

**CITY OF DOVER PLANNING COMMISSION
DECEMBER 19, 2022**

The Meeting of the City of Dover Planning Commission was held on Monday, December 19, 2022 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, Mr. Baldwin, Dr. Jones, Mrs. Welsh (virtual), Mrs. Malone (virtual) and Mrs. Maucher.

Staff members present were Mrs. Mary Ellen Gray, Mrs. Dawn Melson-Williams, Mr. Julian Swierczek, Mr. Jason Lyon (virtual) and Mrs. Kristen Mullaney (virtual). Also present were Ms. Pamela Scott, Mr. Doug Motley, Mr. Charlie Barnett, Mr. Chris Mondoro, Mr. Joe Di Giorgio, and Mr. James Taylor, Fred Wittig and Robert Wittig. Speaking from the public was Mr. Mark Slater, Ms. Linda Parkowski, and Ms. Charlene Robertson.

APPROVAL OF AGENDA

Mrs. Denney moved to approve the Agenda as submitted with both changes, seconded by Dr. Jones and the motion was unanimously carried 9-0.

APPROVAL OF MEETING MINUTES OF NOVEMBER 21, 2022

Mr. Baldwin moved to approve the Planning Commission Meeting Minutes of November 19, 2022, seconded by Mr. and the motion was unanimously carried 9-0.

COMMUNICATIONS & REPORTS

Mrs. Gray provided an update on the regular City Council and various Committee meetings held on November 28 & 29, 2022 and December 12, 2022.

Mrs. Melson-Williams stated that the next Planning Commission regular meeting is scheduled for Monday, December 19, 2022 at 7:00PM in the City Hall Council Chambers.

Mrs. Melson-Williams stated that they are still looking to fill their Planner position. They have made an offer to an individual and they are waiting for that to pan out. Hopefully they will have good news for the Commission in January.

Mrs. Melson-Williams stated that City Offices are closed on Monday, December 26, 2022 and then January 3, 2023 for the holidays.

Mrs. Melson-Williams stated that the schedule of deadlines for 2023 was included in the Planning Commission meeting packet so mark your calendars accordingly. The Planning Commission meetings continue to be the third Monday of the month unless that Monday happens to be a holiday which is what happens in January, February and June. The next Planning Commission regular meeting is scheduled for Tuesday, January 17, 2023 at 7:00PM in the City Hall Council Chambers.

Mrs. Melson-Williams stated that they have two upcoming opportunities with the University of Delaware, the Institute for Public Administration. Both trainings will be presented via Zoom.

You do have to register for that. If there is a Commission member that is interested, please let Staff know and we will get that taken care of for you. The first one is January 18, 2023 and it's at 10:00AM in the morning for Planning 101: Planning Your Community's Future. It is an intro to the aspects of planning. The second one is going to be February 8, 2023 at 10:00AM and it's an Introduction to Land-Use Law, the Constitution and Takings. This is a continuation of the IPA's series of planning education that's offered. If you've taken one before you can certainly take it again. Sometimes they have new presenters and updated information for you and they have found them quite beneficial. If you would like to attend either one of those trainings, again they are virtual via Zoom, so they will have to register you for the classes.

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: None

NEW APPLICATIONS

AX-22-03 Lands of Craig, Keller, and Burkett: Annexation of Three Parcels on West Denneys Road – Public Hearing and Review for Recommendation to City Council of an Annexation Request and Rezoning Request for recommendation to City Council for three parcels of land totaling 40.1157 +/- acres located on the north side of West Denneys Road.

Parcel A: The parcel consists of 27.5834 +/- acres located on the north side of West Denneys Road and west of Carlisle Drive. The owners are George L. Craig Jr. and Deborah J. Craig. Property Address: 57 Rocky Road. Tax Parcel: ED-00-056.00-01-40.00-000. The property is currently zoned AR (Agricultural Residential District) in Kent County. The proposed Zoning is RM-2 (Medium Density Residence Zone) and partially subject to the SWPOZ (Source Water Protection Overlay Zone).

Parcel B: The parcel consists of 10.5661 +/- acres located on the north side of West Denneys Road and west of Carlisle Drive. The owners are Robert G. Keller and Gloria K. Keller. Property Address: 4085 W. Denneys Road. Tax Parcel: ED-00-056.00-01-41.00-000. The property is currently zoned RM (Multifamily Residential District) in Kent County. The proposed Zoning is RM-2 (Medium Density Residence Zone) and partially subject to the SWPOZ (Source Water Protection Overlay Zone).

Parcel C: The parcel consists of 1.9662 +/- acres located on the north side of West Denneys Road and west of Carlisle Drive. The owner is Bruce A. Burkett. Property Address: unaddressed parcel on W. Denneys Road. Tax Parcel: ED-00-056.00-01-42.00-000. The property is currently zoned AR (Agricultural Residential District). The proposed Zoning is RM-2 (Medium Density Residence Zone).

The annexation category for the three parcels according to Dover's *2019 Comprehensive Plan* is Category 2: Priority Annexation Areas and the land use designation is Residential Medium

Density. Proposed Council District 1. Ordinance #2022-25. *The First Reading of this Annexation Request was held on November 14, 2022. Public Hearing before the Planning Commission is scheduled for December 19, 2022 and City Council on January 9, 2023.*

Representative: Ms. Pamela Scott, Saul Ewing LLP; Mr. Doug Motley, Jack Lingo Asset Management LLC; Mr. Charlie Barnett, Morris & Richie Associates

Mrs. Melson-Williams stated that this request is for a series of three parcels that are located on the north side of West Denneys Road. The area on the south side of West Denneys Road is already within the City of Dover. The three parcels this evening have various ownerships and ultimately total just over 40 acres of land. We have identified them as part of Parcel A which is the lands owned by George Craig Jr and Deborah Craig. Parcel B which is just over 10.5 acres and has an address of 4085 W. Denneys Road and is owned by Robert and Gloria Keller. Parcel C which is just under 2 acres of land and is owned by Bruce Burkett. In total, there are three parcels that we are considering this evening. The property is considered contiguous to the City of Dover as noted that the area on the south side of W. Denneys Road is currently within the City of Dover. The City's *Comprehensive Plan* has identified this area as a Category 2: Priority Annexation Area meaning it is eligible for annexation into the City of Dover upon request of the property owners. Additionally, the *Comprehensive Plan* outlines that this area should have a land use category of Residential Medium Density. Residential Medium Density carries with it a series of zoning classifications that would meet that land use category. The applicant is pursuing a zoning classification of RM-2 (Medium Density Residence Zone) which is a medium density residential zone here in the City of Dover. The RM-2 (Medium Density Residence Zone) allows for a variety of types of residential development including single family houses, duplexes, townhouses and garden apartments. Tonight, you are just considering annexation and the appropriate City of Dover zoning classification for the property. Any future development of the site would be subject to an additional review process once it is part of the City of Dover. Additionally with this property, we find that there is a package area which will be the SWPOZ (Source Water Protection Overlay Zone). The SWPOZ (Source Water Protection Overlay Zone), specifically the Tier 3: Excellent Recharge Area, does impact these properties and that would be applied to both parts of Parcel A and parts of Parcel B. The Planning Staff is recommending approval of the request for Annexation. They find that it is compliant with the *Comprehensive Plan*, the Annexation component of that plan and it would be a logical expansion area of the City of Dover. Likewise, they do recommend approval of its Rezoning to the RM-2 (Medium Density Residence Zone), finding that it allows for a variety of housing types and is consistent with the land use classification of RM-2 (Residential Medium Density Zone). Likewise, we also recommend the implementation of the SWPOZ (Source Water Protection Overlay Zone). The parcels in general would meet the general standards for RM-2 (Residential Medium Density Zone) just as they are and it is noted that there are some existing dwellings on the subject properties. The Planning Commission is charged with considering the Annexation request and has to consider the following factors when looking at the potential zoning of the property. One, to look at the uses that are permitted by the proposed change whether they would be compatible with the existing uses and zones in the general area, whether adequate public services and infrastructure exists or can be created or extended to expand the needs of this area and whether the proposed change is in accordance with the City's *Comprehensive Plan*. The City Utility Committee did consider utility service needs for this area. There is the opportunity for City services; however, right now they are served by a different utility provider when it comes to

electric and they fall within the CPCN (Certificate of Public Convenience and Necessity) of another water service provider. The Department of Water/Wastewater has also noted the sanitary sewer service is available in the general vicinity and it would be the burden of the developer to make those improvements.

27:06 Ms. Scott stated that Mr. Jack Lingo is the equitable owner of these property and has them under contract at the moment. As indicated, its three parcels combined, just over 40 acres in size and the properties, as Mrs. Melson-Williams indicated, are currently located in the Priority 2 Area in terms of annexation so the annexation of these properties would be consistent with what is proposed in the *2019 Comprehensive Plan* for the City of Dover. In addition, in terms of the proposed zoning classification for the property, again, Medium Density Residential is what is proposed as part of the *2019 Comprehensive Development Plan* and what they have proposed in terms of RM-2 (Medium Density Residence Zone) is consistent with that Medium Density Residential classification. It is also consistent with the surrounding properties in the area that are already located within the City of Dover that fall into a Medium Residential Density classification.

Mrs. Maucher opened the public hearing.

Mr. Mark Slater – 22 Ardsley Circle Dover, DE 19904

Mr. Slater stated that he has a question about the SWPOZ (Source Water Protection Overlay Zone). Are there restrictions as far as development and if so, what are they? Responding to Mr. Slater, Mrs. Melson-Williams stated that this is the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Area: Excellent Recharge Area. So, there are some limitations on the amount of impervious surface that can be located in those areas. Meaning how much of that land could be covered by things like building, pavement, and the like. Depending on where it's located on the property, will be how much of that is involved in any future development. The SWPOZ (Source Water Protection Overlay Zone) also specifically prohibits a number of types of activity that she would say are probably already prohibited in our residential zone anyway. These tend to be uses that have the potential for some type of hazard that could affect a water supply that's in the ground. Those are things like an automobile repair shop, a gas station, or other things related to chemical processing. If it was to be developed on septic systems, there are some limitations there. But it's really the uses that are outright prohibited would be ones that could potentially have some activity that would harm groundwater. There are limitations on the amount of pavement or impervious surface for a project and those thresholds can be as low as 30% and up to 60% of that area that could be paved but there are certain things that they have to do to try to get the water back into the underground. Those are the limitations just really in general. Our Zoning Ordinance outlines them in more detail.

Mrs. Maucher closed the public hearing.

Dr. Jones moved to recommend approval to City Council for AX-22-03 Lands of Craig, Keller, and Burkett: Annexation of Three Parcels on West Denneys Road based upon Staff recommendations and DAC comments as they are in the Comprehensive Plan and it is consistent with the land use designation Medium Density Residential and to include the change in zoning to RM-2 (Medium Residential Density Zone) and to include the SWPOZ (Source Water Protection Overlay Zone), seconded by Mrs. Denney and the motion was carried 9-0 by roll call vote. Dr.

Jones voting yes; the application is consistent with the provisions in the Comprehensive Plan. Mrs. Welsh voting yes; as Dr. Jones stated, the change in zoning is consistent with the Comprehensive Plan. 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; it is in keeping with the Comprehensive Plan and it is what she believes to be a great use for this parcel. Mr. Hartman voting yes; based upon the designation in the Comprehensive Plan that it is a high priority for annexation and is compatible with existing uses. Mr. Baldwin voting yes; based on Staff recommendation and it meets the Comprehensive Plan. Mrs. Maucher voting yes; it is consistent with the Comprehensive Plan as well as compatible with existing surrounding land use.

Mrs. Melson-Williams stated that she just received an email regarding some public comments regarding this application so she will read it into the record. Noting that the email came at 7:47PM as Planning Commission was voting on the Annexation request. It is an email from Brandon Fansler. It states “My name is Brandon Fansler. I am a property owner of 3074 Kenton Road. This property is attached to Parcel A. I do not have a concern or comment on the Annexation of the property but do oppose the Rezoning. Rezoning these properties to RM-2 (Medium Density Residential Zone) would significantly change the character of the community.

This will be included as part of the information that goes forward to City Council, but it just now came in as the Commission was completing their deliberation.

S-22-14 Commerce Way Dover DE LLC Warehouse on Commerce Way – Public Hearing and Review of a Site Development Plan to permit construction of a 234,000 SF +/- warehouse and associated site improvements on Commerce Way. The property is zoned IPM (Industrial Park Manufacturing Zone). The property is located on the northwest side of Commerce Way, north of W. North Street. The owner of record is H & M Properties, LLC. The Equitable Owner is Commerce Way Dover DE, LLC. Property Address: 22.967-acre unaddressed parcel on Commerce Way. Tax Parcel: ED-05-076.10-02-07.03-000. Council District 1. PLUS #2022-09-05. *This site was subject to MI-19-02: Comprehensive Plan Amendment 2019, and the Rezoning application Z-19-01: Lands of H&M Properties on Commerce Way which was approved in March 2019. Waiver Request: Partial Elimination of the Fence Component of the Opaque Barrier. For Consideration: Performance Standards Review.*

Representative: Mr. Chris Mondoro, Kimley-Horn & Associates; Mr. Joe Di Giorgio; project architect

Mr. Swierczek stated that this is a proposal for a warehouse on Commerce Way. It is a facility that is supposed to be a 234,000 SF +/- . This is a property that has been before the Planning Commission. Recently, the western half had been rezoned for a potential high density residential development that did not happen. The property has sat vacant for several years and in 2019, it did not come back for a Rezoning to IPM (Industrial Park Manufacturing Zone) to allow for the potential of an industrial commercial development. IT is part of a larger business park. There are other such facilities in the area to the south and east that are a variety of commercial uses and offices. To the north and west is largely residential. You can see on the plan, on the screen, that there is some wooded area that kind of buffers this development area on those residential areas, being Woodmill Apartments to the west and an area of some open land and then some single

family homes to the north. In the proposal, it is noted that there are approximately three hundred (300) vehicle parking spaces on the south and west sides. The east side is shown to contain about thirty loading spaces. It was noted that the submission from the applicant had identified that there would also be eighty-one what they call trailed parking spaces which you see to the east of the building on the right of the plan. This, from their understanding is the only part identified as being phased. Being that forty-four are purposed to be implemented in the initial phase of construction of the project and then thirty-seven spaces being designated for later development though the timeline is not specified. In our findings, they had noted that because of the zoning and the scale of the proposed developments, this was subject to the Performance Standards Review Application which the applicant had submitted some material in support of. Planning Staff finds it is largely compliant with provisions of the *Zoning Ordinance*. Similarly, because of the scale of development, the project was also subject to the PLUS Review from the State. The State did issue their findings, largely finding that there was not to be any sort of objectionable materials or development on site. To his knowledge most recently, they do not yet have the applicant's response to that. For Staff recommendations, they did note that they recommend approval of the Performance Standards Review that they had submitted, again, finding that it is largely compliant with the provisions of the *Zoning Ordinance*. The applicant had shown their plans, the implantation of a fence as part of the buffer requirement which is largely along the north and west property lines because that is where it is abutting residential uses. Kind of going counter to the *Zoning Ordinance*, Planning Staff finds that because of the wooded nature of this, that is might actually be detrimental to remove trees in a slightly wooded area to then implement a fence and finding that the trees would make a better buffer for residential areas. In addition to that, they had noted in their recommendations to encourage the possibility of the applicant looking at the installation of facilities for electrical vehicle charging stations. Currently, our *Zoning Ordinance* does not have any such provisions requiring that but always having an eye to the future that is something that they are encouraging where possible. Also, due to the expansive roof there, we encourage the applicant to look at the possibility of solar energy being implemented.

Mr. Mondoro state the Mr. Swierczek did a great job summing up the property and what they have done to date. He just wants to provide a few clarifications to the items that were in there. First being the PLUS Review. It is correct that they have not yet responded to those comments; however, he wants to note that they will be proposing a bus stop and shelter from the comments that would be relocated. Regarding parking, there are two hundred ninety-three parking spaces required and three hundred provided. There was a question about the number of employees on site. They do not anticipate that the desire will exceed the amount are required by the square footage. Regarding the height of the building, he just wants to clarify that it is 51' 2" as shown on the elevations. As part of the Fire Marshal's comments, they will also be providing full accessibility around the building which will require a shift further away from the residential on the west side.

Mr. Hartman stated that he favors allowing the trees to remain certainly in lieu of a fence if necessary but in the event that something happens to those trees, what recourse does the City have to have a barrier installed between the warehouse and the residential area? Responding to Mr. Hartman, Mr. Swierczek stated that wherever a non-residential use is abutting a residential use, there is a requirement for a buffer that includes a landscape component. There are specifications for certain types of trees and landscaping that would meet those requirements. So,

in this situation where we have woodland present and obviously that is fantastic; they love to see woodland remain. If there were to be some type of removal there, there is still a minimum requirement of landscaping that would need to be present to facilitate that. As long as they were meeting that minimum standard for landscape buffer, they would be able to verify that.

Mr. Hartman asked that if by some circumstance the trees were knocked down and they no longer met that landscaping standard, what would initiate the City looking at that? Responding to Mr. Hartman, Mr Swierczek stated that the easiest way to do that is when construction is completed and the Certificate of Occupancy needs to be issued by the city, the Planning Office will go out and do an inspection of the site. So when work is done there and Stagg goes to inspect, they are going to be inspecting to make sure that they are meeting the landscape buffer requirements. If there were to be trees removed to a scale that it is insufficiently addressing that part of the Code, then they would be able to raise it with the applicant at that point.

Mr. Hartman stated that his concern is like in 5 years from now after the project is completed. Responding to Mr. Hartman, Mr. Swierczek stated that he believes that the Zoning Ordinance does have a requirement stipulated that if plantings do need to be put in place by the developer, they have to be planted meeting a certain specification and then in one year's time there is another stipulation for certain standards. He doesn't think there is anything specifically listed in Code for further down the road like in five years. He believes that is something that the Planning Commissioners might be able to inquire about in their motion.

Mr. Hartman asked if the applicant would be willing to submit a plan for maintaining that area of trees as a buffer area. Responding to Mr. Hartman, Mr. Mondoro stated yes.

Mrs. Maucher stated that she wanted to clarify about the bus stop and the recommendation in the PLUS Report. The applicant did say they were doing that, right? Responding to Mrs. Maucher, Mr. Mondoro stated that was correct. There was a request to provide a shelter out there and that will be provided on their property which will be a slight relocation of that stop.

Mr. Cooper stated that he noticed that the plans show the trees, but they also show a fence. He knows that Mr. Swierczek stated that there were concerns about taking the trees out to put the fence in could also cause issues to the trees. Is the plan to keep the trees or the fence? Responding to Mr. Cooper, Mr. Swierczek stated that he should have clarified that you can see on the plan that there is a sort of one area to the west of the building where the wooded area is thinner. It would make more sense to implement that fence, whereas, on the northern portion it would not. So it is where site conditions would lend themselves to be better to maintain woodland as opposed to the woodland not being thick enough and a fence should be implemented.

Mrs. Maucher opened the public hearing.

Ms. Charlie Robertson – 1242 Farmview Drive Dove, DE 19904

Ms. Robertson stated that her concern is the same thing that they were talking about. That woodland area, not only is it home to an awful lot of wildlife like fox, deer, and groundhogs, but most of them also have fences on the other side of that. When it rains, they get an enormous amount of flooding that comes down to the ditch and goes into some people's garages. So if take

that area away, they will need something that will help buffer some of that rain and/or snow when it melts. That is a serious issue for her along with a lot of her neighbors.

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Ms. Linda Parkowski- Kent Economic Partnership

Ms. Parkowski stated that she would like to speak in support of the project. This will be a job creator. We have inquiries all day every day for this size warehouse and we don't have enough of this type of inventory in order to meet the demand right now. We encourage the Commission to please support this project. She thinks that they have done a really nice job of protecting the neighborhood and supply parking. This is a site that was built as an industrial commercial park. They are really grateful that this project will be on a board along with some of the other projects that are going on in warehouse distribution and logistics.

Mr. Joe Di Giorgio stated that he did not have any statements at this time but is here for questions.

Mr. Jack Melvin, property owner, stated that he has no concerns.

Mrs. Melson-Williams stated that they did receive an email regarding this application. It was provided to the Planning Commission members via email this afternoon and also provided on their desks this evening. It comes from Kate and Ted Drew. "We, Ted and Kate Drew own and live at 1236 S. Farmview Drive. Our property is adjacent to this proposed construction. Per the last updated letter date from Kimmie Horn in lieu of attending the meeting, we are permitted to submit comments about this construction through email at this address. Therefore, we would like to request that the culvert, easement, tree line, and berm between the field and our properties on S. Farmview Drive be left intact. The culvert allows water to settle away from our homes when heavy rains cause the side culverts to overflow into our front street. The tree line is home to many wildlife species included red foxes, deer, ducks, and hawks. They have physically seen the dens in the brush and enjoy the antics of the foxes and their families in the area for years. The berm keeps water from the fields away from our already overtaxed culvert between the properties. The berm also keeps crops and litter debris from the fields from blowing against our fences. Lastly, the tree line and berm are sound buffers which keep the noise from the existing warehouses to a lessened level. In the past when we had attended a similar meeting regarding potential construction, we were told that companies do their best to keep already existing tree lines and boundaries in the plan. We hope this is the case for this plan as well so then we should have no objections. Thank you for allowing for our comments. "

Mrs. Melon-Williams stated that Ms. Robertson who spoke did submit her comments that she made verbally to us in a written copy so that they would also include in the record.

Mrs. Maucher closed the public hearing.

Mr. Hartman asked about the berm and the culvert that was mentioned in the letter from the couple on S. Farmview Drive; that's not going to be impacted with this project, is it? Responding to Mr. Hartman, Mr. Swierczek stated not to his knowledge. There is a provision in the Zoning Ordinance that a berm may be utilized as an option as part of the landscape buffer. As to whether or not the applicant is specifically planning that, he is not sure at this stage.

Mr. Mondoro stated that's correct. The culvert wasn't identified on our survey so that will be to remain; it's not part of the property. There is a portion of the berm located to the north of the site, roughly consistent with the building that will largely be remaining intact. Part of what they are required to do from a stormwater management standpoint is to demonstrate that they are reducing flows to offsite areas, and they will be demonstrating that as part of their application to DAC.

Mrs. Denney stated that with regard to what Ms. Roberson was commenting about, they always have this information before us, the Kent Conservation and all of these statistics in their plans. Although they can view it, some of them aren't even knowledgeable that they should follow up on this. She just wants her to know that within the plans through Kent Conservation, they will not issue Certificates of Occupancy on situations such as this without an approved storm water management plan. She hopes that that in writing gives her comfort as she is concerned that this would add flooding to their properties.

Dr. Jones states that she is very familiar with the flooding in that area. Will the Planning office be keeping an eye on the manipulation of the berm? Responding to Dr. Jones, Mr. Swierczek stated that in terms of looking at the topography of the site, especially with regards to stormwater management that largely the purview of the Kent Conservation District. They have certain standards that they will be looking at when they are looking at plan review, they are going to need to see certain items on the plan. Then similarly when they go out for their inspection just like Planning will do, they will be looking at conditions as well. He can't speak specifically to what their standards are, but they will be looking at that.

Dr. Jones stated that was fine. She just wanted to make sure that we understood Ms. Roberson's concern because it is a real concern if you have ever gone through there.

Mrs. Denney moved to approve S22-14 Commerce Way Dover DE LLC Warehouse on Commerce Way as she believes that this is needed in the community, and it seems to be well thought out and meets the Comprehensive Plan and the desires of how we want things to develop within the city.

Mrs. Maucher asked if the motion included the Waiver Request for the partial elimination of the fence component of the opaque barrier. She asked if that was to leave the trees intact. Responding to Mrs. Maucher, Mr. Swierczek stated that basically where it would be preferable to leave the woodlands intact as the buffer instead of the fence.

Mrs. Denney stated that she wishes they were addressing that separately because her feeling is that you can fence that wooded area to a certain extent. You would have to cut trees down to put a fence around the edge of the property. Although she does realize that that takes away the visibility of the people who enjoy it and walk through it. In keeping with that thought process,

she will include in her motion for approval the request for the waiver of the partial elimination of the fence requirement.

Mrs. Maucher stated that there is also a Performance Standard Review requirement.

Mrs. Denney moved to approve S-322-14 Commerce Way Dover DE LLC Warehouse on Commerce Way as she believes that this is needed in the community and it seems to be well thought out and meets the Comprehensive Plan and the desires of how we want things to develop within the city; and to include the approval request for the waiver of partial elimination of the fence component, and based on the recommendation of the Planning Staff to confirm the proposed development will not violate any of the provisions found in the Zoning Ordinance regarding dangerous objectionable elements, seconded by Mr. Hartman and the motion is carried 9-0 by roll call vote. Mrs. Denney voting yes; in keeping with her motion. Mr. Hartman voting yes; based on the recommendations of the DAC as well as the testimony of the applicant's representative tonight. Mr. Baldwin voting yes; based on the DAC comments and the fact that it fits with the current area. Dr. Jones voting yes; based upon previous comments and she would like to add that based upon the consideration of the concerns of the residents in that area. Mrs. Welsh voting yes; based on previous comments. Mrs. Malone voting yes; for reasons stated. Mr. Cooper voting yes; for reasons stated. Mr. Roach voting yes; for reasons stated. Mrs. Maucher voting yes; based on recommendations for Planning Staff.

S-22-16 Retail Store at 293 South Saulsbury Road – Public Hearing and Review of a Site Development Plan to permit construction of a 9,100 SF, one-story retail building and associated site improvements. The proposed development is to be located on the undeveloped northern portion of the parcel already containing a retail building (convenience store) and associated fuel pumps (Royal Farms). The property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). The property is located on the east side of South Saulsbury Road and north of W. North Street. The owner of record is West Dover Roadway, LLC. Property Address: 293 S. Saulsbury Road. Tax Parcel: ED-05-076.11-01-43.00-000. Council District 4. *For Consideration: COZ-1 Superior Urban Design. This site was subject to Conditional Use Site Plan Application C-11-05 Royal Farms and Bank at 293 Saulsbury Road reviewed by Planning Commission in November 2011 with its Final Plan approval issued in February 2012.*

Representerative: James Taylor, PE of Verdantas; Fred Wittig and Robert Wittig representing property ownership.

Mr. Swierczek stated as noted, this is a proposed 9,100 SF retail facility in the proposed northern undeveloped portion of an already developed parcel. This property had most recently been before the Planning Commission in 2011 as a proposed convenience store in the southern portion with fuel pumps which is today the Royal Farms; and the northern portion originally proposed bank. While the southern portion had been implemented, the northern one had not. So again, that's why this development is being proposed in a parcel that technically already has development on it. That previous application had included two approved waiver requests. One for the fencing component of the opaque barrier on the northern property line. That was to allow for an alternate material being a white vinyl and then a second one was for the partial elimination of the 6-inch upright curbing. Both of those had been approved as part of the overall Site Development and as

largely still following those lines. Those are still considered active approvals. The building proposed again is noted as a single story 9,100 SF building and the potential tenant has been identified as Dollar General. The main considerations for the site development in addition to it being zoned C-2A (Limited Central Commercial Zone) is that it is within the COZ-1 (Corridor Overlay Zone). The COZ-1 (Corridor Overlay Zone) has come before you several times recently. This is an added zoning component along portions of Route 8, Saulsbury Road and McKee Road that has added site design standards and building architecture design standards in order to contribute to what the *Zoning Ordinance* for the Superior Urban Design. In order to do that. The applicant has submitted a supplementary letter attesting as to how they feel their design is meeting those Superior Standards which was provided in the packet. Planning Staff does find that the plan largely demonstrates a compliance with the Superior Design provisions and that will be something for the Planning Commissioners to consider in their motion. Specifically, as to whether or not, they find that it does meet those standards. We had asked basically for the applicant to ensure that the north elevation meets the same design standards as the west and south elevations. On the site layout that is shown on the screen, you can see that the north elevation, while it does not face directly towards any road frontage, it is potentially visible from Saulsbury Road. So, we just wanted that to be a consideration for the applicant. Once again for an eye to the future, Planning Staff is recommending that the applicant look at potential of installing the facilities or infrastructure to facilitate electrical vehicle charging stations in the parking lot.

Mr. Taylor stated that as Mr. Swierczek mentioned, we are here to seek approval for a 9,100 SF retail building; specifically a Dollar General at the corner of Saulsbury Road and North Street. In 2011, there was a vision to revitalize this corner which was approved in 2012 as a Royal Farms and there was a bank and a drive through that was originally approved for the site. In 2013, the Royal Farms was completed and the rest of the site has sat vacant for the last 10 years while they sought a tenant. At this point in time, a tenant has been found and that's why we are here tonight. As Mr. Swierczek mentioned, the site is within the COZ (Corridor Overlay Zone). They provided some documentation as to how we meet the Superior Urban Design for the site. He also wanted to comment on a couple of other things that were in the Planning Staff's Report regarding the relief to have the longest edge of the building facing the corridor. Obviously with this tight site, to try and fit this building in there with that orientation, it will not be feasible to face Saulsbury Road. There is also a question about the islands and do they have enough islands on this site. Per the COZ (Corridor Overlay Zone), it says that an island is required anytime there is more than twenty parking spaces in a row. In this instance, we are only providing eighteen and six and four. By the Code, there actually does not appear to be a requirement for a landscaping island in that row of parking. Shade trees will be provided in the other island and peninsulas to meet the landscaping requirements for the site and there will be a 5% interior parking that will be landscaped as well. The open space was further clarified to be a 27% for the overall site. That includes the Royal Farms and where they are developing today. Mentioning about the loading space, there was a document provided that had an updated architectural detail that shows a typical fence to help screen the loading area from the public right-of-way. It is not your typical fence; it is a little bit of an upscale architectural feature that was added onto that aspect. If you do not have it, he can share it but it should have been part of the presentation.

Mr. Swierczek stated that he apologizes because he did not include that in the presentation but it should be in the packet.

Mr. Taylor stated that as far as the Superior Urban Design falls, there were four ways to where they are meeting that for this site. The first one is multi-modal transportation. As mentioned in that letter, there are bus stops located within 1,200 feet of the site. With access ways through their site, they will be providing connectivity between two buildings on the site. For architectural Features, you can see that this isn't a typical building; this is an enhanced aspect with the stone architecture and multi-types of façade. Landscaping as required will be provided above the minimum requirements for the site. Then green technologies used for stormwater. The existing stormwater facility will be retrofitting to account for this additional square footage and impervious coverage for the site. They are currently working with DelDOT and with the Kent Conservation District as well as the other members of the DAC to obtain approvals.

Mrs. Maucher stated that she travels Saulsbury Road quite regularly. She knows that they are redesigning the roadway. Is that still going to remain the only entrance onto that property? Responding to Mrs. Maucher, Mr. Taylor stated that will still remain the only entrance onto that site. There are plans for another renovation to Saulsbury Road to kind of help with some of the additional traffic in general, its not related to this project. They are looking at some enhancements taking place. But there won't be another access into the site.

Mrs. Maucher stated that sometimes she sees people get into the turn lane to access the Royal Farms rather than to get to the other street. Responding to Mrs. Maucher, Mr. Taylor stated that his understanding is that they are looking at modifying that whole stretch of roadway again.

Mrs. Maucher opened the public hearing.

Mr. Wittig (virtual) stated that he had no comments regarding this application.

Mrs. Maucher closed the public hearing.

Mrs. Maucher stated that she wanted to verify that the previously approved waivers do not need to be included in tonight's motion. Responding to Mrs. Maucher, Mrs. Melson-Williams stated that is correct. They are already either been implemented on the site or continue in the same vein. There is potential for some elimination of curbing as they continue to design stormwater in this area and Staff would be amenable to do that.

Mr. Cooper moved to approve S-22-16 Retail Store at 293 South Saulsbury Road noting that they have provided sufficient documentation for the Superior Urban Design, seconded by Mrs. Denney and the motion was carried 9-0 by roll call vote. Mr. Cooper voting yes; based on his motion, Mr. Roach voting yes. Mrs. Denney voting yes; she thinks this project fits within the Comprehensive Plan and what the City would like to see developed there. Mr. Hartman voting yes; it is a use that is approved and there has been a lot of work done in the past. Mr. Baldwin voting yes; for reasons previously stated. Dr. Jones voting yes; for reasons already stated. Mrs. Welch voting yes; for reasons previously stated. Mrs. Malone voting yes; for reasons previously stated. She will be glad when that area is cleaned up because it is terrible right now. Mrs. Maucher voting yes; based on Staff recommendations.

MI-22-05 Text Amendment: IPM-2 (Industrial Park and Manufacturing Zone) - Public Hearing and Review for Recommendation to City Council of a Text Amendment to the *Zoning Ordinance*, Article 3 – District Regulations, Section 20A – Industrial Park Manufacturing Zone – Business and Technology Center (IPM-2), Section 20A and Article 12 – Definitions to include *Vocational education facility*. The proposed Ordinance outlines additional permitted land uses within the IPM-2 Zone to include printing, publishing, binding, and packaging, as well as various accessory uses. The Ordinance proposes adding several Conditional Uses to include Building contractor’s yard with restrictions; Vocational education facilities; Associated retail uses in conjunction with and accessory to a permitted use with restrictions; Craft distilleries and microbreweries with restrictions. The proposed Ordinance adds a purpose statement and includes guidelines and performance standards for the regulation of the above. Ordinance #2022-21. *First Reading was held by City Council on November 28, 2022 where the Public Hearing dates were set for Planning Commission on December 19, 2022 and City Council on January 9, 2023.*

Representative: Planning Staff

Mrs. Gray stated that this is a request for a Zoning Text Amendment which revises the text in the *Zoning Ordinance*. The Planning Commission is part of the public hearing and review process and will provide a recommendation on the Text Amendment request to City Council. The Garrison Oak Business and Technology Center formerly known as the Garrison Oak Technology Park was purchased by the City with funding from the State in 1999. It is zoned as IPM-2 (Industrial Park and Manufacturing Zone). This 400-acre site was funded through the State’s FY2000 Bond Bill in the amount of \$2 million to facilitate the site acquisition. The Bond Bill included epilog language specifying that for at least a period of 10 years the site was to be used as a high-end technology industrial park targeted to information and technology, life sciences, semi-conductor fabrication, scientific research and development and high tech manufacturing. It’s location on White Oak Road with potential access to State Route 1 has been identified by Dover and the State as a potential location to promote economic activity. Council adopted the Ordinance creating IMP-2 (Industrial Park and Manufacturing Zone) on August 23, 1999. That put the zoning for this Garrison Oak Business and Technology Center in place. The allowed uses then included manufacturing and processing of biotechnology and related products, research design, testing and development laboratories, offices for corporate support operations for financial services, insurance and healthcare industries, and agricultural farm uses. It should be noted that this Garrison Oak Business and Technology Center is the only tract of land in the City that is currently zoned IPM-2 (Industrial Park and Manufacturing Zone). This zoning district was revised by Council on October 12, 2009. These revisions added electricity generation as a permitted use and modified the Bulk Standards by reducing the minimum lot size from 50 to 10 acres with a minimum width and depth of 100 feet. Then in December of 2018, City Council adopted Resolution 2018-12 that modified the name of Garrison Oak Technology Park Facility to Garrison Oak Business and Technology Center as it is known today. This Resolution also articulated that the City wanted to expand the purpose in nature of the site to reflect the current business conditions and the changing marketplace therefore improving its marketability. This Resolution was part of a new marketing approach to secure occupants and a strategy to link to the research performed by the Kent Economic Partnership that the area is best suited for growth prospects and the logistics warehousing distribution sector. Council adopted these amendments to the zoning district on Dec 9, 2019, which reflected the attempt of this resolution and in

addition to changing the name, it also added warehousing trans-shipment, distribution and logistic support as well as business and professional services in data management as permitted uses. The eastern portion of this site is in a Tier 2 Primary Well Head Protection Area in the SWPOZ (Source Water Protection Overlay Zone) and the purpose of a Tier 2 is to safeguard the potable water resources of Dover and Kent County. Since the nearest well field is over a mile away the enhanced protection requirements merely surrounding the well head likely do not apply; however, there are uses that are prohibited in the SWPOZ (Source Water Protection Overlay Zone) area that are articulated in that Ordinance.

Moving on to the proposed uses, that is why she is here tonight. It always helps to have background history of this park. The commercial Moving Experience Real Estate Company, which is the broker of record marketing this property for the City, had indicated through a letter to the City Manager on September 20, 2022 that the current IPM-2 (Industrial Park and Manufacturing Zone) limits development opportunities due to restricted development. Furthermore, that some of the potential purchases have been denied due to zoning restrictions. A few of these potential users include educational facilities, athletic fields, self-storage, Concord recycling and contractor's yard. In addition, this letter suggested that the City consider some of these uses as potential uses, permitted uses or uses with restriction or conditional uses. Then a follow up letter by our broker was sent which included some potential language and also suggested that some additional uses be added to include printing, publishing, binding and packaging as well as look at some changes to the parking regulations. Regarding Staff recommendation when this part was created and State tax dollars provided funds to facilitate the site acquisition. It was done so with the provision that the site be used as a high technology and industrial park. The 2018 Resolution and associated 2019 Ordinance modified and expanded a purpose to reflect current business conditions and the changing marketplace and added uses of manufacturing and uses of warehousing, trans-shipment, distribution, and logistic support as well as business and professional services in data management as permitted uses. Planning Staff believes that any revisions to the IPM-2 (Industrial Park and Manufacturing Zone) need to stay within these parameters. Regarding the proposed text amendments, there are a number that are being proposed within this to articulate these there is an addition of a purpose and intents section, they are adding truck terminals and clarifying the addition of accessory uses. They are purposing to add indoor recreation and amusement establishments. The addition of conditional uses is to include builders/contractors' yard, vocational educational facility, associated retail uses in conjunction with an accessory to a permitted use as well as a craft distillery and micro-brewery. Also, they are adding a definition for a vocational educational facility. Because this is a Text Amendment proposed to the *Zoning Ordinance*, a public hearing recommendation by the Planning Commission is required. The next step after tonight, it will go before Final Reading and public hearing at the January 9, 2023 Council Meeting.

Regarding the recommendation of Planning Staff. Planning Staff developed a proposed ordinance for text amendments for industrial park manufacturing business and technology center because of consideration and economic development strategies and interaction with developers and property owners. As part of this process as outlined in the *Zoning Ordinance*, the City Planner will need to prepare a proposed zoning text amendment. The City Planner shall issue a Report to the Planning Commission and City Council including comments from other reviewing agencies which evaluates these two factors; whether such a change is consistent with the aims

and principles embodied in the Ordinance as to particular zones and concerns as well as whether the proposed amendment is consistent with the *Comprehensive Plan*. To sum up the Planning Staff's recommendation, the Planning Office is in support of these changes to the permitted uses, the accessory uses and conditional uses in the IPM-2 (Industrial Park and Manufacturing Zone) with the exception of the recommendation for indoor recreation and amusement establishments. This use was added by City Council at the first reading of the Text Amendment on November 28, 2022 and that is underlined 62 which added articulation of 28-19 Indoor Recreation and Amusement Establishments. As indicated in the discussion above, they feel the purpose and intent of this zoning district is a high-technology and business district. Planning Staff believes that any changes to the zoning district shall meet the intent and purpose and the proposed use of indoor recreation and amusement establishment does not meet this threshold. This is also included in the Staff's Decision and Community Action Form dated November 10, 2022 in the packet. Regarding the *Comprehensive Plan*, Chapter 12 Land Development Plan discusses office parks and industrial land-uses as an opportunity for the creation of employment centers. This text amendment to the IPM-2 (Industrial Park and Manufacturing Zone) clarifies and broadens the potential uses while maintaining a focus on industrial activities. They feel that it is in compliance with the *Comprehensive Plan*. Regarding the Planning Commission review, the Article 10, Section 5.23 the two factors that the Planning Commission should be looking at per the Code regarding a review for a text amendment to a *Zoning Ordinance* is whether such a change is consistent with the aims and principles embodied in the ordinance as to the particular zones of concern and whether such proposed amendment is consistent with the aims of the *Comprehensive Plan* of the City. She also wants to call to attention, a comment letter that Councilman Anderson submitted to the Planning Commission this afternoon regarding his support of the addition of the use for indoor recreation.

Mr. Hartman asked if they had to consider the suggestions proposed by the applicant. Responding to Mr. Hartman, Mrs. Gray stated that he is welcome to do so should he wish. The proposed ordinance is in front of you, but you can certainly make additional recommendations if you wanted to add or suggest additional uses.

Mr. Hartman stated that he doesn't support most of those recommendations by the applicant. He was just asking as a matter of procedure.

Mrs. Maucher stated that it is her understanding that what they will be voting on is the ordinance as proposed. Responding to Mrs. Maucher, Mrs. Gray stated yes.

Mrs. Maucher opened a public hearing.

Mrs. Linda Parkowski – Kent Economic Partnership

Mrs. Parkowski stated that she is in support of the amendment. They have been trying to market Garrison Oak Industrial Park for a while. As the brokers' letter stated, some of the uses were very restrictive and they were written in 1999 or 2009. We are in support of this. It brings the *Zoning Ordinance* into today's world and they certainly appreciate that.

Mrs. Melson-Williams stated that the only written correspondence is the letter of December 19, 2022 from Councilman Anderson expressing his views regarding the IPM-2 (Industrial Park and

Manufacturing Zone) amendment that is proposed that you found either in your mail or on your desk this evening. She can certainly read it into the record if you would like but she thinks that they have all had the opportunity to take a look at that tonight.

Mrs. Maucher closed the public hearing.

Mr. Cooper stated that he has a question for Mr. Hartman. As he reads through Councilman Anderson's letter, he doesn't find too many moments that make him pause. He has traveled around; he has a good buddy of his that he runs a beer blog for. He has traveled to almost 800 different breweries around the Country and a large number of them are in business parks. He finds that there is a lot of jobs, there are a lot of businesses that happen in business parks that aren't necessarily tractor trailer type jobs. It's not just loading and unloading. There are a lot of entities that happen across the Country, and he has gone as far as Washington State and down to Texas. He has driven home from some of these trips to Texas and Colorado and visited a lot of these places. He is curious to what give Mr. Hartman pause because in many evenings, Mr. Hartman has changed his way of thinking. Not that he wants him to now, but he is curious to know what gives him pause.

Mr. Hartman stated that his question is concerning the letter from the real estate agent where they were purposing the use of concrete recycling facilities, athletic fields. His concern was not with the micro-brewery or distillery.

Mr. Cooper stated that he doesn't believe those are in his letter, not necessarily in the Ordinance. Responding to Mr. Cooper, Mr. Hartman stated yes. His question was whether or not they had to consider those, and he did not want to consider those tonight.

Mr. Hartman moved to recommend approval to City Council for MI-22-05 Text Amendment: IPM-2 (Industrial Park and Manufacturing Zone) to adopt as written, seconded by Mr. Cooper.

Mrs. Melson-Williams asked if they were recommending approval of the version of the Ordinance that was included in the packet that also includes the indoor recreation and amusement establishments as a permitted use. She just wants to make sure that they are all looking at the same Ordinance.

Mrs. Hartman stated yes.

The motion was carried 9-0 by roll call vote. Mr. Hartman voting yes; its consistent with the wishes of the Comprehensive Plan and it is consistent with the principles in the Ordinance to the particular zones concerned. Mr. Baldwin voting yes. Dr. Jones voting yes; for reasons previously stated. Mrs. Welsh voting yes. Mrs. Malone voting yes; based on Mrs. Gray's comments. Mr. Cooper voting yes. Mr. Roach voting yes. Mrs. Denney voting yes; she thinks it's clearly in keeping with the Comprehensive Plan and it has the potential to breathe a little new life into that project. Mrs. Maucher voting yes; she thinks that it is important that the City regularly review its Ordinances and make these kind of changes as conditions change.

NEW BUSINESS

Meeting adjourned at 9:05 PM.

Sincerely,

**Kristen Mullaney
Secretary**