

## MINUTES

### CITY PLANNING COMMISSION

**March 22, 2018**

Present: Desmond Baker (Vice-Chair), Lloyd Budd, Patrick Carter, Anthony J. Hill and Tanya Washington (Commission Members); and Herb Inden, Gwinneth Kaminsky, Tim Lucas and Gemma Tierney (Planning).

The meeting was convened at 6:05 pm by Desmond Baker. Mr. Baker noted that the meeting was rescheduled from the original date of Tuesday, March 20 due to inclement weather.

#### **REGULAR MEETING**

##### **Approval of the minutes of the February 20, 2018 Planning Commission Meeting**

Mr. Baker asked the Commission to make a motion on the minutes of the February 20, 2018 City Planning Commission (CPC) meeting. Patrick Carter moved to approve the minutes, and Anthony Hill seconded the motion. All members voted to approve the minutes.

#### **New Business**

##### **Resolution 06-18: A proposal to remove a portion of Downing Drive, between Eastlawn Avenue and Governor Printz Boulevard, from the Official City Map.**

Mr. Lucas from the Department of Planning and Development presented the Department report for Resolution 06-18, which addresses a request from Duffield Associates, Inc., on behalf of CHRF, LLC and Moat Street, LLC, to remove a portion of Downing Drive, between Eastlawn Avenue and Governor Printz Boulevard, from the official City Map. He stated that the removal was requested to facilitate the redevelopment of three adjacent parcels. He presented a series of slides to accompany the presentation, including maps and plans of Downing Drive. He noted that, after the applicants initially submitted their request, they modified it to include the dedication to the City of a cul-de-sac to be constructed at what would become the terminus of Downing Drive following the removal.

Mr. Lucas provided some historic background on Downing Drive. He stated that Downing Drive was first dedicated to the City as a public right-of-way in 1983 as part of a subdivision of land for the development of Downing Industrial Park, and that in 1985, its west end was shifted southward. He noted that only 450 feet of Downing Drive was constructed, while the other approximately 900 feet of the dedicated right-of-way remained only a "paper street" on the City map. He said that the 615-foot portion that is requested for removal is part of the "paper street."

Mr. Lucas stated that preliminary plans for the development of the site include construction of three buildings in two phases. He also noted that the Department of Public Works (DPW) determined that the street bed is owned by neither the City nor a private entity. He stated that all parcels bordering Downing Drive are in an M-1 (Light Manufacturing) zoning district. He

## City Planning Commission Meeting Minutes

March 22, 2018 Meeting

Page 2

described the land uses in the immediate area as a steel pipe supply company, automobile repair business, self-service car wash, and the Brandywine School District's school bus storage and repair facility, and noted that the entire 5.2-acre site proposed for development is vacant. He added that, because Downing Drive was never fully built, it is only used by the adjacent business owners, and their access would be unaffected by the removal.

Mr. Lucas reviewed comments from City departments regarding the proposed removal. He said that the City Fire Marshal has no objections to the removal and had stated that the design of the cul-de-sac and development on the adjoining parcels must meet all requirements listed in Title 1, Chapter 5 of the State Fire Code.

Mr. Lucas then reviewed comments from the DPW. He said that the DPW identified several utility easements within and adjacent to the Downing Drive right-of-way, including portions of the street proposed to be removed, but the department concluded that the street removal would not negatively affect any existing utility easements, and all rights of access by the City would remain unchanged. The DPW also stated that it will consider amending the existing utility easements during engineering review, to better match current conditions and facilitate development of the site. Mr. Lucas continued by saying that the DPW's Transportation Division supports the proposed street removal, recommends that the City accept the dedication of the cul-de-sac to improve the existing roadway and better serve the neighboring properties and emergency personnel, and states that the design of the cul-de-sac, including lighting and signage, must meet all Fire Marshal and Public Works standards. He said that the Transportation Division also stated that the stub of Downing Drive that will remain between Eastlawn Avenue and the formerly removed 35th Street should remain on the official City Map as a paper street for now. Mr. Lucas said that the DPW's Division of Streets and Sewers identified issues relating to existing utility infrastructure and possible filling of existing stormwater infrastructure in portions of the right-of-way and in the property proposed for development, and requested continued coordination with the owners and developers to resolve these issues. Mr. Lucas said that the DPW's Division of Water suggests connecting the waterline extending from Eastlawn Avenue to the line extending from Governor Printz Boulevard within the Downing Drive right-of-way to create a loop in the system.

Mr. Lucas said that the Department of Planning indicated that formal written metes and bounds legal descriptions of the street removal and cul-de-sac dedication will need to be submitted to the City by the applicant prior to introduction of any legislation to City Council.

Mr. Lucas noted that the City Code describes the procedures for City street closings and right-of-way disposition, and that, because the ownership of Downing Drive cannot be determined, the determination of property rights shall be by judicial determination in accordance with applicable State statutes.

Mr. Lucas stated that a public notice regarding the street removal was mailed on March 7 to surrounding property owners, occupants, and the standard CPC mailing list, and that the Planning Department did not receive any comments from the public. He also described the

## City Planning Commission Meeting Minutes

March 22, 2018 Meeting

Page 3

standard circulation of the meeting agenda via mail, email, the City website, and by posting in the City/County Building lobby.

Mr. Lucas concluded his presentation by stating that the Department of Planning and Development has no objection to the street removal as proposed and that it recommends the approval of the dedication to the City of the cul-de-sac as proposed, subject to Fire Marshal and Public Works design requirements.

Mr. Baker asked the Commissioners whether they had any questions or comments. Lloyd Budd asked how ingress and egress to the adjacent buildings would be controlled during development, and inquired whether there was someone present who could answer the question. Jeffrey Bross approached the podium and introduced himself as a registered Profession Engineer in Delaware and an employee of Duffield Associates. He said that the portion of Downing Drive used by the surrounding businesses will remain in its current form aside from the addition of the cul-de-sac, which will serve the two businesses seeking the street removal, and that these two businesses may be slightly inconvenienced during construction. He noted that traffic and emergency access must be maintained during construction. He said that the businesses at the near (northeast) end of Downing Drive will not be affected by construction, aside from some construction traffic. Mr. Budd thanked him and asked if equipment would be stored on Governor Printz Boulevard during construction. Mr. Bross replied that it would be stored on the properties adjacent to the portion of Downing Drive proposed for removal.

Mr. Baker asked Mr. Bross whether the property owners would be responsible for maintenance of the new private street. Mr. Bross confirmed that this would be the case, and added that the property owners would set up a private maintenance corporation to maintain the street.

Mr. Baker asked Mr. Lucas to clarify the method of disposition of the right-of-way, given that its ownership cannot be determined. Mr. Lucas referenced subsection 42-11(c) of the City Code, "Disposition of city's interest," which reviews the process of disposition for different scenarios of ownership of the right-of-way, including cases wherein ownership cannot be determined. He said that when Downing Drive was dedicated to the City in 1983, the City did not take title to the land. Mr. Baker asked if the City was maintaining the street even though it did not hold title. Mr. Lucas replied that the City did maintain the portion that was built. Mr. Baker asked why the City did not take title to the street, to which Mr. Lucas replied that the DPW holds all rights to access and maintain the street even if the City does not hold title to it. Mr. Carter asked if the judicial determination required for the street disposition would happen in Chancery Court, and Mr. Lucas confirmed that it would.

Mr. Baker asked the Commissioners whether they had any other questions or comments. As there were none, he called for a motion regarding Resolution 06-18. Mr. Hill moved to approve the resolution, and Mr. Carter seconded the motion. All members voted to approve Resolution 06-18.

Because the Waterfront Development Review case addressed by Resolution 07-18 had been withdrawn from the agenda at the request of the applicant, Mr. Baker moved on to Resolution 08-18.

**Resolution 08-18: Annual Review of the Capital Budget and Capital Improvements Program for Fiscal Years 2019 - 2024.**

Gwinn Kaminsky from the Department of Planning and Development presented the Department report for Resolution 08-18, which addresses the Capital Budget and Capital Improvements Program (CIP) for Fiscal Years 2019-2024. She said that the CPC is being asked to make a recommendation on the FY 2019-FY 2024 CIP prepared by the Office of Management and Budget and the Planning Department. She noted that the first year of the CIP, FY 2019, serves as the Capital Budget and funds the projects in the first year of the program.

Ms. Kaminsky stated that, because the City typically only enters the bond market every two years, the CIP is designed with alternating off-years in which there are no expenditures or funding considerations, and that FY 2019 is an off-year. She said that the remaining five years constitute the CIP outyears, which reflect 38 anticipated projects and their estimated costs for future funding consideration. She said that the 35 projects found in the FY 2020 and FY 2022 outyears were carried over from the FY 2018-FY 2023 CIP, with 27 of these expected to be funded through at least 2024, and eight projects expected to be completed prior to 2024. She also stated that FY 2024 included three new projects. She said that the 38 projects are estimated to cost \$264,528,000, and that this cost is broken down by funding sources, which include the General Fund, Water Fund, and Other Funds.

Ms. Kaminsky stated that the Department of Planning finds the proposed documents to be consistent with past planning and budgeting efforts, and that Resolution 08-18 recommends to City Council the adoption of the Capital Budget and CIP for FY 2019-FY 2024. She concluded by saying that legislation related to the Capital Budget and CIP, along with the City's annual operating budget, were introduced at Mayor Purzycki's Budget Address during the March 15, 2018 Council Meeting, and that this legislation is expected to be considered by City Council at their May 17 meeting.

Mr. Baker asked the Commissioners whether they had any questions or comments. As there were none, he called for a motion regarding Resolution 08-18. Mr. Carter moved to approve the resolution, and Tanya Washington seconded the motion. All members voted to approve Resolution 08-18.

**Resolution 09-18; Waterfront Development Review WF 02-18: Franklin Fibre-Lamitex Corporation, 903 East 13th Street. Proposal to expand an existing non-conforming use in a W-4 (Waterfront Residential/Commercial) zoning district.**

Tim Lucas from the Department of Planning and Development presented the Department report for Resolution 09-18. He presented a series of slides to accompany the presentation. He stated that the purpose of the resolution is to evaluate the compatibility of the proposed expanded light

## City Planning Commission Meeting Minutes

March 22, 2018 Meeting

Page 5

manufacturing use with the Waterfront Development Review Standards (waterfront standards), and to provide CPC recommendations to the Zoning Board of Adjustment (ZBA) based on the appropriateness of the proposed expanded use in the W-4 zoning district and its potential effects on current and future recreational and development activities in the surrounding area.

Mr. Lucas said that the current light manufacturing use on the site became a nonconforming use in 2010, when the site was rezoned from M-1 (Light Manufacturing) to W-4 (Waterfront Residential/Commercial). He said that Franklin Fibre-Lamitex Corporation proposes to expand operations on the site, and that this expansion is likely to include the construction of a new building and additional parking. He said that the proposal is subject to CPC review because the CPC is authorized to review waterfront development proposals whenever ZBA approval is necessary to establish a use in a waterfront district, and that the CPC can make recommendations to the ZBA to approve or deny these uses.

Mr. Lucas presented maps and aerial images to illustrate the location of Franklin Fibre. He stated that the site is a single parcel of approximately 3.5 acres, which occupies the entire block bounded by North Locust, 13<sup>th</sup> and 14<sup>th</sup> Streets and Northeast Boulevard. He said that the company's current facilities are located primarily along 13<sup>th</sup> Street, with access to parking from North Locust Street.

Mr. Lucas said that the W-4 zoning district is intended to protect and encourage investment in well-planned and designed multi-use developments where intensive use is appropriate. He stated that the waterfront standards identify site design and riverfront activity standards as being of major importance in W-4 districts, and economic development of minor importance. He noted that the site design standards are not fully considered because the purpose of the present meeting is to evaluate the proposed use only. He added that, when the applicant submits development and construction plans to the Department of Licenses and Inspections as part of a building permit application, the Planning Department will need to evaluate the plans for conformance with the waterfront standards. Mr. Lucas continued by saying that the riverfront activity standards are largely not applicable to the proposal because the site is not adjacent to the Brandywine Creek. He then reviewed the ways in which proposed use met the economic development standards. He said that the company's proposed expansion will provide the potential for the hiring of five more employees, who will generate wage and head taxes for the City, and that further developing the vacant portions of the site would provide an increase to the tax base.

Mr. Lucas then reviewed the appropriateness of the use in a W-4 district and the potential effects of its expansion on the adjacent property owners and the surrounding area. He noted that the Department considered factors relating to land use and traffic in its analysis of the proposal's appropriateness and potential impacts. He stated that most of the area surrounding the site is either vacant or contains existing grandfathered uses, such as automobile repair and outdoor storage, although there are also some commercial uses. He said that expansion of the use and further development of the site will likely have an overall positive effect on both current and future land uses in the neighborhood by bringing economic growth and increased activity to a largely underutilized area. He said that the Department's analysis concluded that the expansion of the use is likely to cause a slight increase in traffic to and from the site, but that any potential

## City Planning Commission Meeting Minutes

March 22, 2018 Meeting

Page 6

negative effects of this increased traffic on current local traffic, including Northeast Boulevard (State Route 13A), and on current and future development and recreational activities in the area is likely to be negligible.

Mr. Lucas described the standard circulation of the meeting agenda via mail, email, the City website, and by posting in the City/County Building lobby. He concluded his presentation by stating that the Department of Planning recommends approval of Resolution 09-18, which recommends that the Zoning Board of Adjustment approve the use variance application by Franklin Fibre-Lamitex Corporation to expand a nonconforming manufacturing use at 903 East 13th Street, and includes the following recommendation:

- Although all new curb cuts onto State-maintained roads need to be evaluated and approved by DelDOT, and Northeast Boulevard is a State-maintained road, it is recommended that designs for developing the site utilize available frontage along East 14th and North Locust Streets for all new curb cuts.

Mr. Baker asked the Commissioners whether they had any questions or comments. Mr. Hill asked if the operations on the site were considered heavy, medium or light industrial activity when they were permitted as a matter of right under the site's prior M-1 zoning. Mr. Lucas replied that the activity was considered light industry, and that it consists of manufacturing and assembling plastic parts.

Mr. Baker asked Mr. Lucas if the site is in the floodplain. Mr. Lucas said that the site might be elevated above the floodplain. Mr. Baker said that he thinks it might be in the flood plain, and inquired if there were plans to deal with flooding issues. Mr. Lucas said that any new construction would have to comply to FEMA standards. He added that information submitted by the applicant indicated that there were existing flooding issues caused by a flood control intervention installed by the City, but the owners were working with the City to resolve these issues. He continued by saying that because designs for the proposed expansion had not yet been submitted, the Department and CPC are only considering the potential use, rather than the design of the site.

Mr. Baker asked if there were other questions or comments. As there were none, he called for a motion regarding Resolution 09-18. Mr. Hill moved to approve the resolution, and Mr. Carter second the motion. All members voted in favor of Resolution 09-18.

### **Adjournment**

Mr Baker called for a motion to adjourn the meeting. Mr. Carter moved to adjourn, and Ms. Washington seconded the motion. All members being in favor, the meeting was adjourned at 6:38 pm.