

**AGENDA
NEW CASTLE COUNTY
PLANNING BOARD BUSINESS MEETING
DEPARTMENT OF LAND USE - NEW CASTLE ROOM
87 READS WAY, NEW CASTLE, DELAWARE
March 15, 2016
9:00 A.M.**

ROLL CALL

MINUTES – November 17, 2015
December 15, 2015
(January 19, 2016 meeting was canceled – no minutes)
(February 16, 2016 meeting was canceled – no minutes)

DEFERRALS –

BUSINESS

App. 2012-0497-T. To Amend New Castle County Code Chapter 7 (“Property Maintenance Code” and Chapter 40 (“Unified Development Code”), Articles 15 (“Historic Resources”), 30 (“County /council and Administrative Bodies”), and 31 (“Procedures and Administration”) to Prevent the Demolition by Neglect of Property Zoned Historic or with a Historic Zone Overlay and to Designate \$200,000 of the Property Maintenance Revolving Fund for Emergency Repairs for these Historic Properties. **Ord. 12-084, Sub. 2, is a text amendment that will provide New Castle County with adequate remedies to address the demolition by neglect of historic properties.** CC Sponsors: John Cartier, Lisa Diller, David Tackett, Janet Kilpatrick.

App. 2015-0172-D. Brandywine Town Center grounds east of Concord Pike (US 202), west of Brandywine Parkway and south of Beaver Valley Plaza. **To Amend a Declaration of Restrictions** dated February 12, 1991 by Brandywine Raceway Associates Inc. et al in association with a rezoning from R-1-C and R-2 to C-3 by Ord. 90-27. The declaration was subsequently amended June 13, 1999 and September 25, 2008 by Acadia Brandywine Subsidiary LLC et al in association with construction of **Brandywine Town Center**. The current amendment is to relocate 0.4 acre of parkland to another location within Brandywine Town Center and to add another 1.3 acres of parkland to allow construction of a new building abutting Concord Pike and adjacent to Brandywine Town Center as proposed in App. 2015-0048-S for **AAA Car Care Center**. CR (Commercial Regional) zoning. CD 2.

App. 2015-0892-S/Z. East and west sides of Caledonia Way, 1145 feet west of Porter Road. Exploratory Resubdivision Plan, Rezoning review for **St. Andrews Addition-Apartments**. The purpose of the plan is to revise the previously approved and recorded plan for St. Andrews Addition (2005-0580-S/Z) and to reconfirm the ST rezoning approved by County Council in October 2002 by Ord. 02-065, and subsequently reconfirmed in February 2006 by Ordinance 05-095. Former *New Castle County Code* Section 40.31.114 requires that all subsequent land development plans to a previously recorded rezoning plan be in strict conformity with the development shown on the approved preliminary plan that was relied upon when County Council granted the rezoning. This plan proposes to revise apartment building footprints, number of stories and locations. **Ord. 16-008 will approve a revised exploratory plan to supersede the existing record plan (20120307-0012959) and reconfirm the rezoning of 57.26 acres from S (Suburban) to ST (Suburban Transition).** CD 12.

OTHER BUSINESS

Presentation by DE HEAL: Delaware Bike Plan

REPORT OF COMMITTEES

REPORT OF GENERAL MANAGER

REPORT OF CHAIRMAN

OTHER BOARD MEMBER COMMENTS

COMMENTS FROM THE PUBLIC

ADJOURNMENT

***** PENDING APPLICATIONS *****

PUBLIC RECORD OPEN – The application below has already been presented at a public hearing. The public record is now held open for submission of written comments until March 31, 2016. The tentative date of the business meeting at which the Department and Planning Board will present recommendations is April 19, 2016.

App. 2015-0045-S/Z. Northwest corner Pulaski Hwy. (US 40) and LaGrange Parkway. Exploratory Major Land Development Plan, Rezoning, and PLUS Review for **LaGrange Plaza** proposes to rezone the remaining portion of the existing 5.25 acre parcel to CR to construct a 6,560 SF restaurant and a 10,720 SF office/retail building. Ord. 15-090 will rezone 1.41 acres from S (Suburban) and H (Historic Overlay) to CR (Commercial Regional) and H (Historic Overlay) and amend the 2012 Comprehensive Plan consistent therewith. CD 11.

Address comments to: Department of Land Use, Zoning Section, 87 Reads Way, New Castle DE 19720 or LandUse@nccde.org

New Castle County
DEPARTMENT OF LAND USE and PLANNING BOARD
Public Hearing Register

MARCH 15, 2017
(date)

IMPORTANT: PLEASE PRINT

Application No. _____

- | | |
|--|---|
| 1. <u>Patti Miller - Nemours/DE HEA&</u>
Name
<u>2200 Concord Pike</u>
Street Address
<u>Wilm DE 19803</u>
City State Zip | 9. _____
Name
Street Address
City State Zip |
| 2. <u>STEPHEN JOHNS</u>
Name
<u>4305 MILLER RD.</u>
Street Address
<u>WILM DE 19802</u>
City State Zip | 10. _____
Name
Street Address
City State Zip |
| 3. <u>MICHAEL NOCHMAN</u>
Name
<u>1201 N. ORANGE ST, ST6400</u>
Street Address
<u>WILM DE 19801</u>
City State Zip | 11. _____
Name
Street Address
City State Zip |
| 4. <u>Jeff Riegner</u>
Name
<u>1013 Centre Road, Suite 302</u>
Street Address
<u>Wilmington DE 19805</u>
City State Zip | 12. _____
Name
Street Address
City State Zip |
| 5. <u>Wilson Davis</u>
Name
<u>Law Dept</u>
Street Address
City State Zip | 13. _____
Name
Street Address
City State Zip |
| 6. <u>ANTHONY AGLIO</u>
Name
<u>D-IDOT</u>
Street Address
City State Zip | 14. _____
Name
Street Address
City State Zip |
| 7. _____
Name
Street Address
City State Zip | |

FINAL
MINUTES - BUSINESS MEETING
NEW CASTLE COUNTY PLANNING BOARD
87 READS WAY, NEW CASTLE, DELAWARE
March 15, 2016

The Business Meeting of the Planning Board of New Castle County was held on Tuesday, March 15, 2016 in the New Castle Room of the Government Center Building, 87 Reads Way, Corporate Commons in New Castle, DE.

The meeting was called to order by Acting Chair Sandra Anderson at 9:00 a.m.

The following Board members were present:

Sandra Anderson	Leone Cahill
Richard Killingsworth (9:35)	William McGlinchey
Joseph Montgomery (9:44)	Linda Porras-Papili
Ruth Visvardis	

The following Board members were absent:

David Sheppard	Robert Snowden
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Planning Board Attorney, Department of Law

Wilson Davis

The following Department of Land Use employees were present at the meeting:

George Haggerty	Reed Macmillan
Antoni Sekowski	Valerie Cesna
Matthew Rogers	

The following members of the public were in attendance:

Patti Miller	Stephen Johns
Michael Hochman	Jeff Riegner
Anthony Aglio	

MINUTES

Due to members known to be arriving late, it was decided to defer voting on the minutes until later in the meeting.

DEFERRALS –

None.

BUSINESS -

App. 2012-0497-T. To Amend New Castle County Code Chapter 7 (“Property Maintenance Code” and Chapter 40 (“Unified Development Code”), Articles 15 (“Historic Resources”), 30 (“County /council and Administrative Bodies”), and 31 (“Procedures and Administration”) to Prevent the Demolition by Neglect of Property Zoned Historic or with a Historic Zone Overlay and to Designate \$200,000 of the Property Maintenance Revolving Fund for Emergency Repairs for these Historic Properties. **Ord. 12-084, Sub. 2, is a text amendment that will provide New Castle County with adequate remedies to address the demolition by neglect of historic properties.** CC Sponsors: John Cartier, Lisa Diller, David Tackett, Janet Kilpatrick.

The Department of Land Use considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommended **CONDITIONAL APPROVAL** of Ordinance No. 12-084, Sub. 2. The Department recommends the following changes and will prepare a substitute ordinance if requested by the sponsors.

Proposed changes to Ord. 12-084, Sub. 2:

1. In Section PM 102.6.1

To the sentence: “Demolition by neglect shall include any one or more of the following courses of action or inaction: a) deterioration of the structure’s exterior to the extent that it creates or permits a hazardous or unsafe condition; b) deterioration of exterior walls or other vertical supports, roofs, chimneys, horizontal members, exterior wall elements including, but not limited to, wooden walls, brick, plaster or mortar to the extent that it adversely affects the character of the historic structure; c) defective or insufficient weather protection for the exterior walls, roofs, foundations, doors and windows, including broken windows or doors and including lack of paint or other protective covering on exterior walls.” [Add: d) or other appropriate property maintenance standards.]

2. In Section PM 102.6.1 revise the last sentence: “The Code Official shall proactively inspect all properties subject to this subsection, twice annually, [Add here: or as determined by the Code Official,] from a list provided by the HRB, cite all violations as customary . . . on each semi-annual inspection to the HRB.”

3. Throughout the ordinance replace annual or semi-annual report to the HRB, with submittal of a written report on each violation.

4. Include the suggested revisions proposed by the Historic Review Board, above.

The Planning Board considered the recommendation offered by the Department of Land Use and the Historic Review Board. On a motion by Ms. Anderson, seconded by Ms. Cahill, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance No. 12-084, sub. 2, subject to the same conditions recommended by the Department. The motion was adopted by a **vote of 5-0-1-3** (YES: *Anderson, Cahill, McGlinchey, Papili, Visvardis*; ABSTAIN: *Killingsworth*; ABSENT: *Montgomery, Sheppard, Snowden*).

In discussion preceding the vote, the Board offered the following comments:

(Mr. McGlinchey noted that he was not in attendance at the public hearing for this application, but he read the hearing transcript and was prepared to participate in reviewing this application.)

Ms. Visvardis asked if the Historic Overlay remains on the parcel when ownership changes. Valerie Cesna, Department of Land Use Planner, explained that the Historic Overlay district is a zoning district and it is tied to the parcel.

Mr. McGlinchey asked if there is a process to remove the Historic Overlay from a property. Ms. Cesna explained that because the process to add the overlay to a property is a rezoning application, a public process, it would also require a rezoning application to propose removing it. He expressed concern that since property owners voluntarily apply for a rezoning to add the Historic Overlay; if additional restrictions are created there may be an unintended consequence: fewer owners wanting to be in Historic Overlay districts.

Ms. Anderson said she thinks that performing inspections twice a year is onerous. She noted the Department's recommended condition to temper the inspection schedule by adding the phrase, "or as determined by the Code Official" would give the Code Official some judgment, but the language regarding the semiannual inspections is not proposed to be removed. Ms. Cesna said the Department's intention is to provide the Code Official with some leeway to determine when it is appropriate to have less frequent inspections. Ms. Anderson asked if that would also apply to the reports that are required to be produced; that is not clear in the language of the suggested condition. Ms. Cesna explained that since the reports are tied to the inspections, there would be no reports for properties that are not on the current round of inspections.

Ms. Anderson asked what protections are provided by the Historic Overlay. Mr. Haggerty noted there are no financial benefits offered to the owner. The protection is accomplished by incorporating historic preservation concerns into the County's review of plans and permits affecting Historic Overlay districts. The Historic Review Board is charged with undertaking those reviews.

Mr. McGlinchey said his impression is that people who want the Historic Overlay on their property want their property treated as historic, even beyond their own ownership, and are willing to treat it properly and expect it to be treated properly in the future. They are asking for their property to be held to a different standard.

Ms. Cesna explained that the effect of the Historic Overlay is the creation of an additional level of review for applications that come through the Department of Land Use. Such applications include land development plans, a rezoning to change the base zoning, and building permits.

The Historic Review Board reviews plans and rezonings for the effects on historic properties. In reviewing building permits the HRB has authority to approve the design and materials for exterior (but not interior) alterations.

Ms. Papili asked if any input was sought from the owners of the current Historic Overlay properties regarding this proposed ordinance. Her concern is that when these owners applied for Historic Overlay years ago, the regulations did not include routine inspections and some may not want to agree to it now. It was noted the Department did not take the step of informing each current Historic Overlay property owner about this proposed ordinance.

Mr. McGlinchey said he thinks this ordinance is just the implementation and enforcement mechanism for what the property owners already agreed to. He asked if the property owners agree to not allow demolition by neglect when the property goes into an Historic Overlay.

Ms. Cesna reminded the Board that Historic Overlay is zoning; it is not a contract or an easement. Owners are advised of the review procedures that will be undertaken by the Department when certain kinds of changes are proposed to their property. (These procedures are outlined in the UDC.) There is no written agreement required from the applicant/owner.

Mr. Haggerty said all properties now, including historic properties, are subject to the Property Maintenance Code. This ordinance is trying to focus on the limited list of properties that are in Historic Overlays and to create a dedicated fund for emergency repairs. Because most owners of Historic Overlay properties are motivated to preserve their buildings, we expect most to be in excellent condition. In all likelihood these increased inspections would affect a few problem properties. The purpose of the dedicated fund is to provide the County with the means to undertake limited repair to prevent further deterioration which might lead to loss of a building; it is not intended as a funding source to restore any building to pristine condition.

Ms. Cahill suggested that instead of policing how owners maintain their property, the County could reach out to new owners at the time of settlement to educate them on the regulations associated with this special zoning district.

Mr. McGlinchey said it is reasonable to expect a property owner to know the zoning of the property they are buying. He said it is his impression that this ordinance proposes enforcement and funding without changing the property maintenance regulations pertaining to the Historic Overlay property. The difference he sees is that it will provide a system to check if owners are adhering to the expectations of the H Overlay, as opposed to a complaint-driven process.

App. 2015-0172-D. Brandywine Town Center grounds east of Concord Pike (US 202), west of Brandywine Parkway and south of Beaver Valley Plaza. **To Amend a Declaration of Restrictions** dated February 12, 1991 by Brandywine Raceway Associates Inc. et al in association with a rezoning from R-1-C and R-2 to C-3 by Ord. 90-27. The declaration was subsequently amended June 13, 1999 and September 25, 2008 by Acadia Brandywine Subsidiary LLC et al in association with construction of **Brandywine Town Center**. The current amendment is to relocate 0.4 acre of parkland to another location within Brandywine Town Center and to add another 1.3 acres of parkland to allow construction of a new building abutting

Concord Pike and adjacent to Brandywine Town Center as proposed in App. 2015-0048-S for **AAA Car Care Center**. CR (Commercial Regional) zoning. CD 2.

The Department of Land Use considered the standards in Section 40.31.130.D of the New Castle County Code and public comments. Based on this analysis the Department recommended **CONDITIONAL APPROVAL** of the proposed deed restriction change to relocate 0.41 acres of parkland within Brandywine town Center and to add another 1.3 acres of parkland.

The Department recommended the following condition:

The same number of trees removed from the existing parkland area should be added to the proposed new parkland area.

The Planning Board considered the recommendation offered by the Department of Land Use.

On a motion by Ms. Anderson, seconded by Mr. McGlinchey, the Planning Board voted to recommend **CONITIONAL APPROVAL** of the proposed deed restriction change, subject to the same condition recommended by the Department. The motion was adopted by a vote of **5-2-2** (YES: *Anderson, Cahill, Killingsworth, Montgomery, McGlinchey*; NO: *Porras-Papili, Visvardis*; ABSENT: *Sheppard, Snowden*).

In discussion preceding the vote the Board offered the following comments:

Ms. Anderson asked who will own this property. The applicant's representative indicated the land will be leased from the Brandywine Town Center.

App. 2015-0892-S/Z. East and west sides of Caledonia Way, 1145 feet west of Porter Road. Exploratory Resubdivision Plan, Rezoning review for **St. Andrews Addition-Apartments**. The purpose of the plan is to revise the previously approved and recorded plan for St. Andrews Addition (2005-0580-S/Z) and to reconfirm the ST rezoning approved by County Council in October 2002 by Ord. 02-065, and subsequently reconfirmed in February 2006 by Ordinance 05-095. Former *New Castle County Code* Section 40.31.114 requires that all subsequent land development plans to a previously recorded rezoning plan be in strict conformity with the development shown on the approved preliminary plan that was relied upon when County Council granted the rezoning. This plan proposes to revise apartment building footprints, number of stories and locations. **Ord. 16-008 will approve a revised exploratory plan to supersede the existing record plan (20120307-0012959) and reconfirm the rezoning of 57.26 acres from S (Suburban) to ST (Suburban Transition).** CD 12.

The Department considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommended **APPROVAL** of Ordinance 16-008.

The Planning Board considered the recommendation offered by the Department of Land Use and comments made by the public.

The Planning Board considered the Department of Land Use analysis and reasoning and on a motion by Mr. McGlinchey and seconded by Mr. Montgomery, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 16-008, subject to the conditions listed in the Department of Land Use recommendation. The motion was adopted by a vote of **7-0-2** (YES: *Anderson, Cahill, Killingsworth, Porras-Papili, McGlinchey, Montgomery, Visvardis*; NO: *none*; ABSENT: *Sheppard, Snowden*)

In a discussion preceding the vote, Mr. McGlinchey, verified that the rationale for the adjustments made to the previous plan was based on market demand.

MINUTES

Wilson Davis, counsel to the Planning Board, clarified a question regarding the number of members needed to approve meeting minutes: He said only a majority of the present meeting quorum is required to approve prior meeting minutes, not a majority of those present at the meeting summarized in the minutes.

On motion by Mr. Montgomery, seconded by Ms. Visvardis, the minutes of the November 17, 2015 meeting were approved as corrected by a vote of 5-0-2-2 (YES: Anderson, Killingsworth, Montgomery, Papili, Visvardis; NO: none; ABSTAIN: Cahill, McGlinchey; ABSENT: Sheppard, Snowden).

On motion by Mr. Montgomery, seconded by Ms. Cahill, the minutes of the December 15, 2015 meeting were approved as written by a vote of 6-0-1-2 (YES: Anderson, Cahill, Killingsworth, McGlinchey Montgomery, Papili,; NO: none; ABSTAIN: Visvardis; ABSENT: Sheppard, Snowden).

Wilson Davis was introduced as the new counsel to the Planning Board, filling the vacancy left by Monica Horton's departure.

OTHER BUSINESS

Presentation by DE HEAL: Delaware Bike Plan

Patti Miller (DE HEAL) introduced presenters Anthony Aglio (DeIDOT) and Jeff Riegner (Whitman Requardt and Associates). The subject of the presentation was the bicycling and walking infrastructure in the state, the First State Bike Plan, and how these issues impact planning efforts in New Castle County.

The current bike plan was adopted 2005; an update is underway. The purpose of the current update is to identify efforts already underway around Delaware and to create a unified approach to bike planning. The goal is to make biking safe and convenient for a majority of residents.

Highlights of some existing tools and programs:

The First State Trail and Pathway Initiative was launched in 2012.

DelDOT's Complete Streets Policy promotes multi-modal accommodations for new streets being planned.

The Transportation Alternatives Program and the Recreational Trails Program are federal funding programs administered by DelDOT.

The Level of Traffic Stress Analysis Tool allows DelDOT to examine circumstances of individual roads affecting bike safety.

Ongoing efforts and goals:

Bikeway and trail maps will be updated statewide.

A key theme for this plan is the incorporation of performance measures.

Coordination of all agencies and groups to work toward the same vision. Will establish a steering committee.

Update design guidance for DelDOT engineers.

Non infrastructure goals: education, enforcement efforts, training for road designers, revised maintenance practices.

Online links to bicycle maps:

Delaware Bicycle Council

https://www.deldot.gov/information/community_programs_and_services/bike/biking_in_delaware/

Delaware Bicycle Route Information

<http://www.bikemap.com/de/>

New Castle County Bike Map

https://www.deldot.gov/information/community_programs_and_services/bike/biking_in_delaware/maps.shtml

REPORT OF COMMITTEES

None.

REPORT OF GENERAL MANAGER

George Haggerty, Acting General Manager, reported on the UDC Update project. He said "Uber" Focus Groups (combined business and civic representatives) have met to discuss the Guiding Principles draft ordinance and the Economic Empowerment District (EED) draft ordinance. An additional meeting to discuss the draft Neighborhood Preservation Overlay District (NPOD) ordinance will be scheduled. By the end of May the Department anticipates having the three ordinances ready to advance.

REPORT OF CHAIRPERSON

Mr. Killingsworth said the Board's post-holiday party is turning into a late Spring/early Summer get together if members are still interested.

OTHER BOARD MEMBER COMMENTS

Mr. McGlinchey would like to hear everyone's comments regarding their position on applications under review. When issues and concerns are shared prior to the vote everyone has the benefit of different viewpoints and the vote has more meaning.

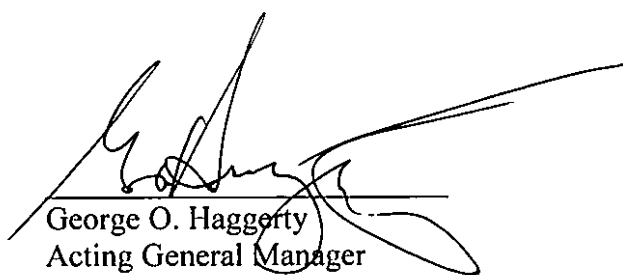
COMMENTS FROM THE PUBLIC


None.

ADJOURNMENT

The Board voted to adjourn the meeting at 10:43 a.m.

ATTEST:


George O. Haggerty
Acting General Manager
Department of Land Use

 *acten chair*
Richard E. Killingsworth
Chairman
Planning Board