

**New Castle City Planning Commission Meeting took place on March 26, 2012 at 6:30 p.m. in the City of New Castle's Town Hall.**

Members Present: David Birrd, Chair  
Joe DiAngelo  
Dorsey Fiske  
Jonathan Justice  
Susan Marinelli  
Florence Smith

Members Absent: William Simpson, Co-Chair  
Vera Worthy

Also Present: Marian Hull, URS, City Planner  
Jeff Bergstrom, City Building Official

The meeting was called to order by Mr. Bird at 6:30 p.m. Roll call was taken and a quorum was declared.

Approval of Minutes – A motion was made and seconded to approve the February minutes as distributed. The motion was approved.

Update on Planning Studies – Mr. Justice reported there are no new developments from the parking study sub-committee. The committee has circulated a draft parking study within the group and it has been sent back to Heather Dunigan of WILMAPCO. The next meeting will be properly noticed in advance of the meeting.

Mr. Bird reported that the neighborhood study is in its infancy. A 1993 survey done by the Delaware Public Administration Institute, College of Urban Affairs and Public Policy at the University of Delaware (UD) has been circulated. He urged fellow Commissioners to review the study, which is available on the UD library website and on the City website.

At the last City Council meeting a resolution was passed to proceed with State bond funds for funding further waterfront studies. None of these State funds will require local funds.

Minor Subdivision for 200-202 West 9<sup>th</sup> Street (21-014-00.224) into 6 lots and to construct 6 townhouse units – Mr. DiAngelo asked if the City Engineer had submitted a letter concerning any concerns he has with this application. Ms. Hull said such a letter on issues of substance had been sent but no responses had been received by this date. Mr. Sean Tucker, counsel for the applicant, received a copy of the letter tonight upon request.

Mr. Tucker presented a review of their application and how they believe they comply with the ordinance. He reminded Commissioners that they are flexible with this application. Also present are Messrs. Mark Ziegler and Trevor Fuhr of McBride & Ziegler, and one of the property owners, Mike Cirillo.

Mr. Tucker started by way of a background to the application. He referenced Ordinance 483 that inserted into the City zoning code a redevelopment ordinance modeled after the last comprehensive plan. A provision in the plan suggests the City encourage redevelopment. The plan was adopted in 2011 and this project is the first being proposed.

Using drawings Mr. Tucker said they plan to incorporate brick used in the neighborhood, break up the units so they appear to be three (3) different homes rather than six (6) straight boxed townhomes, windows on the third floor are smaller than those on the second floor in keeping with the character of older homes in the City, and they have tried to emulate other older brick homes in the area. They modified keystones (above the windows) to avoid monotony and the same for architectural details above the doors.

Mr. Tucker talked about qualifying factors in the ordinance, noting that all do not need to be present. Examples include physical condition that has rendered the site a public nuisance in accordance with City building codes; physical condition that has rendered the site an attractive nuisance to children including abandoned wells and shaft (he noted unsafe structures and excavations on the site when their client purchased it); any structure that due to dilapidation, sanitation, vermin, lack of facilities or safety has been designated by the City as unfit; presence of one or more structures from which utilities (plumbing, heating, sewage) have been disconnected or destroyed; vacant or unimproved tract in a predominately built-up area which by reason of neglect or lack of maintenance has become a place for trash/debris accumulation. He reiterated that their client bought the property in this condition with the idea of fixing it up in accordance with the Comprehensive Plan.

Mr. Tucker offered to answer questions and address items of concern in the City Engineer's letter.

Mr. Ziegler, Civil Engineer, showed a photo showing the property prior to demolition of the structures and said they had a "0" rear yard setback and a "0" side yard setback. Under the proposed plan they will improve all non-conformities. They propose a 14' rear setback; from West 9<sup>th</sup> Street they propose a setback of 18'. This site has no parking now and they are proposing three (3) stalls, including the garage.

After reviewing the application and how it applies to the zoning ordinance, particularly the redevelopment ordinance, Ms. Hull commented that the plan needs to officially state which of the criterion is being considered. Under residential redevelopment provisions the property can have up to two (2) additional units beyond what was legally utilized the last ten (10) years; therefore, for six (6) units the applicant needs to demonstrate there have been four (4) units on the site. According to Mr. Ziegler, Architect Mark Hitchcock did establish there were four (4) or five (5) apartments, plus commercial space at the site prior to demolition. Ms. Hull suggested it would be good to note setbacks that existed versus what is being proposed. Design drawings should also be a part of the application. Her final comment concerned the driveway. The zoning ordinance says that a driveway cannot be any wider than 40% of the width of the building, so each structure could have a driveway that is 20% of its total frontage. The current plan shows one long driveway. Mr. Ziegler said they could remove one parking stall making each driveway about 7.8' wide.

Mr. Bergstrom informed the ordinance says the driveway always has to be 8'. His interpretation is that some lots can't make the 8' and he is unsure if a variance applies. Mr. Tucker wanted to confirm that if they eliminate one of the parking spots and count the garage as one and count the parking spot behind that on the macadam, they would be

compliant without seeking a variance. Mr. Bergstrom confirmed that is his interpretation. According to Mr. Tucker they are willing to remove one of the parking spots to satisfy the 40% requirement, but they may want to seek a variance later. If the Planning Commission prefers they not seek a variance then the applicant would consider the request.

Ms. Hull provided the driveway language for property with a frontage of over 16' (applies to this property) that says "shall have only one driveway at a maximum width of 8' or not more than 40% of the width of the property". Mr. Tucker affirmed they would be willing to move forward by eliminating a parking spot and retain the flexibility of seeking a variance later.

Concerning the number of units that operated at this site the past ten (10) years, a copy of that record was submitted to Mr. Bergstrom. Mr. Hitchcock did the research for the report and they would not object to providing a copy of the report as a condition of the Commission's recommendation.

Mr. Justice asked Mr. Bergstrom if the four (4) residential units were legal with certificates of occupancy. Mr. Bergstrom confirmed they were legal. Mr. Justice compared the plan with Ms. Hull's letter and questioned parking spaces extending 6-7' in the right of way and if an arrangement with the City will be requested. Mr. Tucker explained that he does not consider this to be a problem because before it was proposed for redevelopment the only parking available was in the public right of way. Their plan will limit the parking overlap with the macadam by getting grandfathered in for bulk standards. Parking is a bulk standard. This standard will give flexibility when trying to redevelop sites such as this. Mr. Justice is concerned because this is the first application being considered under the redevelopment ordinance.

Mr. Bergstrom stated the Mayor and City Council will need to approve this plan. A right of way that is not used is the responsibility of, and available for use by the property owner until such time as the public needs to use it.

Sidewalk width in the subdivision ordinance is 5'5". They are not sure how many bedrooms the units will have at this point and they anticipate two (2) vehicles per unit. Landscaping was also discussed.

*(Lengthy discussion followed about how the units will fit into the neighborhood [Ninth Street and Young Street]. )*

Mr. DiAngelo questioned the lots being approximately 19' wide and whether they should be 20' wide per the former Code. Mr. Tucker said because the ordinance is written to allow for an addition of two (2) units there is flexibility to go below 20' per the redevelopment ordinance to encourage people to redevelop. The ordinance allows two (2) additional units to be added and you are permitted to receive a reduction in bulk standards because you are adding two (2) units. Mr. DiAngelo then questioned how it was determined there were four (4) units at this site previously. Mr. Tucker said the architect (Mr. Hitchcock) researched the site and Mr. Bergstrom was involved at the applicant's request. Tax records were checked prior to Mr. Hitchcock's involvement to determine what units were on the tax rolls and when. Mr. DiAngelo wanted to know when the site was looked at and Mr. Tucker could not provide

the answer. Mr. DiAngelo said the site has been vacant for a period of time. Ms. Marinelli has lived across the street for eight (8) years and it's been vacant all that time and as long as ten (10) years. She also questioned there being five (5) units at the site. Her concern is that Ninth Street is already overtaxed and the project faces Ninth Street, which is not a big street. It is her opinion that if the townhomes faced another direction that would be better noting that Young Street is a wider street. Mr. Tucker asked Mr. Ziegler if they could "turn" a unit and not lose it. Mr. Ziegler responded that they could not and provided an explanation. He believes that Ninth Street is a low-traffic road. Mr. DiAngelo believes they are proposing to put too many units in a small area and asked if the developer would be willing to build four (4) units. Mr. Tucker responded 'no' and explained the purpose of the redevelopment ordinance is to encourage an incentive to make it worthwhile to the person who is willing to take the risk.

The units do not need to be occupied in the last ten (10) years, just legally utilized during that time. Mr. DiAngelo would like the City Solicitor to be consulted. Mr. Tucker welcomes his input but requested that a recommendation be given tonight. *(More discussion followed.)*

Ms. Hull advised what is needed is a recommendation on whether or not the Planning Commission believes this application meets the requirements of the zoning ordinance, including the redevelopment ordinance, which allows up to six (6) units and has some general design standards. We can talk about what design standards are important to this body. Her opinion is that if they answer the questions/concerns in the City Engineer's letter and her report then it probably does meet the requirements.

Mr. Tucker said they have no objection to the Commission's recommendation with the caveat of eliminating one (1) parking stall or to seek a variance.

Ms. Fiske spoke to the applicant's request to be permitted to seek a variance for the second parking space. The side view will be more attractive with landscaping on one side and would remove problems with it as a side view. Mr. Tucker suggested they would not seek a variance for that spot. She thinks homeowners would like to have landscaping at the entrance to their property. Mr. Cirillo was receptive to the suggestion and Mr. Tucker said they would commit to this. Ms. Marinelli inquired if the green space behind the townhomes is open space. She was informed it is an open lawn area and would be the responsibility of each homeowner.

Ms. Hull informed the application addresses what is in the redevelopment ordinance. The Commission could recommend to City Council with the condition that the application address all the issues raised in the 3/19/12 letter from her and the 3/12/12 letter from the City Engineer, and that parking be redesigned to meet the requirements of 230- 28(e)2 and 230-1. There would be a public hearing.

Mr. Justice moved to recommend this application to City Council contingent on all of the concerns in the City Planner's letter and City Engineer's letter being satisfactorily addressed and that parking being reduced from three ( 3) parking spots to two (2) parking spots. Ms. Fiske seconded the motion.

Roll call vote and comments:

Ms. Fiske -- voted in favor because she believes it is in harmony with the new ordinance for redevelopment and is contingent on satisfactory responses to concerns of the City Planner and City Engineer.

Ms. Smith – voted in favor pending all concerns are met.

Mr. DiAngelo – voted against the plan citing there are too many homes in a small area resulting in traffic and parking problems. He has always been in favor of improving the City, but he likes to work with the property owner and developer for the good of the City. He does not believe the neighborhood is in favor of this plan. Four (4) townhomes is reasonable but six (6) is too many.

Mr. Justice – voted in favor stating he feels the scale and density of the plan are consistent with the surroundings and what was built across the street. The orientation of the units is standard. His only concerns are what have been raised in the City Planner and City Engineer's correspondence.

Ms. Marinelli – voted in favor citing it will keep some parking off 9<sup>th</sup> Street but agrees that it is too many townhomes in a small area. Sidewalks would benefit; getting vehicles off 9<sup>th</sup> Street would be a benefit. She is concerned with the green area behind the townhomes not giving any aesthetic value to the neighborhood. She also expressed concern that the public will have an opportunity for input at a later time.

Mr. Bird – voted in favor explaining that the redevelopment ordinance gives incentive to property owners to purchase and redevelop property in the City, he is sensitive to the residents of the neighborhood, and the public will have the opportunity to voice their opinion at the City Council meeting. He thinks the property owner should be given the opportunity to present their proposal to City Council. He has concerns about increased traffic, orientation of the units facing Ninth Street leaving the side of the building on Young Street while realizing not much can be done about this, and this proposal may provide an incentive for adjacent property owners to make improvements to their property.

The motion was approved by a vote of 5-1.

Review proposed amendments to Downtown Gateway (DG) district that would permit structures currently zoning Industrial (I) and Service Commercial (SC) to continue to be used per the prior zoning classification for a ten-year period following the effective date of the change to DG zoning – Ms. Hull provided a background to Commissioners. The City Solicitor has drafted language allowing people to use their existing structures under their existing footprints (zoned DG or Industrial (I) and Service Commercial) for a period of up to ten (10) years as a transition period. If the DG was adopted in its present form all these properties would become non-conforming uses and regulated under our non-conforming use regulations. They could not change to another industrial use and if the building is vacant for a year or more it would need to be used as the DG zoning. This language makes outdoor uses under the Industrial District conforming uses within that ten (10) year period. Screening language was written into the non-conforming language and is not written into the DG.

Current property owners would be given flexibility to convert their use to DG but could continue their existing use even if their property were vacant for a year or more. The

difference is that only Industrial and Service Commercial uses can be applied to existing buildings; you cannot build a new building or add on to an existing structure.

The DG has not been moving forward and this is an opportunity to move forward and accommodate property owners. Mr. Bird is concerned about screening of outdoor storage uses and with this proposal it would remain a permitted use for another ten (10) years.

Mr. Bird explained that part of the planning process with the Comprehensive Plan was to identify proposed land uses. Gateway zoning was an effort to implement the Comprehensive Plan and identify areas of the City that are currently considered Industrial and Service Commercial. Under the Comprehensive Plan we are looking at mixed use, commercial and residential, and the DG ordinance plans to implement the Comprehensive Plan. We recognize there are property owners who wish to continue to use their property because of the current market and can continue to do this, but with this change they can continue but if the property becomes vacant, they have ten (10) years to use it either under the DG or as Industrial and Service Commercial. The property cannot be expanded.

Mr. John DiMondi addressed Commissioners. He defended his right as a property owner to operate his business and utilize his property to do so. Housing is not an option for him because of the current economy and his property is half developed with storage units. Under current zoning he could expand the number of storage units.

Mr. DiMondi has the option to seek a variance but argued why that would be necessary. He says he is not a nuisance to the City and his family has been in business for 100 years. A “grandfather” clause is not part of the discussion.

Mr. Bird asked if the Planning Commission thinks the concept of this change to Gateway zoning is a good idea and should be recommended to City Council. A public hearing would be given the permit the public the opportunity to speak on the matter. Mr. DiAngelo suggested looking at this more thoroughly. He prefers leaving Industrial properties alone. Ms. Hull said the idea is because those properties are too small to be used for today’s industrial uses. Mr. DiMondi maintains he should be permitted to keep his current zoning until he wants to change and then follow the proper process to change zoning.

*(Lengthy debate followed.)*

Ms. Hull advised that the ordinance (presented two years ago) has not gone forward because of property owners’ concerns about their businesses being phased out and there are commercial structures on their site that would be costly to remove. This body can also consider language that goes beyond this and examples were cited.

Mr. Bird suggested if there is a feasible way to accommodate the existing property owners that can be fitted into the DG that would be best for everyone. Perhaps consider what uses are there and see what is compatible with our vision. He suggested tabling the matter.

Concerning the redevelopment provision, another question Mr. DiMondi touched on was if property previously zoned residential could have more units added. *(Mr. DiMondi had a*

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*portion of his property sub-divided for seven (7) residential units, but did not develop because of the slowed economy.)* According to Ms. Hull that is a different issue since nothing was built.

Mr. DiMondi contends the redevelopment provision changes building codes. Ms. Hull said he was approved under sub-division (lots and plans) and this is not an issue. Mr. Bergstrom said sub-divisions do not expire. *(Further discussion followed.)* Mr. DiMondi would like the residential portion of his property (7 lots) to be grandfathered. He added that non-conforming properties cannot get commercial mortgages. This creates a problem for potential buyers. *(Discussion between the City zoning code and building code was raised.)*

Going forward Mr. Bird asked Ms. Hull to explore uses currently in existence and if any of those uses could be incorporated into the DG (ex., storage units).

Budget Status – No report.

Commissioners' Comments – None.

Comments from the Public – None.

Next Meeting – There being no further business, a motion was made to adjourn the meeting. The motion was seconded and approved. The meeting adjourned at 8:50 p.m.

Respectfully submitted,

Debbie Turner  
Stenographer