

REGIONAL PLANNING COMMISSION
BUSINESS MEETING
MINUTES
September 13, 2018

The Business Meeting of the Regional Planning Commission was held Thursday, September 13, 2018 in the Levy Court Chambers, Room 203, of the Kent County Administrative Complex, 555 Bay Road, Dover, Delaware 19901.

CALL TO ORDER FOR BUSINESS MEETING

The Business Meeting was called to order at 6:30 p.m.

THE PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL AND DETERMINATION OF QUORUM

The following members were present:

William Spanarelli
Albert Holmes, Chairman
William Jester, Vice-Chairman
David Peterman
Paul Davis
Gene Thornton

Members Absent:

Denise Kaercher

Also present were:

Sarah Keifer, Director of Planning
Craig Eliassen, Attorney

ADDITIONS TO, DELETIONS FROM, AND APPROVAL OF AGENDA

On a motion made by Mr. Davis and seconded by Mr. Spanarelli, the Regional Planning Commission voted to APPROVE the agenda of the September 13, 2018 Business Meeting.

APPROVAL OF MINUTES

On a motion made by Mr. Jester and seconded by Ms. Thornton, the Regional Planning Commission voted to APPROVE the minutes of July 12, 2018 Business Meeting.

REVIEW OF APPLICATION STATUS REPORT – Current as of September 6, 2018

LEVY COURT ACTION ON COMMISSION RECOMMENDATIONS:

Application

RPC Rec.

L.C. Action

C-18-04 Edwards, Latisha
CS-18-03 Bay Communications
CS-18-05 Crossings at Kent

Approve
Approve
Approve

Denied
Approved
Approved

Old Business

None

New Business

C-18-05 Potts, Jennifer: Request Conditional Use approval of a Home Office located outside the Growth Zone Overlay District.

Ms. Thornton: I had a question that occurred to me, and I wanted to see if I could seek some clarification before we vote; Mr. Davis, last week did ask the applicant something about would she be willing to stretch out her appointments so that there would not be the possibility of one client's car sitting in the driveway and then a second client's car being out there and therefore eliminating a place for the family to park if it was stretched out, and I thought that I saw the applicant indicate that she would be interested in doing that, but I don't think that we followed up on that enough. That would solve, I think, some of the problems pretty easily if maybe it was a half an hour in between clients instead of the traditional 15 minutes that most people have.

Mr. Peterman: Wasn't that part of the conditional approval?

Mr. Davis: I did say it last week; the problem becomes, it's unenforceable by Kent County. It's just one of those things that happen, we don't enforce deed restrictions, we don't enforce these types of things. What I would like to say, if the applicant is here tonight raise your hand, okay, there's going to be a motion made, and I may do it myself, but if this thing would pass I would ask as a courtesy to the neighbors, is for your wife to stagger those things out. We have no way of enforcing that so if it gets approved, and then it's approved, I gave this a lot of thought prior to coming up here about those neighbor's concerns, and they are valid concerns, but realistically in my view point you have this situation in a subdivision. Down the street you have people that maybe playing cards in the afternoon, four or five cars, so if they will work with the neighborhood and try to stagger those things out I think that would hopefully correct some of that issue, but that's not a very wide street, we didn't design them it's just the way it is, because we can't enforce it there's no sense in me putting it into the motion because it's just a moot issue, but please keep in mind the other people who live in that neighborhood, if you have a concern because this lady and her husband will have two cars then you need to look at yourself when you have a birthday party or whatever the case may be. It's no different in any subdivision, I go in subdivisions all the time and see what's going on, you'll see four or five cars in front of somebody's house, it's just one of those things that unfortunately the way the streets are designed out there you kind of have to live with it, so that's my comments Mr. President.

On a motion made by Mr. Davis and seconded by Mr. Spanarelli, the Regional Planning Commission recommend **Conditional Approval** of application C-18-05, a home occupation for a home office (Therapist) – located outside the Growth Zone Overlay District. This is based on Exhibit A - the Staff Recommendation Report dated September 6, 2018; Exhibit B - Public Hearing Testimony dated September 6, 2018; and the findings of fact that:

- a. The subject site is zoned AC (Agricultural Conservation), in which a home occupation/home day care is permitted per Sections 205-47 and 205-366 of the Kent County Code; and
- b. The application complies with the Comprehensive Plan.

Pursuant to Chapter 205 of the Kent County Code and pursuant to 9Del. C. §4802, the Commission has reviewed the application and, furthermore as part of this approval, the applicant shall comply with all Staff and Agency Requirements as described in the September 6, 2018, Staff Recommendation Report and the following conditions of approval:

- a. The applicant shall comply with all the conditions per §205-366 of the Kent County Code.
- b. Failure to comply with the conditions of approval or applicable regulations can result in a revocation of any permits issued for this conditional use and a revocation of the conditional use itself.

Mr. Peterman: Yes to approve.

Ms. Thornton: Yes with a strong recommendation not to be blocking up the neighbors lawns and whatnot.

Mr. Spanarelli: Yes per the motion.

Mr. Davis: Yes for the motion.

Mr. Jester: Yes for all reasons given.

Mr. Holmes: Yes for all reasons given.

The Commission voted unanimously in favor of recommending **conditional approval** of application C-1805.

C-18-06 Rivera, Efrain: Request Conditional Use approval of a Home Based Contractor located inside the Growth Zone Overlay District.

Mr. Davis: I know there were some issues there, there are a lot of issues everywhere in the County, but this man, I think, is trying to run a business, he's trying to do the right things, and the adjoining neighbor that has conditions a lot worse than this will be, so I think he is trying to do the right thing.

On a motion made by Mr. Davis and seconded by Mr. Peterman, the Regional Planning Commission recommend **conditional approval** of application C-18-06, for a Home Based Contractor's Establishment (Landscaping) located inside the Growth Zone Overlay District. This is based on Exhibit A - Staff Recommendation Report dated September 6, 2018, Exhibit B - Public Hearing Testimony dated September 6, 2018, and the findings of fact that:

- a. The subject site is zoned AR – Agricultural Residential in which a home based contractor is permitted as a conditional use per Section §205-397.7 and §205-251 of the Kent County Code;
- b. The application complies with the Comprehensive Plan

Pursuant to Chapters 187 and 205 of the Kent County Code and pursuant to 9 Del. C. §§4802 and 4811, the Commission has reviewed the application and the September 6, 2018 Staff Recommendation Report, and, furthermore as part of this approval, the applicant shall maintain compliance with all requirements of Chapter 205, Zoning including but not limited to:

- a. The subject property shall be the primary residence of the owner of the home based contractor business and shall remain the primary residence of the owner of the business for the entire length of time that the business exists on the subject property.
- b. Approval of a home based contractor establishment shall be location specific and shall not be transferable to another location.
- c. Approval of a home-based contractor establishment shall be applicant/owner-specific and shall not be transferred or conveyed to another person without reapproval.
- d. Except for vehicles already permitted by the parking regulations of Chapter 205, Zoning, all other vehicles and construction equipment shall be stored within a building.
- e. Retail sale of goods and products shall be prohibited on the premises.
- f. The hours of operation shall be limited to 7:00 a.m. and 10:00 p.m.
- g. The applicant is proposing to use the existing 396 sq. ft. attached garage and 144 sq. ft. hallway for the business. The code does not identify the maximum size an

attached garage can be to be used for a home based contractors establish, but for detached structures it allows a structure to be no larger than 5% of the lot area which on this 0.69± acre parcel would be 1,500 square feet.

Mr. Peterman: Yes to approve.

Ms. Thornton: Yes it's in compliance with our Comprehensive Plan.

Mr. Spanarelli: Yes per the motion.

Mr. Davis: Yes per my motion.

Mr. Jester: Yes for all reasons given in the motion.

Mr. Holmes: Yes for all reasons given.

The Commission voted unanimously in favor of recommending **conditional approval** of application C-18-06.

CS-18-06 Calvert Mechanical Systems: Request Conditional Use with Site Plan approval of a Contractor Establishment located inside the Growth Zone Overlay District.

Mr. Jester: I would like to say before I start; I certainly appreciate them taking a site like that and bringing it back into full compliance. It was great to see a site that was in such bad shape being brought back, and it looks like it will do for the future.

On a motion made by Mr. Jester and seconded by Mr. Peterman, the Regional Planning Commission recommend **Conditional Approval** of application CS-18-06, Calvert Mechanical Systems, a conditional use site plan for a Contractor's Establishment, inside the Growth Zone Overlay District. This is based on Exhibit A - Staff Recommendation Report dated September 6, 2018, Exhibit B – Public Hearing Testimony dated September 6, 2018 and the findings of fact that:

- a. The subject site is zoned BG - General Business, in which a Contractor's Establishment is permitted as a conditional use with site plan per Sections 205-170 and 205-282, of the Kent County Code; and
- b. The application complies with the Comprehensive Plan.

Pursuant to Chapters 187 and 205 of the Kent County Code and pursuant to 9Del.C. §§4802 and 4811, the Commission has reviewed the application and the September 6, 2018 Staff Recommendation Report, and, furthermore as part of this approval, the applicant shall comply with all Staff and Agency Requirements as described in the September 6, 2018 Staff Recommendation Report and shall comply with the following condition:

- a. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.

Mr. Peterman: I vote yes for conditional approval.

Ms. Thornton: Yes it's in accordance with our plan.

Mr. Spanarelli: Yes per the motion given.

Mr. Davis: Yes for all the reasons given.

Mr. Jester: Yes for all the reasons in my motion.

Mr. Holmes: Yes, it's going to be a good project.

The Commission voted unanimously in favor of recommending **conditional approval** of application CS-18-06.

CZ-18-05 / LC18-10 MJK Properties, LLC: Request to amend the Zoning Map / Comprehensive Plan from AC (Agricultural Conservation) / Low Density Residential to BG (General Business) / Highway Commercial.

On a motion made by Mr. Spanarelli and seconded by Mr. Jester, the Regional Planning Commission recommend **Approval** of Ordinance LC18-10 to amend the Comprehensive Plan Map from Low Density Residential to Highway Commercial and Zoning Map Amendment from AC (Agricultural Conservation) to BG (General Business) for the 5± acre portion of this 39.4± acre parcel. This is based on Exhibit A - the Staff Recommendation Report dated September 6, 2018, Exhibit B - public testimony dated September 6, 2018 attached hereto and the findings of fact that:

- a. There are other BG zoned properties to the west of the subject site, and the proposed rezoning would be consistent with the mixed use nature of the surrounding neighborhood.
- b. The Kent County Comprehensive Plan currently incorporates a portion of the property for future highway commercial uses along South DuPont Highway.

Mr. Peterman: Yes to approve.

Ms. Thornton: Yes.

Mr. Spanarelli: Yes.

Mr. Davis: Yes for all the reasons given.

Mr. Jester: Yes for the reason in the motion.

Mr. Holmes: Yes per Staff Recommendation and all reasons given.

The Commission voted unanimously in favor of recommending **approval** of ordinance LC-18-10.

SL-18-02 Knollwood: Request preliminary plan approval of a 289 lot residential subdivision located inside the Growth Zone Overlay District.

Mr. Holmes: There were some people here who were concerned about the road coming in and out by their house through their

development. Before we vote on this I think we ought to try to explain that we can do what we can to try to alleviate the situation but there is only so much we can do with Del-DOT right Mr. Jester?

Mr. Jester: Exactly, we've tried before, and the road widths and everything else, and they seem to have their own agenda.

Mr. Peterman: Didn't they decide to work together on this, and put some shrub or something around that entrance for that man that complained about the trucks being too much traffic?

Mr. Holmes: From what the engineer said they were going to try to do something to alleviate that situation.

Mr. Davis: I think that ought to be in the record, I certainly trust the engineer's company, but I know that was a concern, I think since it was a concern we ought to put that on the record if we can legally do that by the engineer. Can we do that?

Ms. Keifer: Are you referencing the additional landscaping? That's actually proposed in the motion.

On a motion made by Mr. Peterman and seconded by Mr. Davis, the Regional Planning Commission grant **Conditional Approval** of application SL-18-02, Knollwood Subdivision, located inside the Growth Zone Overlay District. This is based on Exhibit A - the Staff Recommendation Report dated September 6, 2018, Exhibit B - public testimony dated September 6, 2018 attached hereto and the findings of fact that:

- a. The subject site is zoned AC (Agricultural Conservation) in which a single-family residential subdivision is a permitted use in this zoning district.
- b. The application complies with the Kent County Comprehensive Plan.
- c. The application complies with the Adequate Public Facilities Ordinance (APFO).

Pursuant to Chapter 205 of the Kent County Code and pursuant to 9 Del. C. §§4802 and 4811, the Commission has reviewed the application and, furthermore as part of this approval, the applicant shall comply with all Staff and Agency Requirements and Planning Staff Recommendations as described in the September 6, 2018 Staff Recommendation Report, including but not limited to the following conditions:

- a. The addition of lighting near the amenities located in the Active Open Space. Developer should contact the Department of Public Works to create a Street Light District.
- b. The applicant should consult with DNREC about the possibility of establishing habitat for aquatic and water dependent plants and animals in conjunction with the construction of the 8.3 acre pond. The pond should be stocked with appropriate species of fish.

- c. The 20-foot wide internal pedestrian walkways shown on the plan should be clearly demarcated so that lot owners do not mistake these strips of land as private property. The owner proposes to use trees and shrubs to landscape/delineate the 20-foot wide walking paths. The landscape plan should show the plantings, along with detail and cross-section of the surface of the internal walkways to be approved by the Planning Office prior to final approval of the subdivision.
- d. In the vicinity of lots 40 & 41, additional 6 foot landscape buffering shall be installed between the existing woods and proposed buffer along the shared boundary line with Woodfield Subdivision.
- e. Open spaces that are not utilized for active recreation shall be planted with a no maintenance perennial groundcover to reduce the mowing requirements for the future Homeowners' Association. The species of groundcover must be approved by the Planning Office prior to final approval of the subdivision.
- f. Alternatively, if the above mentioned passive open spaces are planted with grass to be maintained by the Homeowners' Association, multiple access points shall be designed to allow landscaping workers and residents to make free use of these areas without the need to traverse private property at or near the following locations:
 - (1). Between lots 22 & 23
 - (2). Between lots 49 & 50
 - (3). Between lots 101 & 102

These access points shall be a minimum of 10' in width in order to accommodate landscaping equipment.

- g. To avoid conflict with individual lot owners or future improvements made by lot owners, street trees shown on the Landscape Plan shall be planted prior to the issuance of a Certificate of Occupancy for the lots where street trees are proposed. A note should be added to the plan to this effect. In addition, label a 10' landscape easement for the planting of street trees.
- h. Based on scheduling proposed by DeIDOT, the following phasing schedule shall be adopted for the issuance of building permits within the Knollwood Development as recommended by the Kent County Comprehensive Plan.
 - **For the first 75 building permits:** No off-site road improvements required.
 - **To issue building permit 76:** The developer must provide documentation from DeIDOT as proof to the Planning Office that they have completed the Phase 2 Peachtree improvements as noted in the Agency Comments shown on this report in Section IV, item F(3). The documentation from DeIDOT must provide a phasing schedule for the completion of the remaining off-site improvements, specifically noted in this report in Section IV, items F(1), F(2), and F(4). Additional documentation from DeIDOT shall be required based on the deadlines set forth by DeIDOT as proof to the Planning Office that off-site

improvements have been completed to DeIDOT's satisfaction. Building permits and/or Certificates of Occupancy may be delayed if required improvements are not completed or if satisfactory documentation is not received.

- i. The Planning Commission's approval of the preliminary subdivision plan shall be valid for a period of eighteen (18) months.

Mr. Peterman: I vote yes to approve.

Ms. Thornton: I vote yes to approve with the provision that the promises made to the people with the complaints will be explored, and hopefully they'll be modified plantings to help out those homeowners, and also that the applicant please review very carefully the PLUS comments dated August 1, 2018 regarding the TMDL's that were provide with the packet in reference to the conditions and everything.

Mr. Spanarelli: Yes for the motion as written.

Mr. Davis: Yes for the motion.

Mr. Jester: Yes for all reasons given.

Mr. Holmes: Yes per the motion.

The Commission voted unanimously in favor of granting **conditional approval** of application SL-18-02.

LC18-09 Site Plan Exemptions: An Ordinance to amend the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, as amended by amending §187-44 Exemptions by adding an exemption for minor expansions of existing development.

On a motion made by Mr. Spanarelli and seconded by Mr. Jester, the Regional Planning Commission grant **approval** of ordinance LC18-09, Site Plan Exemptions. This is based on the findings of fact that this ordinance:

- a. Creates an exemption from formal site plan review for small expansions to existing uses (less than 5,000 square feet of impervious cover).
- b. Allows for administrative approval.
- c. Permits submission of plot plans in lieu of engineered drawings.
- d. Exempts accessory structures of less than 300 square feet from review.
- e. Requires compliance with design criteria (landscaping, buffering, etc.) to the greatest extent practicable.
- f. Allows for discretion in requiring letters of no objection from outside agencies.

Mr. Peterman: I vote yes to approve.
Ms. Thornton: Yes.
Mr. Spanarelli: Yes for my motion.
Mr. Davis: All the reasons given, yes.
Mr. Jester: Yes.
Mr. Holmes: Yes for all reasons given.

The Commission voted unanimously in favor of recommending **approval** of ordinance LC-18-09.

Commission Comments

Ms. Thornton asks the Board to remember, in case she is not on the Commission for a long time, when any discussions are had about riparian buffers being made larger to consider every time there is a hurricane it's really important to remember the water quality.

Mr. Davis asks the Staff; when their packet has a large amount of pictures please send him the hard copy because it takes too much ink to print.

Mr. Jester asked everyone to keep firefighters in their prayers because Delaware was asked to supply a number of trucks, manpower and services in the Carolina's.

Ms. Keifer informed the Board that Levy Court adopted the Comprehensive Plan Tuesday night, and the Staff is putting together the final version with all the amendments. If they want a hard copy let her know, and it will be on our website.

ADJOURNMENT

On a motion made by Mr. Peterman and seconded by Ms. Thornton, the Regional Planning Commission voted unanimously to ADJOURN the Business Meeting of September 13, 2018 at 7:05 p.m.

Albert Holmes, Jr.
Chairman

Sarah E. Keifer, AICP
Director, Kent County Planning Services

Respectfully submitted by:

Nancy L. Thompson – Senior Secretary
Kent County Department of Planning Services