

CITY OF DOVER PLANNING COMMISSION
APRIL 17, 2023

The Meeting of the City of Dover Planning Commission was held on Monday, April 17, 2023 at 7:00 PM as an In-Person Meeting and also using the phone/videoconferencing system WebEx. The Meeting Session was conducted with Chair Mrs. Maucher presiding. Members present were Mr. Cooper, Mr. Roach (virtual), Mrs. Denney, Mr. Hartman, Mrs. Welsh (virtual), Mrs. Malone (virtual), and Mrs. Maucher. Mr. Baldwin and Dr. Jones were absent.

Staff members present were Mrs. Mary Ellen Gray, Mrs. Dawn Melson-Williams, Mr. Julian Swierczek, Ms. Katherine Oehmke, Mr. Jason Lyon (virtual) and Mrs. Kristen Mullaney. Also present was the City Solicitor, Mr. Nick Rodriguez. Also present were Mr. Mike Riemann, Mr. Dominic Balascio, Mr. LB Steele, Mr. Jim Eriksen, and Mr. Dave Heatwole. Speaking from the public were Mr. Tyler Friedman, Mr. John Sergovic, Ms. Shirley Donovan and Ms. Michelle Williams.

APPROVAL OF AGENDA

Mrs. Denney moved to approve the Agenda as submitted, seconded by Mrs. Welsh and the motion was unanimously carried 7-0 with Mr. Baldwin and Dr. Jones absent.

APPROVAL OF MEETING MINUTES OF MARCH 20, 2023

Mrs. Welsh moved to approve the Planning Commission Meeting Minutes of March 20, 2023, seconded by Mrs. Malone and the motion was unanimously carried 7-0 with Mr. Baldwin and Dr. Jones absent.

COMMUNICATIONS & REPORTS

The next Planning Commission regular meeting is scheduled for Monday, May 15, 2023, at 7:00PM in the City Hall Council Chambers.

Mrs. Gray provided an update on the regular City Council and various Committee meetings held on March 27 & 28, 2023 and April 10 & 11, 2023.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Melson-Williams presented the audience information on policies and procedures for the In-Person Meeting and Virtual Meeting using the WebEx system.

OLD BUSINESS

Requests for Extensions of Planning Commission Approval:

S-20-10 Bayhealth Staff Parking Lot Expansion at Scull Property (Revision of March 25, 2021) - Request for One Year Extension of Planning Commission Approval granted on April 19, 2021 for a proposed Site Development Master Plan Application to permit construction of 453 new parking spaces over the course of three phases for the Bayhealth Medical Center Campus. This expands the existing parking from 227 spaces to a total of 680 parking spaces on the Scull Property. Phase 1 proposes 251 new parking spaces; Phase 2 proposes 72 new parking spaces;

and Phase 3 proposes an additional 91 parking spaces and a connection to S. State Street at the South Street intersection. The Plan shows the demolition of existing buildings in each phase for a total of seven (7) buildings demolished including the Scull Mansion to accommodate the increased volume of parking. The Revision offers a proposal related to the Scull Mansion. The properties measure 11.43 acres +/- and are located on the east side of S. State Street in the block between South Street and Scull Terrace. The properties are zoned IO (Institutional and Office Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). The owners of record are Bayhealth Medical Center, Inc. and KGH Development Corp. The parcels are proposed to be consolidated before the project begins. Property Addresses: 605 S. State Street, 625 S. State Street, 100 Scull Terrace, and 150 Scull Terrace. Tax Parcel Numbers: ED-05-077.13-01-49.00-000 and ED-05-077.13-01-51.00-000. Council District 2.

Representatives: Mr. Mike Riemann, Becker Morgan Group

Mrs. Melson-Williams stated this is a Request for Extension. This Application S-20-10, the Site Development Master Plan Application associated with a proposal for the Bayhealth Staff Parking Lot Expansion at the Scull Property located in the 600 block of South State Street was initially reviewed by the Planning Commission in April 2021 with a submission of a Revised Plan that was received in March 2021. Initially, the applicant had filed back in the fall of 2020; however, chose to pull back their Application for a time and then resubmitted in March for that April meeting in 2021. The Planning Commission did grant conditional approval of the Master Plan. With that, they have two years to submit what would be a Phase I of their project for Administrative Site Plan Review, get that approved, and commence construction activities. At this point, they are coming up on that two year time frame. The applicant has made that initial Administrative Site Plan submission. They have received comments from the Planning Office as recently as late January of this year and have been working with the other agencies including the Department of Public Works Water/Wastewater, the City's Fire Marshal's Office where they have achieved approval, DelDOT and the Kent Conservation District. All of them have been working on review of their Master Plan. As noted in their letter, they are dealing with some property ownership situations where the two properties involved currently are not held in the same legal name; so, they have some process there. But they have been making some process towards getting a Final Plan Approval. With their letter from April 6, 2023, they are making a request for a one-year extension of their Site Development Master Plan approval.

Mr. Riemann stated that he thinks Mrs. Melson-Williams hit most of the highlights. He does want to say that they are at the Final Plan stage with the agencies. The Kent Conservation District has requested final signed and sealed drawings as has DelDOT. Those have been filed and they are just waiting for those approvals to come back. Then once they have those, they would file the final request with the City. They are really a matter of a few weeks from having this wrapped up and they just need a little more time to get it over the finish line.

Mrs. Malone moved to approve S-20-10 Bayhealth Staff Parking Lot Expansion at Scull Property (Revision of March 25, 2021) for a one-year extension, seconded by Mrs. Welsh and the motion was carried 7-0 by roll call vote with Mr. Baldwin and Dr. Jones absent. Mrs. Malone voting yes; based on the Staff recommendations and comments. Mr. Cooper voting yes; based on Staff recommendations. Mr. Roach voting yes. Mrs. Denney voting yes; she thinks it's reasonable to

grant this extension giving consideration to the fact that they are still waiting on so much here as far as reports are concerned. Mr. Hartman voting yes; they are in dire need of additional parking. Mrs. Welsh voting yes; it is definitely necessary with the expansion and based on DAC Comments. Mrs. Maucher voting yes; based on the progress that the applicant has made to date and the end is near.

Pending Development Application:

S-23-06 College Road Apartments at Railroad Avenue/Grove Street – Continued Review of Site Development Plan for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000. Council District 4. *Waiver Requests: Reduction of Parking Requirement. Consideration of Active Recreation Area Plan. The Planning Commission conducted a Public Hearing and began review of this application at their March 20, 2023 Meeting and deferred action seeking additional information.*

Representatives: Mr. Dominic Balascio, representing ownership entity Patel College Properties, LLC and Patel Excers College Road, LLC

Mrs. Maucher stated that this Application was tabled at the last meeting to obtain a legal opinion from our City Solicitor regarding the dedication of right-of-way of Raymond Street for public use and Mr. Rodriguez responded to that question in a letter dated April 14, 2023 to the Planning Commission titled “Site Plan Approval College Road Apartments.” This letter indicates that the portion of the Raymond Street at issue has been affectively annexed into the City of Dover as a public right-of-way. In the interim, they have also received some correspondence dated April 13, 2023 from Mr. Sergovic representing Dr. Mishoe. First, there will need to be a motion made to raise the Application from the table.

Mrs. Malone moved to raise Application S-23-06 College Road Apartments at Railroad Avenue/Grove Street from the table, seconded by Mrs. Welsh.

Mrs. Maucher noted that the public hearing was held at our last meeting; so, they will not be taking any public comment this evening.

The motion was carried 6-1 by voice vote with Mr. Hartman opposed and Mr. Baldwin and Dr. Jones absent.

Mrs. Melson-Williams stated that S-23-06 College Road Apartments at Railroad Avenue/Grove

It is an Application for development of the property that is located to the north of Raymond Street and east of Railroad Avenue. The proposal for development of this RG-5 (General Residence Zone for Mid-Rise Apartments) for a proposal of two six-story mid-rise apartment buildings consisting of a total of 385 units in a range of studio, one-bedroom and two-bedroom units. There are also some freestanding smaller garage buildings. For the buildings themselves, the first floor is given over to parking and the remaining floors are the residential units. The property itself also will include Active Recreation Area components with the project and other expanses of parking areas. They ensured that you have the various plans and the DAC Report that is dated March 8, 2023. There is also a separate report related to the Active Recreation Area Plan. And included with this Application, there is one Waiver Request and that was a Request for a reduction of parking requirements. At the last meeting, there was some discussion of that item and she is not sure if the applicant has formerly withdrawn that Request. The plan image that is on the screen is of the overall site. The development is concentrated on the western portion of the property and as the eastern portion is an area impacted by flood plain and wetlands. The project also includes a landscape plan with additional tree plantings for the site overall. She would refer you to the Development Advisory Committee Report with the Planning narrative and the various agency submissions that you have received previously. As noted, the public hearing was closed at your last meeting in March. By way of that meeting in March, there was a motion put forth by the Planning Commission that asked for some information from the City Solicitor. As noted, that has been provided in the Letter dated April 14, 2023. A hard copy of that Letter was presented on your desks this evening and it was also emailed to all members of the Planning Commission on Friday afternoon of last week in preparation of tonight's meeting. Additionally, there was the item of correspondence dated April 13, 2023 that was received from Mr. Sergovic representing Dr. Mishoe.

Mrs. Maucher asked the applicant if he was still requesting the Parking Waiver. Responding to Mrs. Maucher, Mr. Balascio stated that as they stated at the last hearing, they are more than glad to remove the Waiver for parking. With that being said, they are committing to less units with the Parking Waiver. They have more than adequate space to meet the parking requirement. It was suggested by the Planning Department and the other committees that reviewed it, that due to the size of the project they just have way too much parking when you calculated it and also given the fact that they only have mostly one-bedroom units. Almost 85% of the units are one-bedroom. If the Planning Commission wants them to have the Code required parking, they are more than glad to do that. That may actually result in additional units because they were agreeing to limit the units of the numbers shown on the Plan with that Parking Waiver. One of the things that Mrs. Melson-Williams had said, he would like to remind the Planning Commission is that this is a use by right and that they have submitted a fully code compliant plan. They have worked very carefully with the Planning Department and all of the various agencies to make sure that they have a fully compliant plan. So, they are not a conditional use; this is a use by right. He would implore everybody that it's your goal as a Planning Commission to move forward and approve a fully code compliant plan that is a use by right. They worked with Mr. Rodriguez and they got the Letter that the Commission asked for. He has all of the information that he needed for that letter.

Mr. Hartman stated that they have two letters before us, one from the City Solicitor and one from Dr. Mishoe's attorney. The issue of property rights is still in question if you read both of those

letters. As Commissioners what are they supposed to do? When he reads the (Zoning Ordinance) Article 10 Section 22, they are supposed to set requirements for these Site Plans to benefit the welfare of the neighborhood in particular. If they sit in judgement of these two attorney letters and they error on the side of the City, then they may be doing a grave injustice to the neighbors and property owners. He believes that this issue should be tabled until the property rights are ultimately resolved in court. Otherwise the City may be held liable for holding an annexation in direct violation of their *Code of Ordinances* Part One, Sub Part A, Article 1, Section 105: "In a case where annexation is not petitioned by all owners of a property considered for annexation, such annexation shall be subject to an election." You have termed this annexation as a "clarifying annexation" and he can find no description of "clarifying annexation" in the Code.

Mrs. Maucher stated that the Letter from Mr. Rodriguez says it went through the annexation process. The right-of-ways were annexed into the property and that was the underlying question. As to the underlying legal dispute, that is not the purview of the Planning Commission. They have before us a code compliant plan and that is what their decision is based on. If there are legal issues with that, that needs to be decided outside of us. Responding to Mrs. Maucher, Mr. Hartman stated that he understands but that needs to be decided. That's why this needs to be tabled until it's decided. If it's decided to the benefit of Dr. Mishoe, the City is in direct violation of its own Code for annexation. That should be reason enough to table this until it's resolved.

Mrs. Gray stated that she thinks it would be helpful to have our City Solicitor, Mr. Rodriguez weigh in on this discussion.

Mr. Rodriguez stated that what he was asked to do at the last Planning Commission meeting held on March 20, 2023, at the conclusion of the meeting, Mr. Cooper moved to table that application and to refer it to him for an opinion on the right-of-way. He wrote the Letter stating that the right-of-way, as far as he is concerned, is in the City. He responded to the request and he pointed out the College Settlement Company in 1899, at this point, where this property was not in the City of Dover. There were annexations from that plot. A lot of times when the properties are annexed, there is a question about the road system. He felt, at that time, that those roads were dedicated to public use by recording the plot. The annexation was referred to the Planning Commission on November 15, 2021 which is the annexation that this Commission heard. On November 15, 2021, the annexation recommendation was heard by this Commission and you had a public hearing. At that time, only one person appeared to make a comment at the public hearing. At the conclusion of the public hearing, the Planning Commission recommended to Council to go ahead with the annexation. On December 13, 2021, Council considered Resolution # 2021-26 for annexation for the rights-of-way of Raymond Street, (also known as Jason Street), Railroad Avenue, and Grove Street with each street being annexed and being described by meets and bounds in the submittal to the City. City Council passed the Resolution # 2021-26 annexing these streets to the City of Dover; and, then on December 13, 2021 thereafter, Council passed an ordinance confirming that. These streets have been annexed to the City of Dover. Your comment is about a legal conclusion on this. He was not asked to search title to these properties and that never really occurs. He would have to have approval by Council to do that and that would take an enormous amount of time and expense for him to do that. What you have before you is the Resolution which you had before and these streets are annexed to the City of Dover. If you wanted to litigate this, you are talking about years. You have not had anything really before you

opposed to this until this submittal which just came in a couple of days ago. They have asked for that many times in the past and have never really received anything. They really had no opposition until it came to him on Friday. His recommendation is to go ahead with it tonight with what you have with his opinion and that is the opinion that you recommended it to Council, Council passed it and these right-of-ways, in his opinion, are City of Dover.

Mr. Hartman stated that he respects Mr. Rodriguez's opinion but they have another Officer of the Court with another opinion. As a member of the Planning Commission, he finds an obligation to not go ahead with this Site Plan until they can resolve the issues that best serves the neighbors and the public welfare of the neighborhood. That was in the section that he has quoted before and he is not suggesting that they deny this Site Plan. He is just suggesting that they, in the best interest of the neighborhood and the citizens of Dover, that we table this until this can be resolved. Going back to the original annexation AX-21-04, actually he believes that he is the one who moved to approve that but he did that without any knowledge of the property rights concerns of anybody. That was not mentioned by the City, that was not mentioned by the Planning Office and he was not aware of that. This Commission recommended to Council to approve that and Council did based on their recommendation. He is saying that it could have been a faulty recommendation because if Dr. Mishoe is correct in her property rights assessment then the City is not in accordance with its own Code. That's the beginning of this whole thing. He doesn't think they should try to put this in a little compartment about what they are here about tonight because at the beginning of all of this, there could have been a mistake and that mistake can result in a grave injustice to the neighborhood that is opposing this Site Plan.

Mr. Roach stated that he cannot agree with Mr. Hartman more. He honestly feels as though right is right and wrong is wrong. He understands what Mr. Rodriguez clearly said in his statement, that no one came forth at the time that they approved the Annexation. But at this time, there are people that are claiming that it was annexed inappropriately. He agrees with everything that Mr. Hartman is saying. At this point in time, he feels as though it would be a grave injustice to not only the neighborhood but also the property in question from the owner who is claiming that it is their property. He feels as though at the least, it should be tabled until those matters work out because regardless of if it was right now or it was right at the time that the Annexation was completed, it is not fair. In his opinion, as the Commission it is their job to make sure that they protect their constituents and the City and make the right decision in regards to all the people involved. He understands that there has been an enormous amount of money that has been spent on this plan. He apologizes for that but as Mr. Hartman said, if this information was given to them from the beginning, it probably wouldn't have been annexed in the first place. With that being said, he definitely agrees with them at the least of them tabling this situation until they can have some type of resolution in regards to the legal matters that have been presented by Dr. Mishoe's attorney. If we do move forward with the plan, that officially says that everything that she has brought forward is invalid and there is no reason for them to even look at it. To him, that is wrong and he doesn't feel as though that would be fair to anyone in this process. He would understand that somebody who has put forth money to be able to move forward with a Site Plan is upset but he understands that they also have to do what's right. To him, that is not right at all because a thirty page document that was given to all of them as a Commission, he does not feel as though he could ever vote yes to move forward with a Site Plan knowing that there is somebody that is contesting the rights of their property.

Mrs. Denney stated that she is coming in late since she missed last month's meeting although she updated herself through the minutes and reviewing. She feels exactly the same way. She agrees with Mr. Hartman and Mr. Roach. She really feels as though it does not help anyone for them to vote on something that they do not feel has a crystal clear decision made on "who's on first". She really doesn't believe that they should vote on something without this being absolutely clear about who owns what.

Mrs. Malone stated that this obviously has been discussed for a really long time. She is a little bit confused that right at the twelfth hour someone has come forward stating that they own this when Mr. Rodriguez has done his research. It went before Council and has had many votes and nobody had ever come forward except for right now when the property was up for grabs and the developer has done all of this work. Nobody came forward through any of this process until just last month. Something is a little fishy with that in her opinion. She has a lot of respect for Mr. Rodriguez and she believes that his recommendation is pretty solid. She understands the concerns that neighbors do have. She doesn't feel that the issue between the property right wording or whatever should be the Planning Commission's decision. She feels that they should move forward with this.

Mr. Roach stated that he would have to humbly disagree with Mrs. Malone due to the fact that Mr. Rodriguez clearly stated that he didn't do the research at the time to check titles and ownership when he made his recommendation because, at the time, nobody was contesting. To say that he did a recommendation, he clearly stated that he did not have all of this information when he made his recommendation. He literally just said that to us. So he doesn't understand how they can say that a recommendation was made when at the time, it was made in good faith. Mr. Rodriguez said that it costs money and time to be able to do the research to track back. He doesn't understand how they can have any more contention in regards to his statement. He would definitely not say in a dishonest nature, but he said that he did not do all of the research because at the time nobody was contesting. So, regardless of whatever is going on in the situation, there is somebody contesting now and he feels as though, in his opinion, that the rights of anybody shall not have a time on it. Whether it's the twelfth hour, first hour, fifteenth hour or thirty-first hour, somebody is claiming that their property was annexed in a way that was not appropriate based on our own Code. Just from a moral code, he does not feel as though that is fair. He humbly disagrees with everything in regards to the idea of moving forward with anything especially regardless of when a recommendation is made by a gentleman who just said that he did not do the research.

Mrs. Maucher stated that she doesn't believe that it is productive to go back and forth between Commissioners. You have made your point and Mrs. Malone has made her point. She is going to ask Mrs. Gray to speak on a certain provision.

Mrs. Gray stated that they have a challenging provision based on the discussion that the Planning Commission just had. In Appendix B of the *Zoning Ordinance* in Article 10, Section 2 – Site Development Plan Approval, Subsection 2.43 Planning Commission Site Plan Review, Subsection E – Planning Commission Action states that "the Planning Commission shall act to approve or disapprove an application for site development plan received by it either as an

original review or as a referral from the City Planner under the provisions of subsection 2.42(A) of this article within 45 days or within such additional time as may be consented to by the applicant. Planning Commission disapproval shall include written findings upon any Site Development Plan element found contrary to the provisions or intent of the Zoning Ordinance.” She would certainly like to invite Mr. Rodriguez to speak on this, but what this provision is indicating is that an application can’t continually be tabled. An action would need to be taken, but she would also like to hear Mr. Rodriguez’s opinion on this as well.

Mr. Rodriguez stated regarding the statement about him not doing the title search on the property, he never does that and he doesn’t think that the City would want him to do that. It’s clear from everything that he has looked at that the Annexation was appropriate. These properties are in the City of Dover. We have not heard anything to the contrary until Friday. He really doesn’t think that it’s a legal issue that the Planning Commission should consider because they have presented everything that shows that this property was annexed and that the right-of-way was annexed. There is no question about that. If you are talking about postponing it until this matter is resolved, you are probably looking at a court action that could last 2-3 years or longer. That would really destroy this application by waiting that long. He is confident about what he told the Commission about his opinion. It came from the Commission also and you have never heard any opposition to until Friday and to take that up and put this application on hold is really going to destroy it. If the contention that you heard tonight does not like it, it can always be taken to court if you approve the application. Waiting until this point in time and they really asked for any opposition, then it comes up on the eve of the meeting tonight. He is speaking on behalf of the City of Dover as the City Solicitor. He doesn’t have any problems about knowing that the property has been annexed which you did. In his opinion, it is all proper.

Mrs. Maucher asked Mr. Rodriguez to speak to tabling the application. Could the application be tabled indefinitely as it has been suggested? The applicant is entitled to some certainty, right or wrong and to table it indefinitely is that something that the Planning Commission can do? Responding to Mrs. Maucher, Mr. Rodriguez stated that he is not really sure that he understands the question.

Mrs. Gray stated that she believes that Mrs. Maucher is talking about the Code provision that she just described that indicates that “the Planning Commission shall act to approve or disapprove any application for a Site Development Plan received by it either as an original review or as a referral from the City Planner within 45 days or within such additional time which may be consented to by the applicant. The Planning Commission disapproval shall include written findings upon any Site Development Plan element found contrary to the provisions or intent of the *Zoning Ordinance*.”

Mrs. Denney stated that they obviously have opposing letters from members of the bar giving us direction. From the beginning of her viewing this, she has felt somewhat confused. She is wondering if they were to vote on it and if it were voted down then how long would it be before the applicant could refile and come back with the appropriate information? The reason she is asking this question is because she chairs the Board of Adjustment for the County and if somebody brings something before them and it doesn’t go their way, they can turn around and show up at next month’s meeting. She is trying to understand timewise how difficult that type of

a motion would make it for this applicant. Responding to Mrs. Denney, Mrs. Melson-Williams stated that she doesn't believe that the City's *Zoning Ordinance* in the provisions for your procedures, sets up a timeframe where they are limited in making the same application again. That does exist here in the City's *Zoning Ordinance* for the Board of Adjustment where they can't accept a similar application within a certain timeframe but that provision does not exist for applications to the Planning Commission in the case of Site Plans.

Mrs. Denney stated that her interpretation of what you just said is that ultimately they could come back again as quickly as they choose. Responding to Mrs. Denney, Mrs. Melson-Williams stated yes, she believes that would be the correct interpretation.

Mrs. Denney stated that obviously with the appropriate notification time.

Mr. Sudler stated (speaking from the audience) that if you are going to allow Mr. Balascio to speak then they are going to speak for the record. He understands what Commission this is but run it the way that it needs to be run. If you are going to allow him to speak, then I will be speaking. We have our representation here and Mr. Rodriguez, you know that my mother met with you in the conference room in 2022 with Mrs. Gray and Mrs. Melson-Williams. You all know that is not true and he is surprised at you. My mother gave you the information and you know that. My brother was there too so for you to say that they never told you is wrong.

Mrs. Malone moved to approve S-23-06 College Road Apartments at Railroad Avenue and Grove Street removing the parking waiver, seconded by Mrs. Maucher and the motion fails with a 2-5 by roll call vote. Mrs. Malone voting yes; based on Mr. Rodriguez's comments. Mr. Cooper voting no; because he doesn't think that they have all of the information in front of us to make a validated decision. Mr. Roach voting no; for reasons that Mr. Cooper stated and also from the public outpour from the community members in regards to this application and also because of the outpour in rejection of the application from public officials; and also because they do not have any information that supports anything other than the testament of Mr. Rodriguez and from what Mr. Sudler just spoke about, there is information not being given to us in regards to the clarity as it pertains to a conversation that supposedly happened in regards to this application. This is just completely 110% unfair for somebody to bring an attorney with all of this information and for us to move forward as a Commission for any reason that is other than clear. Mrs. Denney voting no; she really doesn't feel that there is enough concise information before her to make an honest decision. She tends to be one of those when in doubt "don't" people. But again we have opposing letters from members of the bar. She is certainly not opposed to the project as a whole, but she just doesn't feel as though she can vote yes this evening on this without the rest of the information. Mr. Hartman voting no; he would have much preferred to table this and he would like to give Mrs. Malone the opportunity to withdraw her motion. But based on the fact of the opposing opinions from officers of the court and acknowledging that the work put in by Mr. Rodriguez, he still believes that the original Annexation AX-21-04 may have been done in error and any legal proceedings that follow this are going to either approve that or disapprove that. He would have rather tabled the application. Mrs. Welsh voting no; she believes that Mr. Rodriguez is correct and it is her understanding that he was asked to make a decision on the right-of-way and not the ownership of the property. As there is still an issue with the ownership of the property, she believes that is necessary to be

clear and indefutable before they can make a decision. She also believes that there was ample time previously if there was contention about the ownership of the property for there to be some legal matter decided about it. The applicant has purchased a property well before tonight; so, if there was an issue there as far as someone else owning the property then whoever owned it before the applicant must have sold it to them and that's where the issue lies with her. Mrs. Maucher voting yes; this is a compliant application. The underlying property issues do need to be resolved but however that is not the purview of this Planning Commission; it belongs in a court of law. We do have opposing viewpoints from lawyers and it needs to be in a court of law for that decision.

Mrs. Maucher stated that since the motion failed, they have to have another motion to deny the application.

Mr. Rodriguez stated that he thinks the applicant should be allowed to speak.

Mr. Balascio stated that the section that Mrs. Gray just read says that he as the applicant can ask for the application to be tabled. Mr. Rodriguez may not be aware because we have had a lot of information exchange hands but he does have all of the title and engineering work because they were asked to preform that as part of these re-annexations. He offered to submit testimony last time and it was submitted so it is in the City records already. But also when they went through both of the annexation hearings with Planning Department and with City Council before, all of that was submitted. Our engineers did all of the title work on the roadway. They followed adjoining property deeds, they did all of the engineering, and they surveyed it. If the Commission would like to table it tonight, he can re-provide that information to Mr. Rodriguez and whoever wants to meet with him and Mr. Rodriguez to go over that. It is very clear because they traced it as his direction from 1899 forward. He is a Delaware attorney who practices in real estate and in Delaware, they as Delaware attorneys issue title. He can assure you that they went through this and worked with the City. Again, when they went through the Planning Commission for the initial Annexation and then to City Council for Annexation and now when they came back to this Commission this issue was raised. Keep in mind that back in October when they met with Mr. Rodriguez and the Mishoe family, they allegedly had an attorney at that time. Mr. Rodriguez was very clear and asked them to provide any documentation that contradicted what they provided. They (Mr. Balascio) provided all of the title and all of the engineering. Not one bit of evidence was provided in that time (by the Mishoe family). Now the letter that is being used tonight is a letter that has been admitted outside of the public record because it's closed. His rights are being violated. He is going to be nice and ask the Commission to table this with very clear direction that he meet with Mr. Rodriguez and whoever else wants to meet and they will provide this information again. You already have this in your records because they paid over \$20,000 in engineering work at your request. There was a clarification Annexation because it had already been annexed in but there were some questions on whether some small parts had or had not been done because of the way the property descriptions were done. They went through that whole process and they keep getting delayed and delayed. They have a use by right and Mr. Rodriguez is right and the other Commissioners who voted to approve tonight are right. If somebody has a property challenge, they should file an action in court against them. You approving them (the application) tonight does not stop them from filing their action in the appropriate manner to say that they own part of our property. Their letter says they do but they provide no supporting

documentation in that letter. There was a motion and it failed so there is no motion standing. He now, as the applicant, is allowed to stand up here and ask the Commission to table so that they can re-up the information that they previously provided to Mr. Rodriguez and the Commission for review. It will clarify exactly what you are asking for. If Mr. Sergovic would like to meet and go over that with Mr. Rodriguez present, they are more than glad to do that.

Mrs. Maucher asked Mr. Rodriguez if that was an appropriate legal process to follow in this circumstance. Responding to Mrs. Maucher, Mr. Rodriguez stated that he thinks it would be fine to table it and work out the legal parts of it. He made a statement about no opposition. There has been opposition but there has been nothing in writing and that's what they were looking at until Friday. They have asked for the opposition and it has been presented maybe verbally but without proof of it. That is what they were looking for the entire time. He doesn't mean to talk badly about anybody but they have never received anything in writing.

Mrs. Maucher asked if they needed a motion from the Planning Commission to table it or is a simple request from the applicant sufficient to table it. Responding to Mrs. Maucher, Mrs. Gray stated that she recommends that the Planning Commission make a motion.

Mrs. Denney stated that she is trying to understand the difference between this motion that already failed based on the vote that they just took and what deterrent would happen if that stood as they voted and then the applicant came back next month or the month after with a new application and brought them the materials that they need. Frankly, she thinks you can understand their point as well. Again, there are two opposing pieces of information and it is very difficult in all of the years that she has been on these types of committees to say "I guess this attorney is right". She can't do that and there lie the reason this whole motion to deny and where we are now. She doesn't understand tabling it for more information. Responding to Mrs. Denney, Mrs. Gray stated that there was a motion on the floor to approve the application and that motion failed; so, therefore you need to have another motion to deny or to table. The Ordinance indicates that the Planning Commission needs to either approve or deny within 45 days or within such additional time that may be consented to by the applicant and that is what is being discussed right now.

Mr. Balascio stated that he asks at this time for the application to be tabled and continued so that they can have legal counsel address the letter that has been illegally entered into the record tonight by Mr. Sergovic.

Mr. Hartman asked Mr. Rodriguez if he has had time to review the April 13, 2023 letter from Dr. Mishoe's attorney. Responding to Mr. Hartman, Mr. Rodriguez stated yes.

Mr. Hartman asked if they table this application, will that letter be a part of the discussion and will her attorney be a part of the discussion. Responding to Mr. Hartman, Mr. Rodriguez stated that obviously they would consider everything. This is the first time that they have had something in writing. If they would have had that six months ago, they could have worked it out but now it is coming just before the meeting. It is something that the applicant has researched and searched the title to the property and that is what he has told you about. It comes without them being able to respond to it at this time. He is looking out for the City in trying to keep the

City out of a lawsuit. That is his aim and always has been his aim as City Solicitor. It is his duty to keep the City of Dover out of a lawsuit. He would like to keep them from being sued because despite your action, a lawsuit is probably going to be filed one way or the other. If you gave us some time to work that out and try to get it resolved without going to court to save the City some money and from fighting a lawsuit that would be really good.

Mr. Hartman stated that he agrees that they should try to keep the City out of a lawsuit. Acknowledging what you said a couple of times about the information being submitted or presented at the last moment, what the Planning Commission is being asked now because of this late submission is to make a judgement without all of the facts. That is why he advocated tabling this so that they could at least digest the facts and maybe get a better understanding from both sides of the property rights. They do not want to infringe on any property rights of that neighborhood. Again, they do not want to infringe on the rights of the applicant to use their property. What has been put before the Planning Commission is not enough information for them to make an opinion.

Mr. Hartman moved to table application S-23-06 College Road Apartments at Railroad Avenue and Grove Street until all parties involved can meet and at least have some record of what is said to present to the Commission if there is still opposing opinions, then so be it but if they can come to some agreement, it would make it a lot easier to make a choice. (Discussion continued without an immediate second to bring it to a vote.)

Mr. Cooper questioned that they had a motion to approve and it failed so is the application dead at that point or do they need another motion to kill it? He is not trying to kill it; he is asking for clarification. Do they need another motion to not approve and that would pass and kill the application? Are they still eligible to table this application? In the applicant's defense, if he needs to refile for next month's agenda then so be it. But he doesn't know if they are allowed to table it at this point. He certainly thinks that it is in the best interest of everybody involved to table it. Responding to Mr. Cooper, Mrs. Gray stated that the motion failed so there was affectively no action taken.

Mr. Cooper stated that because the motion was to approve and it failed, no action was taken. Had the motion been to deny and it failed we would be in the same boat; however, if the motion has been to deny and it had been passed then they would have killed the application. So, an option to table this or deny this is still on the table. Responding to Mr. Cooper, Mrs. Gray stated yes, that is correct.

Mrs. Maucher asked how long the application could be tabled for. Is it for 45 days? Responding to Mrs. Maucher, Mrs. Gray stated that she would recommend until the next meeting.

Mrs. Maucher asked if Mr. Hartman would accept the amendment to his motion to table it until the next meeting. Responding to Mrs. Maucher, Mr. Hartman asked if they think it can be resolved by the next meeting.

Mrs. Maucher stated that if it's not ready for prime time at the next meeting that it could be tabled again.

Mr. Sudler (speaking from the audience) stated that they have their attorney present. Can he at least respond to when they think they may be able to have everything ready? The applicant has had all of this time to bend the rules and have all of this dialogue. Can you hear from our attorney since you are hearing from the other side? At time point, it seems very biased.

Mrs. Denney moved to hear from the attorney because she thinks that it's important that they do, seconded by Mr. Cooper and the motion was carried 7-0 by voice vote with Mr. Baldwin and Dr. Jones absent.

Mr. Balascio stated that he objects. The public record is closed so he wants to be on record that he objects to this because you are violating his rights. The public hearing is closed.

Mr. Tyler Friedman – Sergovic Carmean Weidman McCartney & Owens, P.A. – 25 Chestnut Street Georgetown, DE 19947

Mr. Friedman stated that Mr. John Sergovic who has been the author of the letter and who has been the subject of a lot of discussion tonight in terms of facilitating a discussion going forward in clearing up this issue, is in the waiting room of the Webinar right now. He is not sure if he would be allowed to speak or would be willing to clarify this issue.

Mr. Hartman stated that he would like to move that we just get on with this and not hear any further testimony. He made a motion and he would like to continue that.

Mr. John Sergovic - Sergovic Carmean Weidman McCartney & Owens, P.A. – 25 Chestnut Street Georgetown, DE 19947

Mr. Sergovic stated that he has been trying to follow that last exchange but he quite frankly could not. Was there a question posed to him? Responding to Mr. Sergovic, Mrs. Maucher stated yes, it was regarding having the application tabled until the next meeting to give an opportunity for both parties to resolve.

Mr. Sergovic stated that he thinks it would be appropriate to give himself, Mr. Rodriguez and the applicant's attorney at least 45 days to sit down and figure out what the title problems are. It is a very complicated title problem.

Mr. Hartman moved to table application S-23-06 College Road Apartments at Railroad Avenue and Grove Street until the June meeting so that all parties involved can meet and at least have some record of what is said to present to the Commission. If there is still opposing opinions, then so be it but if they can come to some agreement, it would make it a lot easier to make a choice, seconded by Mrs. Denney and the motion carried 7-0 by voice vote with Mr. Baldwin and Dr. Jones absent.

Mrs. Maucher stated that there is protection of rights on all sides and they are not lawyers but they have counsel here.

Mrs. Denney made a motion to wave rules to allow Dr. Mishoe to speak which was accepted by consensus.

Dr. Mishoe stated that there have been a lot of inaccurate statements made tonight. She is not calling any names but those who know that they have made inaccurate statements know who there are. There has also been a lack of clarity from the beginning in terms of what actions were intended to be taken in the very first place. For her to have learned quite surprisingly that the property that she still believes she owns has actually been annexed into the City was devastating to her. When she first learned about it, she did speak up in opposition. You didn't just hear her opposition and if you go back and check all of the minutes, you will see that she has been right here at this podium voicing her opinion along with the whole neighborhood has been at this podium for months. She said before that she is really tired of having to come spend her Monday nights at Council meetings and now at Commission meetings. She believes at the last Commission meeting last month, you tabled the application. She was certain that you tabled it saying to give me, Dr. Mishoe, the opportunity to get legal proof that she owns the property. She did that because that is what she thought the Commission asked of her. She did that and had it sent in writing and she brought the attorneys here tonight. Now what she thinks she is hearing for the first time is that is not what you asked in the first place. That you asked for Mr. Rodriguez to give an opinion. She didn't hear it that way at last month's meeting. She thought that you were waiting for her to get a legal opinion and that's what she did. She fears that this issue is going to end up in court but she said before and she is saying again. She is prepared to do whatever it takes because this is literally her inheritance and it is her legacy to her children and their children and this is all that she does have. She is prepared to stand her ground on that.

Mrs. Denney stated that she is sorry that she missed last month's meeting but she is here now.

NEW APPLICATIONS

Z-23-01 Lands of Jireh Christian Center Inc. at 2161 Forrest Avenue - Public Hearing and Review for Recommendation to City Council for a rezoning application for a parcel of land consisting of 11.9973+/- acres. The property is zoned R-10 (One-Family Residence Zone) and partially subject to the COZ-1 (Corridor Overlay Zone). The proposed zoning for the property is RM-2 (Medium Density Residence Zone) and partially subject to the COZ-1 (Corridor Overlay Zone). The property is located on the south side Forrest Avenue west of Dover High Drive. The owner of record is Jireh Christian Center Inc. The equitable owner is Leander Lakes III, LLC. Property Address: 2161 Forrest Avenue. Tax Parcel: ED-05-075.00-01-05.00-000. Council District 1. Ordinance #2023-04.

Representative: Mr. Jim Eriksen, Solutions IPEM; Mr. LB Steele, Leander Lakes III, LLC

Mrs. Melson-Williams stated that this is a request for Rezoning. The property is at 2161 Forrest Avenue. It is just under 12 acres of land at 11.9973 acres. Currently, it is zoned R-10 (One Family Residence Zone) and partially subject to the COZ-1 (Corridor Overlay Zone). On the image on the screen, the green shows the COZ-1 (Corridor Overlay Zone) and that would actually cross over the property. The property is shown fully in yellow. The request is for Rezoning of the property to RM-2 (Medium Density Residence Zone) with part of it remaining subject to the COZ-1 (Corridor Overlay Zone). The *Comprehensive Plan* designates this area with a land use category of Residential Medium Density; and with that land use category of

Residential Medium Density, the RM-2 (Medium Density Residence Zone) is one of the items that is eligible for consideration on the property. The property does have a sort of meandering entrance drive that's tree lined and it goes back to where there is an existing church building that is flanked by parking areas. The subject site was annexed into the City of Dover back in 2007. At that time, the church facility was already located on the property. Surrounding this property are a number of pieces of land that are developed residentially. To the east and the south are the Leander Lakes Apartment Complex. Nearby there is another church building and then further east is the Dover High School Campus. To the west is an adjoining property of which 25 acres was recently rezoned to RM-2 (Medium Density Residence Zone) and then also it was the subject of a Site Development Plan for an apartment complex known as Leander Lakes III that the Commission saw earlier this year. This evening you are considering for this subject site, a Rezoning request to go to RM-2 (Medium Density Residence Zone) and subject to the COZ-1 (Corridor Overlay Zone). The Planning Staff is recommending approval of that finding that it is consistent with the *Comprehensive Plan*. The RM-2 (Medium Density Residence Zone) allows for a variety of housing types; however, it does have a density cap of 8 dwelling units per acre. They feel that the property should also remain subject to the COZ-1 (Corridor Overlay Zone) as that is related to development along the corridor and it has some requirements for dealing with that corridor's appearance and the design of the property adjacent to that corridor. Forrest Avenue/Route 8 is a main gateway coming into the City of Dover from the west. For the Planning Commission tonight, you are to conduct a public hearing and there are a series of factors to consider when looking at a Rezoning application. Those are part of the *Zoning Ordinance* in Article 10, Section 5.36. The factors deal with first whether the use is permitted and if the change would be compatible with existing uses and zones in the area; whether adequate public services and infrastructure exist or can be created to serve any additional demand that would be a result of the zoning change; and whether the proposed change is in accordance with the City's *Comprehensive Plan*. The Commission is making a recommendation and that recommendation goes to City Council. City Council conducts their own hearing and review of the application. Our Development Advisory Committee Report also includes comments from other agencies; most of which are no objection to the Rezoning with some notations/advisory comments should the property redevelop in the future.

Mr. Eriksen stated that he just wanted to add a little bit of context as well as some visuals to the Staff's Report. The Staff always do a great job putting together a very informative Report filled with a lot of good information. As Staff indicated, this parcel is just under 12 acres in size and you may recognize it as the location of the Destiny Christian Church. The parcel currently has some improvements for a church and a parking lot including some stormwater management. If you look in the vicinity of the site, the site is fronted on Forrest Avenue which is classified by DelDOT as a Minor Arterial. Along Forrest Avenue and within the vicinity of the project, there are numerous Medium Density Residential land uses, an Institutional Use with the high school, and plenty of commercial uses. Adjoining the parcel directly, you can see that there are Medium Density Residential apartments to the south and to the east. There are some single-family residences outside of the City limits across the street on Forrest Avenue to the north. Then on the western boundary as Staff previously indicated, there is a 25-acre tract of land that was recently rezoned to the RM-2 (Medium Density Residence Zone) and was recently brought before the Commission for a Preliminary Site Plan for a project named Leander Lakes III and that Site Plan included residential apartments. It is his understanding that workforce housing is in significant

need for the Dover area and the rezoning of this parcel to RM-2 (Medium Density Residence Zone) would allow the developer to provide housing for that need in the manner consistent with the character of the surrounding parcels. The location of this parcel is relatively unique in that there is a lot of opportunity for interconnection with the various phases of Leander Lakes. There is an existing entrance on Forrest Avenue that is currently being utilized by this parcel. Leander Lakes III is proposing to have a shared access with the proposed Calvary Baptist Church which creates a second entrance on Forrest Avenue. There is a traffic light available at the intersection of Dover High Drive where there is two existing entrances that are currently being utilized by the Leander Lakes Apartments. So, any future development of the subject parcel would have access to these other entrances or is anticipated to have access to these other entrances. They all would be able to be interconnected. Any future development of this parcel would encourage that interconnection as well as provide for improvements to that interconnection. By providing choices and interconnections for the drivers, it allows traffic to find a path of least resistance and results in safer access to and from the Leander Lakes projects to allow for better flow of traffic and less meaningful impacts to Forrest Avenue especially given that there is a traffic light right there at the nearby intersection of Dover High Drive. He also wants to point out that any development of this parcel would be subject to the DelDOT Area-wide Study Fee where the developer would pay a fee for DelDOT to provide a study of the area. DelDOT would identify projects in the area and the developer would be responsible for contributions to those projects based on the site share of traffic. He also wants to point out that Leander Lakes III is going through the same exact process on their end. He does want to point out that if those two projects were combined, they still would be going through that same process. They wouldn't need to do a full Traffic Impact Study even if those parcels were going forward at the same times as one project. The adjoining parcels that would be interconnected to the east, south and west of the subject parcel are all zoned RM-2 (Medium Density Residence Zone). Shown on the screen is the Land Development Map from Dover's Comprehensive Plan that shows the proposed rezoning application with an area designated as Medium Density Residential. The site is designated as being within a Level One Investment Area for the State's Spending Maps which would indicate that the State anticipates development on this parcel. So, all of this information coincides with the Report provided by City Staff and all of this information indicates that the Rezoning request is consistent with the *Comprehensive Plan* and is in character with the surrounding area. There is also adequate public facilities as the public facilities serve the existing Leander Lakes projects. If this Rezoning was approved by this Council, they would be returning with a Site Plan that would provide additional details and demonstrate compliance with the City's Code.

Mr. Hartman stated that he believed the applicant mentioned that there would be an Area-wide Study. What do you base that on? Responding to Mr. Hartman, Mr. Eriksen stated that the Area-wide Study is actually performed by DelDOT. So, what DelDOT does is they do an analysis of the area and they split up the trips proposed with this Site Plan and that would be done in the Site Plan Phase. Basically, they then go through and they analyze any impacts to nearby intersections and/or projects that are underway within DelDOT. If there is a known improvement coming within the Area-wide Study, the developer would have to contribute their fair share of that project; so, their pro-rated portion of the traffic that impacts it.

Mr. Hartman stated that he understands that concept, but the problem that they we ran into with

the application that was just before you, one of the problems was that DelDOT signed off on an Area-wide Study when in fact the PLUS Study recommended a TIS. He is just trying to understand since you are considering an Area-wide Study, why aren't you considering a TIS? Responding to Mr. Hartman, Mr. Eriksen stated that the total number of trips of this is going to be the maximum. They don't even have a Site Plan yet just to reiterate that. They don't even know how many units there will be. Even at maximum density, it would only be at 684 trips associated with Leander Lakes IV which is the subject project right now. That would fall under DelDOT's standards. As long as you are under 2,000 trips that would be an Area-wide Study. If you go over 2,000 trips then it is absolutely required to do a TIS.

Mr. Hartman stated that Planning Staff could avoid some problems that we just faced with the application on College Road if you looked at this when it came in and ascertained if a Traffic Impact Study was necessary. It is in your purview to request one and to actually have somebody do it. If Planning Staff would have done that for the preceding problems, it may have negated a lot of public comment. He asks Planning Staff to keep that in mind for projects like this and it sounds like a good project to him. He is just asking Planning Staff to please keep the TIS (Traffic Impact Study) in mind because neighbors care.

Mrs. Maucher asked if maximum density was 684 trips. Responding to Mrs. Maucher, Mr. Eriksen stated that he believes that was on 95 units for the Leander Lakes IV. If you built to the maximum on just this parcel, it would be 95-96 units depending on where they are required to round that off.

Mrs. Maucher opened a public hearing.

Ms. Shirley Donovan – 2168 Forrest Avenue Dover, DE 19904

Ms. Donovan stated that she is very close to the church. In fact in the late 1970's or 1980's, she came before this Commission to have her property rezoned and it was denied unanimously and then she went to Levy Court and it was approved 100%. They do have a Traffic Impact Study there. In fact before they rezoned her, she thinks they put one of those black boxes on the road with a wire going across to study the impact. Every time that she leaves her driveway headed east, the traffic is backed up. Also, when they denied her unanimously, they didn't want to do spot zoning. Is this still considered spot zoning? Because they have a lot of agriculture residential properties around us still. In fact the guy next door wanted to get his property rezoned because he wanted to put in storage units and he was denied. She is afraid that they are going to have a put in a four lane highway and that's going to take part of her property in the road frontage so she is really concerned about that. RM-2 (Medium Density Residence Zone), does that mean more apartments there?

Mrs. Melson-Williams asked Ms. Donovan if she was on the north side of Forrest Avenue. Responding to Mrs. Melson-Williams, Ms. Donovan stated yes.

Mrs. Melson-Williams stated that first off where you live, the last piece that is in the City is the farm field that is beside Cranberry Run. On the south side where this subject site is, those areas are within the City of Dover. The RM-2 (Medium Density Residence Zone) is actually found on adjacent properties. The Exhibit image shows the properties immediately to the east of the site

and to the south. Basically, this property is going to be totally surrounded by properties that are already RM-2 (Medium Density Residence Zone) in the City of Dover. There is another soon to be parcel to the west that is still R-10 (One Family Residence Zone). So from a planning perspective she would not call this a spot zoning to rezone it to RM-2 (Medium Density Residence Zone). To the other question of what types of units, while she believes the applicant has expressed a potential project that would be for an apartment style development, the RM-2 (Medium Density Residence Zone) allows for a number of different residential type units. It allows for single family detached units which means one house and all four walls. It allows for duplex dwellings which would be two units side-by-side and connected. It allows for multiplex which is more than two (units) together. It allows for townhouses which would be a series of units that share walls with each other. It also allows for rooming houses and also garden apartments. Any of those uses on the residential side are allowed in the RM-2 (Medium Density Residence Zone). They each have their own kind of requirements for setbacks and property lines and the like. By the Planning Commission considering rezoning to RM-2 (Medium Density Residence Zone), it would make the property eligible for development with any of those potential uses that are permitted in that zone.

Ms. Donovan stated that her concern also is the Traffic Impact Study. We do have a bad traffic problem on Route 8. Like she said, every time she leaves the house just to go to Wawa, it is usually backed up and you have to wait for the light several times to change so that the traffic moves on. She thinks that a TIS should be done for this project.

Ms. Michelle Williams – 2248 Forrest Avenue Dover, DE 19904

Ms. Williams stated that she is here on behalf of her grandmother, Ms. Marcin Carter. She is here tonight because of her concerns also on Route 8. She lives two houses before the barber shop and she has also lived on Sharon Hill Road. She knows what the traffic is like on this road because she has lived there all of her life. It is very dangerous day or night and she is very concerned about the traffic, let alone how close her house is to the road. She is not that far from two more roads that kind of intersect and it's dangerous. She has seen people killed on motorcycles and she came here tonight because of her concerns. She has had people end up in her yard hitting her trees before coming to a stop before hitting her house and coming through her living room. She has a lot of concerns. She was hit by a car on Sharon Hill Road many years ago. Her point is that this road has a lot of people that walk at night or ride bicycles at night with no lights and dark clothing. She is concerned for herself and her safety and her other neighbors. If you end up building this and letting it grow, what are you going to do for Artis Drive and Sharon Hill Road? Are you going to put a light there? That's really going to make it fun. You have already dropped the speed limit to 35 MPH and they don't even do that. If she goes to get the mail, she has to watch herself because she might get hit. She really doesn't understand why we need to go more west and take away from the agriculture. She understands that we have more people coming into this country but that is another story.

Mrs. Maucher closed the public hearing.

Mr. Hartman stated that the garden apartments for this site are one of the things that are allowed by RM-2 (Medium Density Residence Zone). How many garden apartments would be allowed on such a site? Just generally, for a site of that size how many garden apartments would be

allowed? Responding to Mr. Hartman, Mrs. Melson-Williams stated that the RM-2 (Medium Density Residence Zone) has a maximum density limitation of 8 dwelling units per acre. You could do a rough calculation based on what would be allowed given the size of the property; however, there are other provisions of the Code that they would have to meet in planning out development of said units. Things ranging from parking requirements, setbacks from property lines, tree planting requirements, and the like that may reduce that size of the number of units but you could do a quick calculation based on size.

Mr. Hartman asked if any of the apartments could be five or six floors. Responding to Mr. Hartman, Mrs. Melson-Williams stated that the RM-2 (Medium Density Residence Zone) has bulk standards that would set the maximum number of stories and height. It is going to be slightly less than 96 units and because you are dealing with a decimal 95 units are going to be the maximum number of units.

Mrs. Maucher asked if a dwelling unit was an individual house. Could you have 95 three-bedroom houses? Responding to Mrs. Maucher, Mrs. Melson-Williams stated yes, it is dwelling unit. You would count each apartment unit as one unit.

Mr. Cooper stated that this is one of three developments in this general vicinity, and they are all roughly 95-100 units each. Is that accurate? Responding to Mr. Cooper, Mr. Eriksen stated that he was not involved in Leander Lakes I so he doesn't know the final count on that one. In talking with the developer, they believe that it is about 260 units. Leander Lakes II was 200 units and then this one that they do not have a Site Plan for, but the maximum density is 95.

Mr. Cooper stated that you were saying that DelDOT doesn't require you to get a Traffic Impact Study until you get to 2,000 units. Responding to Mr. Cooper, Mr. Eriksen stated that it would be 2,000 average daily trips. There is a calculation based on the number of units and the trigger point would be approximately 301 units.

Mr. Cooper stated that if we include all three of these together, we are in that range. Responding to Mr. Cooper, Mr. Eriksen stated yes, if you include all three of them together but functionally the existing is all built out in Phase 1. Typically, when you do any kind of study, you would be counting the number of trips that are actually on the road from the built-out phases. So, it would already be factored into any studies that you had.

Mr. Cooper stated that you haven't been required to and you haven't done a traffic study there for any of these three. Responding to Mr. Cooper, Mr. Steele stated that he was in a very different division of the company and he does not know a whole lot about Leander Lakes I. He would assume so, but he doesn't want to say that on the record because he could be wrong.

Mrs. Melson-Williams stated that going back to the question about the RM-2 (Medium Density Residence Zone) and the number of stories and building height. The RM-2 (Medium Density Residence Zone) for garden apartment dwellings has a maximum building height of three stories and thirty-five feet.

Mr. Hartman asked if it would be out of the realm of possibilities to ask Planning Staff to make a

Traffic Impact Study available to the Planning Commission prior to or to accompany the Site Development Plan when it's submitted. Responding to Mr. Hartman, Mrs. Melson-Williams stated that your *Zoning Ordinance* does not have that as a requirement for submission. The road network in this area is a State maintained road, so DelDOT has their own regulations related to development activity which sets up the requirements for a TIS or Areawide Study Fee if their project so qualifies.

Mr. Hartman stated that DelDOT regulations state that the municipality of Dover's size can require a Traffic Impact Study. Responding to Mr. Hartman, Mrs. Melson-Williams stated that our Code does not make that statement so she doesn't believe that Staff would have the authority to require it.

Mr. Hartman stated that you have seen the difficulties that the communities have seen by not having this information before them. Wouldn't this be a good time to try and alleviate these problems by being a little bit proactive and providing a Traffic Impact Study before all of these questions arise? Responding to Mr. Hartman, Mrs. Gray stated that she sees his point but as Mrs. Melson-Williams indicated, we do not have that requirement in our Code. A Traffic Impact Study is a substantial undertaking by an applicant to do so given that we don't have that in our Code. She is not saying that it is not a good idea to contemplate to put in our Code, but to ask an applicant to do that as a condition? We cannot condition a Rezoning, but it is certainly something to contemplate to put in our Code in the future.

Mr. Hartman asked if it could at least be in the DAC Report as a recommendation. Responding to Mr. Hartman, Mrs. Gray stated that they would have to discuss that as Staff. That is DelDOT's purview and that would be something that she would want to consult with DelDOT on because a Traffic Impact Study would be something that would have to be coordinated with DelDOT. That is not something that you go off and do as a municipality. You would have to do it in conjunction with DelDOT; so, we would need their cooperation and assistance in that endeavor.

Mr. Hartman stated well certainly but in their own regulations they say that the municipalities have the right to require a Traffic Impact Study. Responding to Mr. Hartman, Mrs. Gray stated that she is aware of that.

Mrs. Denney motioned to re-open the public hearing.

Ms. Shirley Donovan – 2168 Forrest Avenue Dover, DE 19904

Ms. Donovan stated that when you go west on Route 8 you go into Maryland and we have a lot of people from Maryland to go to Dover to shop because we are tax free. Then where the Dover High School is, she was told by a State Trooper that that quarter mile to Artis Drive is the most dangerous road in the State of Delaware. She has had cars upside down in her yard. Michelle can tell you that they just had one recently that took out her electric box, went through the fence on Larry Wolford's property, and ended up in her yard. Her daughter went out one day to get the mail; and she was lucky because as she was walking back a car went by and took the mailbox out. So maybe tonight is a good time to do a Traffic Study.

Mrs. Maucher closed the public hearing.

Mrs. Denney moved to recommend approval to City Council for Z-23-01 Lands of Jireh Christian Center Inc. at 2161 Forrest Avenue as it's in keeping with the Comprehensive Plan, it is well throughout, well designed and totally fits within the zone that is there. She also wants to interject, that unless things have changed to the best of her knowledge, because it would become impossible, we won't entertain these types of studies until after we reach the point where the application is filed. You can understand that they would be inundated because they already are with these studies. She is not saying that it wouldn't be a great idea if at some point they would but at this point, she thinks it would be very difficult for the engineers to work with DelDOT until we reach the next level which of course there is plenty of opportunity when it gets to the next level for it to be approved or denied by the Council, seconded by Mrs. Welsh and the motion was carried 7-0 by roll call vote with Mr. Baldwin and Dr. Jones absent. Mrs. Denney voting yes; in keeping with her motion, she does believe that it's in keeping with the Comprehensive Plan and blends well with our existing Ordinances. Mr. Hartman voting yes; it's compatible with adjacent uses, there are city services available in accordance with the Comprehensive Plan, and it is subject to the COZ-1 (Corridor Overlay Zone). Mrs. Welsh voting yes; for reasons stated in the motion and it's in keeping with the Comprehensive Plan. Mrs. Malone voting yes; for reasons stated. Mr. Cooper voting yes; for reasons stated in the motion. Mr. Roach voting yes; for reasons stated in the motion. Mrs. Maucher voting yes; for reasons stated.

S-23-09 Byler's Warehouse at 651 Garrison Oak Drive - Public Hearing and Review of a Site Development Plan for a 37,107 SF Warehouse & Bakery with associated site improvements. The site is located at Lot 2 of the Garrison Oak Business & Technology Center. The property is zoned IPM-2 (Industrial Park Manufacturing Zone – Business and Technology Center) and subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 2 Primary Wellhead Protection Area). The property of 14.714 acres is located adjacent to the east intersection of Garrison Oak Drive and White Oak Road. The owner of record is the City of Dover; and the equitable owner is Byler's Store Inc. Property Address: 651 Garrison Oak Drive. Tax Parcel: LC-05-068.00-02-02.00-000. Council District 3. *Waiver Requests: Reduction of Parking Requirement and Partial Elimination of Upright Curbing. For Consideration: Performance Standards Review Application.*

Representatives: Mr. Dave Heatwole, Siteworks Engineering

Mrs. Melson-Williams stated that this is a Site Development Plan for Byler's Warehouse and Bakery at 651 Garrison Oak Drive. That is also known as Lot 2 in the Garrison Oak Business & Technology Center and that Lot 2 is 14.714 acres. The proposal is for a building of just over 37,000 SF to have two components: a warehouse area and then a bakery area. The property includes a central entrance drive and then this initial building is located on the north side of that entrance drive. There is a portion of the property in the southern area that is to remain as an open area grassed meadow at this point. The building does have a series of truck docks for loading purposes and then the bakery portion is a two-story section of the building that's closer to the parking lot that they are purposing. With the parking lot, they are actually seeking a Waiver Request for a reduction of the parking requirement. Based on the square footage of the building, the building requires 47 parking spaces. They are seeking a reduction to 24 parking spaces and in their request have noted the kind of function of the location and that parking is not anticipated to

have a need that is as great as the Code requires. The site is also in the IPM-2 (Industrial Park Manufacturing Zone – Business and Technology Center). The uses of warehouse and bakery functions are allowed uses in that zone. The property is also subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 2 - Primary Wellhead Protection Area) which notes limitations on uses that would be prohibited. What they are proposing as uses is not prohibited. Additionally, the Tier 2 has provisions related to proximity to a wellhead that then have limitations related to impervious cover in proximity to a wellhead. This property is not within 500 feet of a wellhead which is where those provisions kind of kick in. Site access is from Garrison Oak Drive which is a City street. The property already has sidewalk along its frontage and a multi-use path along White Oak Road which is the second frontage. Their plan proposes a connecting sidewalk leading from Garrison Oak Drive into the site. The far western reaches of the lot do have some impact of a flood hazard area; however, the building location is not in that area and those areas remain as open space. There are some existing drainage elements in those areas as well as nearby tree plantings. With this being within the IPM-2 (Industrial Park Manufacturing Zone – Business and Technology Center), it is subject to the Performance Standards Review Process. The applicant has laid out in a letter submitted that the project does not include any of the dangerous or objectionable elements that are outlined in the *Zoning Ordinance*. These are things like fire and explosion hazards, smoke, vibration, odors and some other air pollution items, glare, solid waste, and traffic congestion to a Level of Service E. With this project, they also made a Waiver Request for elimination of upright curbing. That is something that the City Planner reviews with the application. They have granted approval of that elimination of upright curbing for select areas of the drive aisle and an east fire lane in order to address stormwater management sheet flow practices that are proposed on the site. The DAC Comments from the other regulatory agencies are included in the DAC Report. So to remind you of what you are looking at, this is a Site Development Plan. There is a Waiver requested for the reduction in the parking requirement and also for your consideration is their response to the Performance Standards Review.

Mr. Heatwole stated that this application is one that they are very excited about. He grew up as a kid going to Byler's Store just west of Dover and getting ice cream. This warehouse will support their store just west of Dover and also the one in Harrington. They are also considering moving their bakery to this location which they sell those products in the store. Mrs. Melson-Williams covered most of his points but they have five loading spaces which are four truck docks and just one general loading space. They have twenty-four parking spaces and they are asking for a Waiver because they are only expecting seven to ten employees. This is not a public facility; so, it will not be open to members of the public. Even at twenty-four spaces, they feel that they are over parked just based on the planned use for the warehouse. They are proposing a dumpster enclosure. They will have lighting to light the parking lot and their drive aisles. Their access will be off of Garrison Oak Drive. Water and sewer are through the City of Dover. Garrison Oak Drive is a City of Dover road but during the DAC process, it was noted that they need to coordinate with DelDOT to provide some traffic information so they will provide that information to DelDOT and get some sort of Letter of No Objection or a letter of No Contention is what they would typically issue for this project. They will coordinate with the Kent Conservation District for the stormwater management approval and then the other approvals are through the City of Dover.

Mrs. Maucher opened the public hearing and after seeing no one wishing to speak, closed the public hearing.

Mr. Hartman moved to approve S-23-09 Byler's Warehouse at 651 Garrison Oak Drive for a 37,107 SF warehouse and bakery based on staff recommendations in the DAC Report and he further moves that they approve the request for the parking waiver based on the operational requirements foreseen and acknowledge that the partial elimination of upright curbing has already been approved by Planning Staff and approve the Performance Standards Review Application as well, seconded by Mrs. Denney and the motion was carried 7-0 by roll call vote with Mr. Baldwin and Dr. Jones absent. Mr. Hartman voting yes; based on the motion. Mrs. Welsh voting yes; for reasons stated in the motion. Mrs. Malone voting yes; for reasons stated. Mr. Cooper voting yes; for reasons stated. Mr. Roach voting yes; for reasons stated. Mrs. Denney voting yes; she thinks that this is a very good use of this property. Mrs. Maucher voting yes; for reasons stated in the motion.

NEW BUSINESS

Mr. Hartman moved to add an item of new business to be discussed next time. He would like to move that Planning Staff consider developing a cut off for high density developments that may be submitted by a Site Development Plan to require a TIS for these developments that may have a high density. It is within their right to require the applicant to do so and it is also within their right to do so with City funds and to hire a contractor to do so. You don't have to wait for DelDOT to do it. A contractor can do it; a contractor does it most times because DelDOT is swamped so you will normally see a contractor performing the TIS. He would like for Planning Staff to consider developing an ordinance if need be so that the public has an idea traffic safety before they come in here. They have seen the problems that not knowing brings up.

There was no second on the motion; so, there was no motion.

Mrs. Maucher stated that she thinks it's a good idea and that Planning Staff will discuss it internally. She doesn't know that it needs to be a motion from the Planning Commission. She is sure that residents that will appear before City Council can also make that recommendation to City Council.

Meeting adjourned at 9:30 PM.

Sincerely,

Kristen Mullaney
Secretary