the curb-cuts off Delaware Street and includes an underground stormwater system. The impervious space will be reduced to 73%. In addition, the site is in close proximity to bus stops. A full landscape plan will be prepared by Burcham & Associates. Mr. Ziegler explained the multi-use path. Ms. Rivera opined that what the Applicant is planning for the area is in line with WILMAPCO recommendations and asked if they will be assisting the Applicant. Mr. Ziegler note that the Applicant has not reached out to WILMAPCO yet. Mr. Rogers explained that WILMAPCO is a planning agency and the City will ensure that the proposed project is in line with WILMAPCO's recommendations.

Ms. Batty said that because the proposed project is in the DG Zone she had hoped that more homage would have been paid to the Historic District.

Mr. Ziegler noted that the project will be elevated out of the floodplain. Mr. Tucker stated that the Plan is consistent with the DG Zone. Mr. Rogers gave the Commissioners background on the DG Zone, and noted that it has the most prescriptive architectural requirements for development. Mr. Rogers recommended that the Applicant submit enough information so that the BOA can determine the Concept Plan is consistent with the DG Zone and that the Applicant commits to the requirements of the DG Zone.

Ms. Batty reiterated her hope that the Applicant will consider adding more visual integration with the Historic District to the Plan than what was presented.

A Motion was made by Mr. Lovlie that the Planning Commission finds that the proposed development is consistent with the Comprehensive Plan and recommends that the Applicant provide the following prior to proceeding to the Board of Adjustment:

- Preliminary architectural plans and preliminary site plans demonstrating compliance and commitment to the design standards contained in §230-21.1G of the Zoning Ordinance
- Written responses to PLUS comments.

The Motion was seconded by Ms. Reign and unanimously carried.

### **Comments from Commission Members**

Mr. Lovlie welcomed Commissioners Reign and Gibbs to the Planning Commission.

### **Miscellaneous**

Mr. Rogers noted that the University of Delaware offers courses that the newer Commissioners may wish to consider taking.

Ms. Batty opined that the Commission needs instruction relative to communicating among themselves as soon as possible. Mr. Lovlie stated that he had a discussion with the City Administrator on this matter and Mr. Barthel will reach out to the City Solicitor to review this with the Commissioners.

There being no further business to discuss Mr. Lovlie called for a Motion to adjourn.

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A Motion to adjourn was made, seconded and unanimously carried and the meeting adjourned at 8:45 p.m.

Respectfully submitted,

Kathleen R. Weirich  
City Stenographer