

**AGENDA  
NEW CASTLE COUNTY  
PLANNING BOARD BUSINESS MEETING  
DEPARTMENT OF LAND USE - NEW CASTLE ROOM  
87 READS WAY, NEW CASTLE, DELAWARE  
November 17, 2015  
9:00A.M.**

**ROLL CALL**

MINUTES – September 15, 2015

**DEFERRALS**

**App. 2014-0468-S/Z.** South side of SR 7 (Limestone Road), north side of Old Limestone Road and west side Milltown Road. Exploratory Major Land Development Plan, Rezoning and PLUS Review for **Milltown Square**. The plan proposes to realign 3 tax parcels into five tax parcels with four of the parcels to be rezoned ST for single family detached homes and the other parcel to be rezoned to ON for the construction of a 42,000 square foot office building with associated parking on 8.56 acres. **Ord. 15-020 will rezone 5.26 acres from S (Suburban) to ON (Office Neighborhood) and will rezone 3.30 acres from S to ST (Suburban Transition) and will amend the 2012 Comprehensive Development Plan consistent therewith. CD 9. [Tentative business meeting date: Dec. 15, 2015.]**

**BUSINESS**

**App. 2015-0344-S/Z.** West side Shipley Road, north of Parkside Drive and south of Lane Swim Club. Exploratory Major Land Development Plan, Rezoning and PLUS Review for **Harborchase of Wilmington**. The plan proposes to rezone the property from S to ST to construct a 100,316 s.f., 120-bed assisted living facility with associated amenities on 8.42 acres. **Ord. 15-083 will rezone 8.42 acres from S (Suburban) to ST (Suburban Transition) and to amend the 2012 Comprehensive Plan consistent therewith. CD 2.**

**App. 2015-0505-D.** West side Paper Mill Road (SR 72), north side Corner Ketch Road. **To Amend a Declaration of Restrictions** dated April 28, 1998 by **Gladys W. LaFountain/Dempsey Corporation** in association with a rezoning from NC21 (Neighborhood Conservation) to CR (Commercial Regional) by Ordinance 97-173. The proposed amendment will expand Paragraph 1 of the declaration by adding drug store and pharmacy to the list of permitted uses on the premises. CR (Commercial Regional) zoning district. CD 3.

**App. 2015-0650-D.** Northeast side Silverside Road, north of Carr Road. **To Amend a Declaration of Restrictions** dated October 13, 1983 by Brandywine School district and FERM Associates and associated with a rezoning from R-1-C to O-1 by Ord. 83-003. The proposed amendment will increase the permitted building height from one (1) story to two (2) stories to allow construction of two new buildings as proposed in App. 2013-0849 for **Lot 1A – Silverside Carr Center**. ON (Office Neighborhood) zoning. CD 8.

**App. 2015-0674-D.** North side Limestone Road (SR 7), west of Kirkwood Highway (2), and south of Griffin Drive. **To amend a declaration of restrictions** dated December 2, 1992 by Anthony and Barbara Rocco in association with a rezoning from R-1-C to C-1 by Ord. 92-179; and, as later

amended on June 13, 2000. The proposed amendment will reduce the existing thirty (30) foot required landscape buffer along the rear property line between the automotive service building and the residential community of Sheridan Square to seven and one-half (7.5) feet to accommodate nineteen (19) new parking spaces. This application is associated with a land development plan for **Pike Creek Automotive** (2015-0381-S). CR (Commercial Regional) zoning. CD 9.

**OTHER BUSINESS**

**REPORT OF COMMITTEES**

**REPORT OF GENERAL MANAGER**

**REPORT OF CHAIRMAN**

**OTHER BOARD MEMBER COMMENTS**

**COMMENTS FROM THE PUBLIC**

**ADJOURNMENT**

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**\*\*\* 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 December 3, 2015. The tentative date of the business meeting at which the Department and Planning Board will present recommendations is December 15, 2015.

No pending applications.

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

**FINAL**  
**MINUTES - BUSINESS MEETING**  
**NEW CASTLE COUNTY PLANNING BOARD**  
**87 READS WAY, NEW CASTLE, DELAWARE**  
**November 17, 2015**

The Business Meeting of the Planning Board of New Castle County was held on Tuesday, November 17, 2015 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 Chairman Richard Killingsworth at 9:06 a.m.

The following Board members were present:

Sandra Anderson	Richard Killingsworth
Joseph Montgomery	Linda Porras-Papili (9:12)
David Sheppard (9:12)	Robert Snowden
Ruth Visvardis	

The following Board members were absent:

Leone Cahill	William McGlinchey
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Planning Board Attorney, Department of Law

Monica Horton

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

George Haggerty	Reed Macmillan
Matthew Rogers	Antoni Sekowski

## MINUTES

On motion by Mr. Montgomery, seconded Ms. Visvardis, the Board voted to approve the minutes of the September 15, 2015 business meeting as written. The motion passed by a vote of **5-0-4** (Yes: Anderson, Killingsworth, Montgomery, Snowden, Visvardis; No: none; Absent: Cahill, McGlinchey, Porras-Papili, Sheppard).

## DEFERRALS –

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and the other parcel to be rezoned to ON for the construction of a 42,000 square foot office building with associated parking on 8.56 acres. **Ord. 15-020 will rezone 5.26 acres from S (Suburban) to ON (Office Neighborhood) and will rezone 3.30 acres from S to ST (Suburban Transition)** and will amend the 2012 Comprehensive Development Plan consistent therewith. CD 9.

## **BUSINESS -**

**App. 2015-0344-S/Z.** West side Shipley Road, north of Parkside Drive and south of Lane Swim Club. Exploratory Major Land Development Plan, Rezoning and PLUS Review for **Harborage of Wilmington.** The plan proposes to rezone the property from S to ST to construct a 100,316 s.f., 120-bed assisted living facility with associated amenities on 8.42 acres. **Ord. 15-083 will rezone 8.42 acres from S (Suburban) to ST (Suburban Transition)** and to amend the 2012 Comprehensive Plan consistent therewith. CD 2.

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 **CONDITIONAL APPROVAL** of Ordinance 15-084 subject to the following:

- The architectural rendering submitted by the applicant will serve as the basis for the final design to be approved by the Department after additional meetings between the applicant and the community Working Group.

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

On a motion by Ms. Anderson, seconded by Ms. Visvardis, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 15-084 (App. 2015-0344-S/Z) subject to the same condition specified by the Department of Land Use. The motion was adopted by a vote of 7-0-2 (*YES: Anderson, Killingsworth, Montgomery, Porras-Papili, Sheppard, Snowden, Visvardis, NO; none; ABSENT: Cahill, McGlinchey*).

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

Mr. Montgomery asked if the Department has received any response from the Fire Marshall's office, especially regarding the lack of a fire lane at the rear of the property. Antoni Sekowski, Department of Land Use Planner, noted the applicant had indicated that primary and secondary access was designed according to the Fire Marshall's regulations, and that while the Department has not yet received formal approval from the Fire Marshall, such approval is required before the plan can be recorded. That code will take into account the type of facility proposed (residents with limited mobility, etc.)

Mr. Sheppard observed that parking needs at senior living and medical facilities tend to outstrip the use over time. While he understood that this applicant is volunteering to provide twice the minimum parking requirement, he asked if the regulations in the UDC could be adjusted to

address this parking issue. Mr. Haggerty, Department of Land Use Acting General Manager, said this is the appropriate time to look into this issue since the Department is now in the process of updating the UDC.

**App. 2015-0505-D.** West side Paper Mill Road (SR 72), north side Corner Ketch Road. **To Amend a Declaration of Restrictions** dated April 28, 1998 by **Gladys W. LaFountain/Dempsey Corporation** in association with a rezoning from NC21 (Neighborhood Conservation) to CR (Commercial Regional) by Ordinance 97-173. The proposed amendment will expand Paragraph 1 of the declaration by adding drug store and pharmacy to the list of permitted uses on the premises. CR (Commercial Regional) zoning district. CD 3.

The Department considered the standards in Section 40.31.130.D of the *New Castle County Code* and other public comments. Based on this analysis the Department is of the opinion that the proposed changes are not in the best interest of the parties to the restrictions and that the proposed amendment to the existing deed restriction is not consistent with the planning goals for the County. As a result, the Department recommended **DENIAL** of the deed restriction change as proposed.

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

A motion to approve the Declaration of Restrictions change application was made by Mr. Killingsworth and seconded by Ms. Visvardis. The motion was defeated by a vote of **3-4-2** (Yes: Killingsworth, Visvardis, Montgomery; No: Anderson, Porras-Papili, Sheppard, Snowden; Absent: Cahill, McGlinchey). As a result, the Boards' recommendation is **DENIAL**.

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

Members of the Planning Board discussed the classification of a modern pharmacy as a pharmacy with regards to the UDC, the NAICS, State business licensing as well as the percentage of the store allocated for the sales of pharmaceuticals. Ms. Anderson voiced concern over whether a CVS or the like would be more appropriately classified as a convenience store, and if the proposed amendments would be adequate. Matthew Rogers, Planner for the Department of Land Use stated the proposed amendment includes pharmacies like CVS, Walgreens and Rite Aid.

Members of the Planning Board also discussed the comments from the public as well as the impact that amending or maintaining the current deed restrictions would have on the community. Mr. Killingsworth asked the Department to further explain the rationale behind their recommendation and provide specifics with regards to the number of positive and negative responses from the public including whether the negative responses were the product of a form letter, to which Mr. Rogers responded with the exception of the petitions from Estates of Corner Ketch, correspondence was submitted by individuals. Mr. Killingsworth also asked the Department if an analysis as to the distance for each response was performed. Mr. Rogers stated that the Department had not plotted the address of the individual respondents in relation to the site. Ms. Visvardis and Mr. Killingsworth stated that having spoken with abutting property owners that the majority of them were not opposed to the proposed amendments.

Mr. Sheppard voiced concern that the community had agreed on the deed restrictions in part due to the innocuous nature of the existing and at the time proposed auto repair facility, being hardly noticeable from the road and having little impact on traffic in the area and that a pharmacy/convenience store would have more obtrusive signage and a marked increase on traffic in the area. He also stated that if the majority of the community, not only the properties abutting the site, but individuals who commute through the area and utilize the abutting park do not see a benefit to amending the deed restrictions to permit another pharmacy in the area, that they should honor their input.

Mr. Killingsworth stated that his concern is that not amending the deed restriction could put both the business owner and community in jeopardy of not seizing the opportunity that is before them. He also stated that it is important to have that foresight to see what could be there, how it accommodates the comprehensive plan, to have the vision to see what could happen to that property to make that community better and not to anticipate whether it could or should be sold.

Ms. Porras-Papili voiced her concern that this was an agreement with the public and that any change should have a support from the majority of the community.

The final area of discussion for the Planning Board was with respect to the narrow number of permitted uses on site resulting from the existing deed restrictions. Mr. Snowden and Mr. Sheppard stated that the deed restrictions were clearly set up to not only permit the expansion and continued viability of the existing use, but to specifically prevent a convenience store from locating on the site, and that a large portion of such a business is the convenience store portion. The also both felt that the applicant should attempt to sell the property to a new owner that would abide by the existing restrictions. Mr. Killingsworth voiced concerns as to the narrow uses currently permitted in the deed restrictions and how this could impact the future use of the site.

Ms. Anderson voiced further frustration that the proposed amendment to the existing deed restrictions did little to remedy this issue and that it would only result in the future owners seeking another amendment to permit additional uses if the pharmacy is no longer viable. Planning Board members also conversed as to whether it was possible to further broaden the permissible uses through a condition as opposed to having an additional public hearing, to which the Planning Board's legal counsel, stated that another hearing would be needed.

**App. 2015-0650-D.** Northeast side Silverside Road, north of Carr Road. **To Amend a Declaration of Restrictions** dated October 13, 1983 by Brandywine School district and FERM Associates and associated with a rezoning from R-1-C to O-1 by Ord. 83-003. The proposed amendment will increase the permitted building height from one (1) story to two (2) stories to allow construction of two new buildings as proposed in App. 2013-0849 for **Lot 1A – Silverside Carr Center**. ON (Office Neighborhood) zoning. CD 8.

The Department considered the standards in Section 40.31.130.D of the *New Castle County Code* and other public comments. Based on this analysis the Department is of the opinion that the proposed changes are in the best interest of the parties to the restrictions and that the proposed amendment to the existing deed restriction is consistent with the planning goals for the County.

As a result, the Department recommended **CONDITIONAL APPROVAL** of the deed restriction change subject to the following conditions:

1. The plan includes the required 0.4 opacity, with the associated minimum twenty (20) foot buffer yard.
2. Any permitted signage on the proposed structures will be located on the sides of the building facing Silverside Road and not extend past the peak of the structures' roofs.
3. That the proposed structures be limited to thirty-five (35) feet in height as permitted by the UDC.
4. That structures generally conform to the elevations provided at the November 3, 2015 Planning Board Public Hearing. Final approval will be subject to Department of Land Use and will be consistent with the provisions of the Unified Development Code at the time of permitting.

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

On a motion by Mr. Sheppard, seconded by Mr. Montgomery, the Planning Board voted to recommend **APPROVAL** of the Declaration of Restrictions change application. The motion was adopted by a vote of **6-1-2** (Yes: Anderson, Killingsworth, Porras-Papili, Sheppard, Visvardis, Montgomery; No: Snowden; Absent: Cahill, McGlinchey).

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

Ms. Porras-Papili voiced concern as to the thirty (30) day notice being provided to the community as consistent with the deed restrictions. George Haggerty, Acting General Manager of the Department of Land Use, explained that the deed restriction states that the community groups shall be notified thirty (30) days prior to being heard by County Council. Members of the Planning Board and the Department further discussed notification protocol and where the public could find information regarding any give project. Mr. Sheppard stated that based on his experience, applicants are well served by engaging the community prior to going before the Planning Board and County Council. He also stated that what the applicant is proposing with regards to landscaping would be adequate to address the visual impact of the proposed structures. Mr. Snowden spoke to how limiting the height to one (1) story created an effective the transition from the residential property to the office structures.

**App. 2015-0674-D.** North side Limestone Road (SR 7), west of Kirkwood Highway (2), and south of Griffin Drive. **To amend a declaration of restrictions** dated December 2, 1992 by Anthony and Barbara Rocco in association with a rezoning from R-1-C to C-1 by Ord, 92-179; and, as later amended on June 13, 2000. The proposed amendment will reduce the existing thirty (30) foot required landscape buffer along the rear property line between the automotive service building and the residential community of Sheridan Square to seven and one-half (7.5) feet to accommodate nineteen (19) new parking spaces. This application is associated with a land development plan for **Pike Creek Automotive** (2015-0381-S). CR (Commercial Regional) zoning. CD 9.

The Department considered the standards in Section 40.31.130.D of the *New Castle County Code* and other public comments. Based on this analysis the Department is of the opinion that the proposed changes are in the best interest of the parties to the restrictions and that the proposed amendment to the existing deed restriction is consistent with the planning goals for the County. As a result, the Department recommended **CONDITIONAL APPROVAL** of the deed restriction change subject to the following conditions:

1. The plan provides angled parking as depicted in the electronic submission and attached to this recommendation and that the accompanying plan provides the required 0.5 opacity based on plant density and the required solid fence.
2. The applicant is encouraged to seek abutting property owners' agreement regarding the material and color of the solid fence and shall work with the Department of Land Use for final approval.

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

On a motion by Mr. Snowden, seconded by Mr. Montgomery, the Planning Board voted to recommend **APPROVAL** of the Declaration of Restrictions change application. The motion was adopted by a vote of **7-0-2** (Yes: Anderson, Killingsworth, Porras-Papili, Sheppard, Visvardis, Montgomery, Snowden; No: none; Absent: Cahill, McGlinchey).

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

Mr. Sheppard asked is the concept plan had been made as an official submission yet. Antoni Sekowski, Planning Manager for the Department of Land Use replied that no official plan submission had been made, however the concept plan was submitted while the record was open as an alternative design that the applicant would be willing to move forward with if necessary. Mr. Snowden and Ms. Anderson asked the Department to explain the changes to the buffer yard, if the plan proposing angled parking proceeded. Matthew Rogers, Planner for the Department of Land Use, explained that regarding the buffer yard, it would still need to meet the required opacity based on plant density, still require a variance from the Board of Adjustment for buffer width, but would increase in width. Ms. Visvardis stated that the increased buffer yard would help with drainage issues on site. Mr. Montgomery voiced concern to the construction of the retaining wall, with regard to footers. Mr. Sekowski explained that the construction of the wall is governed by the building code.

## **OTHER BUSINESS**

George Haggerty asked the Board for feedback on the presentations that the Department makes at the public hearings and business meetings.

Mr. Sheppard said that as long as Department staff is always present to answer questions, he sees the Department's presentations at the hearings as a duplication of efforts – the applicants should be able to speak for themselves. He said the presentations at the business meetings are a necessity because there is a lot of detail that the Department helps them to get through.



Ms. Anderson was in favor of continuing the Department presentations at the hearings because she said it gives the public a chance to hear more from the Department. She said the Department provides a concise description of the applications, where the applicants are not always as clear. Regarding the business meeting presentations, she said she values the visual presentation as well as the reading of the reports which are important to get on the record.

Ms. Papili likes the presentations the way they are.

Mr. Montgomery suggested the applicants should use pointers when making their presentations and that their visuals should be clearer. Sometimes the exhibits are too dark.

Ms. Visvardis said the Department's presentations at the hearings are nice but the ones at the business meetings are more important, especially since changes to applications often occur after the hearings and the Planning Board really needs to learn what those changes are.

Mr. Snowden said the presentations at the business meetings are a necessity and the addition of graphic exhibits, such as aerial photos and Google maps, have improved the presentations. He said the need for a Department presentation at the public hearings really depends on the type of application. He found the presentations especially helpful for Deed Restriction Change applications due to the level of detail typically examined in those applications. For rezoning applications and land development plans he thought the Department presentations might not be not be as critical.

Ms. Anderson said she appreciates receiving the recommendations reports in advance of the business meetings.

Ms. Visvardis said the presentations that visually show how a property has changed over time is very helpful in understanding the history of the land and is better than the written descriptions alone.

Mr. Killingsworth expressed appreciation for the amount of time the Department puts into preparing slides and exhibits for the presentations, especially when staff time is limited.

## **REPORT OF COMMITTEES**

None.

## **REPORT OF GENERAL MANAGER**

UDC Update – Mr. Haggerty anticipated the presentation of three ordinances to amend the UDC at the 12/1/2015 Planning Board hearing: Guiding Principles, Neighborhood Preservation Overlay Districts, and Economic Development Districts. He emphasized the effort the Department has put into engaging the public in this process and the value of the comments received as the ordinances were revised. After engaging in an aggressive schedule to move these three ordinances forward, he indicated the County Executive, County Council and the

Department have agreed the next round of work will advance at a slower pace and that a revised schedule of work will released soon.

Department Staffing – Mr. Haggerty reported that staffing level has not changed recently. Currently an 18% vacancy rate. The most recent position filled within the past month was for a professional engineer. Interviews for a Transportation Planner were unsuccessful, so that position will be re-advertised. There may be promotional opportunities for internal staff. Mr. Haggerty still serves as Acting General Manager.

Samuel Guy has been appointed as the Acting CAO after the departure of David Grimaldi.

### REPORT OF CHAIRPERSON

Mr. Killingsworth thanked Board members for their continued participation in the UDC update process. He also expressed appreciation for the professional level engagement and sensitive analysis of issues from all Board members during some very challenging applications at today's meeting.

### OTHER BOARD MEMBER COMMENTS

None.

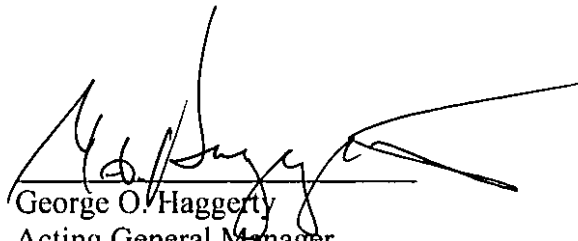
### COMMENTS FROM THE PUBLIC

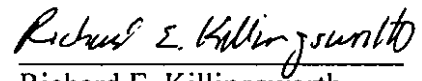
None.

### ADJOURNMENT

The Board voted to adjourn the meeting at 10: 57 a.m.

ATTEST:

  
George O. Haggerty  
Acting General Manager  
Department of Land Use

  
Richard E. Killingsworth  
Chairman  
Planning Board