

New Castle City Planning Commission Meeting
Minutes
1 Municipal Boulevard, New Castle, DE
December 18, 2023 – 7:00 p.m.

Members Present: Margo Reign, Chair
Tamara Stoner
Timothy Gibbs
Brie Rivera
David Majewski
Very Worthy

Absent: Keaira Faña-Ruiz
Cynthia Batty
Kristin Zumar

Also Present: Christopher Rogers, City Planner

Ms. Reign called the Planning Commission meeting to order at 7:11 p.m. The assembly stood for the Pledge of Allegiance. Roll call followed and a quorum to conduct business was declared.

Minutes

A motion to approve the November 27, 2023 minutes as presented was made by Mr. Gibbs, seconded by Ms. Rivera, and unanimously carried.

Public Comments on Agenda Items

Phil Gross – 1301 13th Street

Mr. Gross asked if there is any consideration to any changes that would allow for a change in loading and unloading. Mr. Rogers stated “No.”

Review, Discussion and Recommendation to City Council regarding Ordinance 543 - An Ordinance to Amend Chapter 230, Zoning, as it pertains to marijuana related businesses.

Chief Majewski asked for confirmation of his understanding that the sale of marijuana is prohibited throughout all zoning districts, including any product or by-product of marijuana, CBD, hemp, etc. Mr. Rogers noted that if the Commission approves the recommended language that “marijuana cultivating facilities and retail marijuana stores are prohibited” it is clear that is prohibited in all zoning districts. Chief Majewski asked if that applies only to stores selling a marijuana by-product or also to general retail stores that are selling a marijuana by-product. Mr. Rogers stated that definition of marijuana was added by referring to the State Code, and the State Code defines marijuana in Title 16, §4701(28) as:

- a. “Marijuana” means all parts of the plant, Cannabis, sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

- b. “Marijuana” does not include any of the following:
1. The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.
 2. Products approved by the US Food and Drug Administration.
 3. Industrial hemp as defined in §2801 of Title 3.

Mr. Rogers stated that he does not know where CBD falls into that definition. Chief Majewski stated that he knows of two businesses that this affects; one a sales facility and one a manufacturing facility. He asked if Council provided any notes as to their intention regarding by-products of marijuana. Mr. Rogers stated that he was unaware of Council’s intent regarding grandfathering an existing business vs a new business; noting that the standing Code states that if it is currently conforming and is made non-conforming as the result of an amendment, it retains its conforming status.

In response to a question from Ms. Rivera Mr. Rogers confirmed her understanding that the Ordinance applies only to three industrial zones as noted, and that manufacturing and testing facilities are allowed, but not sales or cultivation is not.

Ms. Reign suggested that the Commission send Ordinance 544 back to City Council for further clarification on a number of matters. Mr. Rogers noted that the Commission is here to make a recommendation, and that Council is specifically permitting two uses by right, and there are definitions for those two uses. Ms. Reign reiterated that she is unsure of what the goal is and that she wants clarification of whether the intent is that marijuana-related products can only be sold in a store that is only selling marijuana-related products, or if it can be sold in any retail store. She noted her understanding that as the Ordinance reads, it is only applicable if you are only selling marijuana-related products; and it does not say “a retail store may not sell any kind of marijuana-related products.” Ms. Stoner noted her understanding that the Ordinance says a retail establishment that sells marijuana-related products is prohibited, and if it is a manufacturing facility in an industrial area it is permissible only if the manufacturing facility is selling to a retail store; and Mr. Rogers stated that her understanding was correct. Mr. Rogers reiterated that he does not know how CBD relates to marijuana and the Ordinance.

Mr. Rogers restated that the question is whether Council intended to prohibit the sale of other by-products of marijuana, i.e., CBD. Mr. Gibbs noted that Walgreens does sell CBD products in Delaware. Mr. Rogers noted that if the Ordinance is passed as presented, Walgreens will be unable to sell CBD in the City of New Castle.

Mr. Rogers stated that he will make a recommendation to Council to accept the Ordinance as amended. He added that he would defer to the Planning Commission relative to the sale of CBD

Ms. Reign reiterated her interpretation that there is a difference between a “marijuana retail store” and a “retail store that also sells marijuana products”, stating that needs to be clarified.

Ms. Stoner stated her understanding differs from Ms. Reign's. Ms. Rivera suggested that instead of stating "a retail establishment" it should state "any retail establishment". Mr. Rogers opined that the intent of City Council was to restrict the sale of marijuana-related products.

A motion was made by Ms. Rivera to recommend Ordinance 544 by putting in language to restrict the retail portion and everything else is restricted to Light Industrial, including the definitions presented by Mr. Rogers, and changing "a retail establishment" to "any retail establishment". Chief Majewski seconded the motion.

Ms. Reign stated the Commission needs to be clear and restated her understanding that the motion is to recommend Ordinance 544 with the inclusions of additional definitions as presented by Mr. Rogers, related changes to the other sections, and changing "a retail establishment" to "any retail establishment"

Ms. Rivera stated that was her motion.

The motion passed unanimously.

Review, Discussion and Recommendation to City Council regarding Ordinance 544 - An Ordinance to Amend Article V Supplementary District Regulations 230- 28 Off-Street Parking and Loading Requirements Section (A)(15) in a Downtown Gateway District; Subsection (a) Parking Requirements for specific uses are as follows – [5] Apartments

A motion was made by Ms. Reign to recommend Ordinance 544 with the inclusion of the amended language submitted by Mr. Rogers. The motion was seconded by Mr. Gibbs and passed unanimously.

Subdivision Plan – Lots 152 and 153 – The Buttonwoods

Merestone Consultants, Inc. submitted a subdivision plan to subdivide existing parcel by recreating the original lot line that was extinguished by deed, thereby re-establishing Lot Nos. 152 and 153 (#3 and #5 Buttonwood Avenue).

Mr. Francis DeAscanis explained the intent to subdivide a large lot into two separate lots. A single-family house is proposed to be built on each of the new lots.

Ms. Rivera referenced Mr. Roger's letter of November 22, 2023, item #7, and asked if that would change the size of anything. Mr. Rogers noted that the buildability of the lots will not be changed and read the definition of "maximum building bulk percentage".

In response to a question from Ms. Reign, Mr. DeAscanis stated that the existing garage will remain.

Mr. Rogers noted that the surveyor submitted a revised Plan. Mr. Rogers recommended that the Planning Commission approve the Plan and that the outstanding items in his letter of November 22, 2023, except #6, be addressed prior to the Planning Commission Chair signing the final Plat

and forward it to City Council for ad ministerial approval. Mr. Rogers explained the process that would be followed.

A motion was made by Ms. Rivera to approve the subdivision plan with the completion of items in AECOM's letter dated November 22, 2023, with the exception of Item #6. The motion was unanimously passed.

Presentation on the Activities of the Flood Resiliency Committee, Alice Riehl, Chair

Ms. Alice Riehl, Chair of the Flood Resiliency Committee (FRC) gave the Planning Commission an update on the activities of the committee. The presentation included an explanation of the 100 year flood, and areas in the City where there is currently flooding and areas that will flood in 2050 and 2100.

Ms. Riehl distributed a number of handouts to the Commissioners. Mr. Rogers noted that the existing 100 year flood plain in the City of New Castle ranges from 8' to 10' elevation. Using DNREC's sea level rise scenario, in 2050 it accounts for a 2' rise in sea level, and in 2100 a 5' rise in sea level on top of the existing flood plain level.

Ms. Riehl gave an update on the flooding situation in New Castle and efforts being made to address the problem. She explained the subsidence occurrence along the eastern seaboard, noting that New Castle is on the same level as the low country in the Carolinas. The City of New Castle has been researching the impact of sea level rise in the City for a number of years, and the Comprehensive Plan states that the City should adopt the recommendations in the Vulnerability Assessment Plan made during that time.

The Sea Level Rise Task Force (now the Flood Resiliency Committee) accumulated data and recommended that the City apply to the National Resource Conservation Service (NRCS) under the Watershed Protection Program. The City's application was accepted and the NRCS is did a preliminary investigation. The City qualified for the program and the NRCS is currently conducting a feasible study of what can be done to address the problem. Ms. Riehl explained the options available under the program. The planning should being in early 2024 with public meetings and information gathering about New Castle. The FRC will act as a liaison with the NRCS and the City. There will be some funding required from the City, but the actual construction and planning will be paid for the NRCS.

The FRC will also be looking into flooding inside the City from rain events. It is unknown if that problem will be resolved through the approved NRCS option.

Mr. Rogers noted that the Planning Commission is gathering information on all aspects of the City as they prepare for the Comprehensive Plan 5-Year Review. Mr. Rogers explained the Flood Plain Management program in the City.

In response to a question from Chief Majewski, Ms. Riehl stated that the FRC is looking into alternative solutions for rain events, including visiting other municipalities to determine how

Planning Commission Meeting
December 18, 2023

they address those issues; as well as storm water management. Regarding debris in storm drains, Ms. Riehl noted that the City will be installing signage for street sweeping.

There being no further business to discuss, Ms. Reign wished everyone a happy holiday and called for a motion to adjourn.

A motion to adjourn was made by Ms. Rivera, seconded by Chief Majewski and unanimously carried, and the meeting adjourned at 8:45 p.m.

Respectfully submitted,

Kathleen R. Weirich
City Stenographer