

**MINUTES**  
**CITY PLANNING COMMISSION**  
**October 8, 2019**

Present: Desmond Baker (Acting Chair), Jennifer Adkins, Anthony J. Hill, Lloyd Budd, and Brett Taylor (Commission Members); and Herb Inden, Gwinneth Kaminsky, Pat Maley, Tim Lucas, Jessica Molina, and Dorien Snyder (Planning).

The meeting was convened at 6:02 p.m. by Desmond Baker.

**PUBLIC HEARING**

**Resolution 14-19:** An Ordinance to amend Article IX, Division 2, Subdivision III of Chapter 48 to provide penalty and enforcement provisions relating to Neighborhood Conservation Districts. Ordinance 19-040.

Pat Maley from the Department of Planning and Development presented the Department report for Resolution 14-19 accompanied by a series of slides. Ms. Maley stated that Ordinance 19-040 is a change to Chapter 48 of the City Code (which is the Zoning Code) and that the change was requested by Council Member Freel in response to his constituents who reside in the councilmanic district which contains the City's only Neighborhood Conservation District. Ms. Maley further stated that the three sections being added are all new language to the Code and that they are not replacing any existing language in this subdivision. Ms. Maley also stated that the introduction of new language reflects the "behind the scenes" research and wordsmithing work that Planning has been doing with the Law Department to update the sections dealing with maintenance and regulation of both categories of historic districts (City Historic District and Neighborhood Conservation District).

Ms. Maley presented a map of the Neighborhood Conservation District and pointed out the area known as "Forty Acres". She stated that "Forty Acres" was designated in 2004 as the first Neighborhood Conservation District in the City of Wilmington. Ms. Maley further stated that currently "Forty Acres" remains as a compact neighborhood that is considered an early "streetcar suburb" of Wilmington and retains many of the two- and three-story brick row houses and semi-detached twins from the original 19<sup>th</sup> century construction.

Ms. Maley said that the Neighborhood Conservation District functioned well for 14 years. She shared with the Commission Members that in 2018, the Departments of Planning and Licenses and Inspections were alerted about a property owner who had painted his corner property and added a large sign, a huge exhaust vent and ductwork to his restaurant and embellished a sidewalk café, ornamental ironwork and "A" frame signs.

Ms. Maley stated the Department of Planning wrote the case up and presented it to the Design Review Preservation Committee (DRPC) and subsequently realized that the Neighborhood Conservation District section of the Code had no provisions to deal with unauthorized work and that there was no legal language linking to the provisions located in the City Historic District section of the Code.

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Ms. Maley explained that this meant that there was no way that the owner could be made to remove the unauthorized work (the paint) and that the only remedies were from the Building Code to deal with the placement of the exhaust vent to the restaurant.

Ms. Maley said that during a DRPC meeting (Fall of 2018) the neighbors expressed to DRPC that they wanted to see the code strengthened and that they sought Council sponsorship from the current Council Member, Charles Freel, who had asked the Department of Planning to develop a resolution.

Ms. Maley further stated that a draft ordinance was introduced on August 22, 2019 for first and second reading by Council Member Freel and that the ordinance contained new language under three sections of code. Ms. Maley also pointed out that the sections had been “reserved” when the code was first developed to allow for growth.

Ms. Maley briefly described each section, with the first section known as **Enforcement of Approved Work** which sets out how work is to be monitored after DRPC grants an approval to move forward and that if the monitoring finds something that was not approved by DRPC, it is a violation. She describes **§48-429** which deals with **Unauthorized Work** – work that was never passed through Planning or DRPC and is therefore a violation. Ms. Maley further stated that when such work is found, it is presented to DRPC for review and that DRPC determines what mandatory remedial action must occur by the building owner and that failure to comply with the remedial action is a violation of the subdivision. Ms. Maley stated that **§48-430** involves Penalties “...for each and every violation AND for each and every day the violation continues shall be guilty of a misdemeanor.”

Ms. Maley presented the Commission Members with a breakdown of penalties per offense as follows: a first time/first offense - not less than \$250 nor more than \$1000; second time/second offense - \$1,000 to \$2500, and the third time/third offense -\$1,000 - \$5000.

Ms. Maley shared with the Commission Members the penalties as it relates to “Demolition without Permits”: the violation is carried as a misdemeanor and the fines begin at \$5000 which shall not be suspended. Fines that range from above that \$5,000 will be determined by a Judge of JP Court 20 where the criminal summons are adjudicated.

Ms. Maley said the Department of Planning recommends that the Commission Members embrace and approve Resolution 14-19: An Ordinance to amend Article IX, Division 2, Subdivision III of Chapter 48 to provide penalty and enforcement provisions relating to Neighborhood Conservation Districts (Ordinance 19-040). She also stated that the resolution will go before City Council’s subcommittee in 48 hours and before the full City Council on November 7, 2019 for their public hearing.

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Mr. Baker asked Commission Members if they had any questions or comments. Mr. Hill asked if they were prosecuting these code violations in the same manner of the housing code violations. Ms. Rosamaria Tassone stated yes. Ms. Tassone further stated that the current legislation deals with Chapter 34 which is a completely different chapter.

Mr. Baker asked for an explanation regarding the permitting process. Ms. Maley said that the customer is to apply with the Department of License and Inspections, which would in turn be directed to follow up with the Design Review and Preservation Commission.

Ms. Adkins stated that it appears to be some relativeness as it relates to fines regarding the City Historic Districts and the Neighborhood Conservation Districts and asked for a breakdown of fines for the City Historic Districts. Ms. Tassone replied by stating that the fines that are noted in the ordinance are higher than what is currently in the Historic Districts, where the fines are \$300 for violations. Ms. Tassone said that the goal is to move forward with the changes which will then mirror each other in the three categories in both the Historic District and the Neighborhood Conservation Districts. Ms. Tassone also stated that the fines that are presented for the Neighborhood Conservation District are the same as the fines for general violations of Chapter 48 the Zoning Code and that the fines for demolition without a permit in the Historic Districts were substantially increased; not less than \$500 and no more than \$1,000.

Ms. Adkins asked what the time line was in order to have the rest caught up. Ms. Tassone said the process would not be long.

Ms. Adkins asked if the Historic District designations were reflected on the deeds, and how the property owner would know that their properties are located in one of the districts. Ms. Maley said that notice is sent out by "Certified Mail" to all property owners, and that the information is reflected in the "Disclosure Statement" during the time of sale, and that training had been provided for the realtors.

Mr. Baker asked if Council Member Bud Freel had any comments. Mr. Freel introduced himself and stated that he was the Councilman for the 8<sup>th</sup> District and mentioned that Ms. Maley covered all angles and concluded that there had not been any real issues for at least 13 to 14 years until little over a year ago. Mr. Freel stated that they came to learn that there were no penalties in the original ordinance, and they were tasked to rectify the deficiencies and incorporate penalties. Mr. Freel asked for the Commission Members support in order to continue moving this item forward. Mr. Freel stated that the next step would be to send the item to City Council for a vote.

Mr. Baker asked the Commission Members whether they had any questions. As there were none, Mr. Baker closed the public hearing portion and convened the regular meeting at 6:15 p.m.

## REGULAR MEETING

### A. Approval of the minutes of the September 17, 2019 Planning Commission Meeting.

Mr. Baker asked the Commission to make a motion on the minutes of September 17, 2019 City Planning Commission meeting. Ms. Adkins made a motion to approve the minutes and Mr. Hill seconded the motion. All members voted to approve the minutes.

### B. NEW BUSINESS

**Resolution 14-19:** An Ordinance to amend Article IX, Division 2, Subdivision III of Chapter 48 to provide penalty and enforcement provisions relating to Neighborhood Conservation Districts. Ordinance 19-040.

Mr. Baker asked Commission Members if they had any additional comments. Mr. Budd asked if there were any retroactive judgments for the current violator. Ms. Tassone stated no.

Mr. Budd asked for clarification regarding the property transfer, specifically whether the new tenants have to adhere to the changes in the code; or whether the current situation be grandfathered for the new tenant. Ms. Tassone stated that if the current owner or the new owner were to make revisions and do work that violates this section, the same provisions would now apply to that work and that owner.

Mr. Baker asked if the new software the City purchased was up and running and commented that the new software will give each department the opportunity to insert comments regarding a property when it is submitted to the Department of License and Inspections and/or the Department of Public Works. Mr. Lucas replied by stating that it is in the final testing phase and that the Mayor Office has not announced an official launch date. Mr. Lucas stated that each department will begin to use it internally and a set time will be announced with plenty of public notice and all applicants would be required to submit applications and plans on the City's website.

Mr. Baker asked Commission Members if they had any questions or comments regarding Resolution 14-19. As there were none, Mr. Baker called for a vote regarding Resolution 14-19. Mr. Hill moved to approve the resolution and Mr. Taylor seconded the motion. All members voted in favor of Resolution 14-19.

**Resolution 15-19: MS-19-04:** Major Subdivision application from Young Conaway Stargatt & Taylor, LLP on behalf of BPG Office Partners VIII, LLC, which proposes to convert an existing building located at 1007 North Orange Street into a 2-Unit Condominium.

Mr. Tim Lucas from the Department of Planning and Development presented the report for Resolution 15-19: MS-19-04: Major Subdivision application which proposes to convert an existing 16-story building located at 1007 North Orange Street into a 2-Unit Condominium. This presentation was accompanied by a series of slides. Mr. Lucas stated that the proposal is considered a major subdivision, and is subject to review by the Planning Commission, because it

consists of a condominium declaration. Mr. Lucas described the property located at 1007 N. Orange Street as being bounded by Orange Street, Delaware Avenue, and West 11th Street and is fully developed and contains one existing building known as the Nemours Building. Mr. Lucas further stated that the site directly borders 1000 West Street, located to the immediate Northwest, which contains the “Brandywine Building”.

Mr. Lucas described the slide showing the cover sheet of the condominium declaration plan which was accompanied by the enabling declaration document and by-laws. He said the enabling declaration calls for the creation of two condominium units, general common elements, and limited common elements.

Mr. Lucas said that the Planning Department reviewed the preliminary condominium declaration plans and draft accompanying documents for their conformance to the City’s Regulations Governing the Subdivision of Land.

Mr. Lucas discussed the site plans as presented which showed the ground floor plan of the building, as proposed for division into the various units and elements of the condominium. Mr. Lucas said that the subdivision plan was circulated to City departments for comment and that the following comments were provided:

**Cover Sheet (Sheet CD100):**

1. Under the Data Column on the cover sheet (Sheet CD000), add the property owner’s current address.

**Site Plan (Sheet S100)**

2. Change the mislabeled condominium name on the drawing from “1007 North Orange Condominium” to “1007 Orange Condominium” to match the enabling declaration document.
3. Change the label on the drawing from “14 Story” to “16 Story” to match the Buildings and Improvements description as described in the enabling declaration’s Schedule B (page 32).
4. If a separate “Common Plaza Easement” exists as noted at the top of the drawing, please add a reference to the document if recorded in the New Castle County Recorder of Deeds office.

Mr. Lucas noted that comment number four can be struck as the instrument number appears on the cover sheet. However, it may be beneficial to add the instrument number to the note on the site plan.

5. More clearly label all the courses and distances for the parcel line as shown on the drawing by (increased font size and/or bold face print).
6. Add a scale bar to the drawing.

7. Since the site plan was prepared by an architect, the Planning Department requests a copy (digital or paper) for their files of the July 5, 2013 ALTA survey named in Exhibit A of the declaration document.

**Condo Floor Plan – Basement (Sheet CD100):**

8. Provide further explanation to the Department of Planning regarding the section of basement area along the northwestern property line (former bed of North Tatnall Street), adjacent to West 11<sup>th</sup> street, which projects beyond property line.

**Sheets S100, CD100-CD118, and CD301:**

9. For clarity consider adding a note to sheet S100 and/or amending the various labels regarding North Tatnall Street (shown as both “Tatnall Street” and “North Tatnall Street”). The portion of North Tatnall Street in question, located between the Nemours and Brandywine Buildings, extending from Delaware Avenue to West 11<sup>th</sup> Street, was vacated and removed from the Official City Map in 1969.

Mr. Lucas stated that the Department of Planning and Development recommends approval of Resolution 15-19 for the preliminary condominium declaration plan for 1007 Orange Condominium and all comments must be incorporated in the final plan submission prior to recordation.

Mr. Baker asked Commission Members if they had any questions or comments regarding Resolution 15-19. Mr. Hill asked Mr. Lucas to repeat what he said regarding Item #4 which has been requested to be removed/deleted from the comments. Mr. Lucas said the site plans specifically mentions an easement agreement and that it would be helpful to name the instrument number on the site plan in case its referenced separate from the cover sheet.

Mr. Hill referred his question to Mr. Dan Johnson, attorney with Young Conway Stargatt and Taylor, regarding the section of basement that jots out underneath the Tatnall Street bed. Mr. Hill stated that the street was vacated in 1969 and asked if the drawings were based on a survey that pre-dates 1969. He wondered if there was any historical context and/or how it came to be that portions of the basement jot out. Mr. Johnson said that there is common ownership with the top building and both buildings are now under common ownership and one of the easement documents that is referenced on the cover sheet is basically an encroachment easement.

Mr. Lucas stated that the subdivision regulations did not originally include condominium declarations in 1977-1978 and that the provision was later added, possibly in 1985. Mr. Lucas added that one of the amendments to the regulations occurred between 1985 and 1993 and the last amendment was in January 2016 with a slight wording change. Mr. Lucas further stated that the City defines a condominium declaration as a subdivision although it is not subdividing land specifically, it can divide land within a condominium. These are virtual subdivisions in three dimensions, similar to an easement with a parking garage. An easement within a parking garage would be an example of a three-dimensional easement.

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Mr. Baker asked if there was a similar situation with the same applicant for the DuPont Building. Ms. Kaminsky stated yes.

Mr. Hill described the formal legal description of a condominium as a type of real property ownership in which each unit owner holds title to his or her individual unit and shares ownership jointly of common areas such as driveways parking, elevators, outside hallways, recreation, and landscaped areas and a homeowner association typically manages the common areas and oversees the covenant conditions and restrictions that apply to the property. He also stated that there will be two separate and distinct office units that are going to be owned by the same entity or by two separate entities and they will share, pursuant to the 72-page document that Mr. Lucas referenced, the legal responsibilities for the portions of the building that are outside their distinct office units.

Mr. Budd asked if the utilities are separate. Mr. Hill stated that sometimes they are it depends on the covenants and restrictions and the agreement between the parties.

Mr. Budd asked about the demarcation points for the two condominiums. Mr. Hill stated that they were included in the plans and that each floor has different portions.

Mr. Brett Taylor referred back to the question regarding utilities and stated that in the case where there is an existing condominium association they can be responsible for making sure on behalf of the condominiums to go ahead and process those bills and in the absence of that, under state code, the condo owners are responsible for their own utilities, property taxes and everything that is listed. Mr. Taylor concluded by stating that the utilities will be paid based on how it is going to be deeded in the title.

Mr. Lucas said similar to the Dupont building, Public Works stated that the City does not support sub-metering of utilities and the entire entity would get one single bill and if they have internal private sub-metering that would be up to the condominium association.

Mr. Baker asked if after exiting the elevator, would you be restricted from entering the rental area of the building. Mr. Hare said yes and that the plan is to create fire separation for the residential space and the elevator bank will be divided between the residential and the commercial components.

Ms. Adkins asked if the end goal was to have two owners or will this be further divided. Mr. Hare stated that presently the goal is to have two owners; but he could not guarantee that the building would not be further subdivided in the future.

Mr. Baker asked Mr. Lucas to clarify the discrepancy under Item #3 between 14-story and 16-story building. Mr. Lucas said this particular building has no 13<sup>th</sup> floor; however, it has an extra floor that contains utilities only and it depends on how you count the floors. He also said that the comment was made to match the declaration.

Mr. Baker asked Commission Members if they had any questions or comments regarding Resolution 15-19. As there were none, Mr. Baker called for a vote regarding Resolution 15-19. Mr. Taylor moved to approve the resolution and Mr. Hill seconded the motion. All members voted in favor of Resolution 15-19.

## **10. ADJOURNMENT**

Mr. Baker called for a motion to adjourn the meeting. Mr. Hill moved to adjourn, and Ms. Adkins second the motion. All members being in favor, the meeting was adjourned at 6:38 p.m.