CITY OF DOVER PLANNING COMMISSION
September 15, 2014

The Regular Meeting of the City of Dover Planning Commission was held on Monday September 15, 2014 at 7:00 PM with Chairman Colonel Welsh presiding. Members present were Mr. Cregar, Mr. Tolbert, Mr. Holt, Dr. Jones, Ms. Still, Mr. Baldwin and Colonel Welsh. Mr. Holden and Mr. Ambruso were absent.

Staff members present were Mrs. Townshend, Mr. Cook and Mrs. Mullaney. Also present were Mr. Joseph Petrosky. Speaking from the public was Ms. Ethel Matney and Ms. Nicole Faries.

APPROVAL OF AGENDA

Mr. Cregar moved to approve the agenda as submitted, seconded by Ms. Still and the motion was unanimously carried 7-0 with Mr. Holden and Mr. Ambruso absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF AUGUST 18, 2014

Mr. Holt moved to approve the Planning Commission minutes of August 18, 2014, seconded by Dr. Jones and the motion was unanimously carried 7-0 with Mr. Holden and Mr. Ambruso absent.

APPROVAL OF THE PLANNING COMMISSION QUARTERLY WORKSHOP MEETING MINUTES OF AUGUST 19, 2014

Ms. Still moved to approve the Planning Commission Quarterly Workshop minutes of August 19, 2014, seconded by Mr. Holt and the motion was unanimously carried 7-0 with Mr. Holden and Mr. Ambruso absent.

COMMUNICATIONS & REPORTS

Mrs. Townshend stated that the next Planning Commission meeting will be held on Monday, October 20, 2014 at 7:00 PM in the City Hall Council Chambers.

Mrs. Townshend provided an update on the regular City Council and Utility Committee meetings held on August 25, 2014 and September 8, 2014.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

1) Requests for Extensions of Planning Commission Approval: None

NEW BUSINESS

NEW DEVELOPMENT APPLICATIONS

1) S-14-18 Tall Pines at 1655 and 1665 Kenton Road – Public Hearing and Review of Site Development Application to permit a multi-family residential development consisting of two (2) three story buildings with a total of 24 units on a 2.34 acre ± parcel. The property is zoned RG-2 (General Residence Zone). The property is on the south side of Kenton Road and the north side of

Chestnut Grove Road located west of the intersection of the two roads. The owner of record is Woodbrook Ventures, LLC. Property Address: 1655 and 1665 Kenton Road. Tax Parcel: ED-05-066.00-01-11.00-000. Council District 1. *Waiver Request: Elimination of Sidewalks. A previous Site Development Plan S-04-33 and Parcel Consolidation Plan were approved by the Planning Commission in December 2004. Some site improvements and foundation work began but then ceased, therefore the original plan expired.*

Representatives: Mr. Joseph Petrosky, Woodbrook Ventures, LLC

Mr. Cook stated that this application is a Site Development Plan to permit construct of two (2) twelve (12) unit multi-family residential structures with associated site improvements on a 2.34 acre ± site located at 1655 and 1665 Kenton Road located west of the intersection at Chestnut Grove Road and Kenton Road. The property is zoned RG-2 (General Residence Zone). The Site Development Application and Parcel Consolidation Plan appeared before the Planning Commission in December of 2004 and a Final Site Plan was approved but subsequently expired.

The general plan of the project includes the following elements. The total of twenty-four (24) dwelling units in two (2) buildings with site improvements to include a parking lot with fifty (50) parking spaces. Fifty-four (54) spaces are required and will be provided as well as the required upright curbing, dumpsters, internal sidewalks and a landscaping plan. Vehicle access is from Kenton Road and a stormwater management pond is also located in the southwest area of the property.

Mr. Cook gave an overview of the site layout shown on the projection screen.

A Landscaping Plan includes a thick hedge screen along the property frontage of Chestnut Grove Road as required by the *Zoning Ordinance.* The plan includes the planting of fifty (50) trees complying with the requirements of the ordinance for tree density as well as the retention of many existing trees on the property. An Open Space and Active Recreation Plan consisting of 18,717 square feet of recreation space in three (3) proposed areas of the property shown on the plan.

These buildings are three story multi-family residential structures. Brick is proposed at ground level with siding and a shingled roof. There is some nice column detailing on the balconies. Both buildings are identical and will face Dover Kenton Road.

The Landscape Plan shows three different recreation areas proposed on the site. Area 1 is near the stormwater pond to the lower left. To the north of the stormwater pond is a proposed gazebo as well as horseshoe pits and landscaping. Area 2 in between the buildings is a lawn area proposed for open space as well as lawn games. Area 3 is in the southeast corner of the property. During the discussions that the Development Advisory Committee had as well as comments from the Parks Recreation and Community Enhancement Commission, Staff recommended deletion of Area 3. One of the reasons for that is that they didn't feel that space was very functional with regards to the proximity to the road as well as the distance from the structures. For the Site Plan when it was originally proposed in 2004, the zoning requirements for the active recreation space areas were different. Today there is less of a requirement for the space. The applicant can simply omit that space and still be within compliance with the requirement for the open space and recreation space.

Also during the course of the Development Advisory Committee meetings, Staff made some recommendations located on Page 7 of the DAC Report. One of which was to relocate the planned horseshoe pits which were in Area 1. Those were too close to the property line according to the *Zoning Ordinance* so they had them relocated to Area 2 between the buildings. They also recommended the inclusion of a picnic table and a grill. This would be a fixed grill, similar to what you would see in state parks. That was on the recommendation of the Fire Marshal. This has been done in similar multi-family projects in the past because people still like to grill; however, in this type of property it's not legal to have a grill on a balcony. This would deter that and give tenants an option. Also, Staff did make a recommendation to include a bench at Area 2 close to the lawn game area.

Mrs. Townshend stated that an existing proposed bench would be relocated from the area around the stormwater pond to the Area 2 between buildings. It's not an increase in the number of benches, it's a re-location.

Mr. Cook stated that also in the recommendations in the DAC Report, Staff recommended that the walking path that goes around the circumference of the stormwater management pond have a defined edge so that weeds don't encroach into that. It can also assist with long term maintenance. They also recommended the inclusion of bicycle parking on the outside. By Code, three (3) bicycle parking spaces are required and they did have discussions at the DAC meeting that the plan would eventually include two (2) spaces at each building entrance facing the parking lot which would give a total of four (4) bicycle parking spaces.

There was a waiver of the sidewalk requirement. By Code, sidewalk is required along Kenton Road frontage as well as the Chestnut Grove Road frontage. The applicant has been in discussion with DelDOT regarding implementation of that requirement.

Mrs. Townshend stated that the waiver is not as much to get out of having a sidewalk there. When the previous plan was approved in 2004, the notes on the plan indicated that DelDOT would be responsible for the improvements within the right-of-way. The applicant is working with DelDOT to figure out where that is because the initial position of DelDOT with this application was that the applicant would be responsible. The purpose of the waiver is to allow for flexibility that if in fact DelDOT is going to construct the sidewalks, that they not be required to be in place when the buildings become open to the public; that they be phased with the DelDOT construction. Obviously this will be played out. If it is something that the applicant is responsible for then they would have to put them in. What they didn't want was given that the DelDOT commitment to construct the sidewalks is uncertain; they didn't want this project to get held up on that.

Colonel Welsh questioned if Mr. Petrosky accepted the DAC comments? Responding to Colonel Welsh, Mr. Petrosky stated yes, he accepted the DAC comments. He has a meeting scheduled with DelDOT on October 17, 2014 to further discuss it with them. He can't accept their recommendations as him agreeing with them.

Mrs. Townshend stated that Mr. Petrosky understands that the Planning Commission can't get him out of the DelDOT recommendations but he doesn't want to commit to agreeing with everything in the DAC Report when there is an issue that he's working with DelDOT on.

Colonel Welsh stated that Mr. Petrosky was going on record stating that he does not agree with DelDOT's comments. Responding to Colonel Welsh, Mr. Petrosky stated yes, that was correct.

Mr. Petrosky stated that the big issue in re-starting this development has been the comments that he received from DelDOT. Quite frankly, it hit him over the head. It was an unusual circumstance at the time. In 2004 that large triangular area was a donation that he gave to DelDOT. In return, the agreement was that they would build the sidewalks when and if they ever built sidewalks on Chestnut Grove Road because they had no plans to build sidewalks north of Chestnut Grove Road. They had no plans on where the alignment is at this point in time. That was why they agreed in 2004 that he would give DelDOT the land and they would build the sidewalks when and if and where they decide to build them. All of a sudden, DelDOT is saying that they aren't going to build the sidewalks. He believes that he has a legal agreement with them and that's something that he has to work out with them. Regardless, he is hoping that the project gets built and that they can work something out one way or another.

Colonel Welsh stated that he was on the Planning Commission in 2004 and this plan is pretty much the same plan as 2004. Responding to Colonel Welsh, Mr. Petrosky stated yes, it is exactly the same. Actually the building foundations are in, the block work is in. Unfortunately a lot of work was done that had to be abandoned and is going to have to be re-done. But the sidewalk issue is dumbfounding to him. It's in writing all over the minutes; the Staff Report from 2004 states it.

Colonel Welsh questioned if there was a document from DelDOT stating this information? Responding to Colonel Welsh, Mr. Petrosky stated that was the problem. They don't have an agreement because at the time, he was told by putting it on the Site Plan that was the way it should have been handled. He gave up 14,000 square feet of his land on the presumption that DelDOT would hold up to their end of the bargain and right now they are fighting it.

Colonel Welsh questioned if there were any other comments? Responding to Colonel Welsh, Mr. Petrosky stated that he agrees with all of the details from the DAC Report. He agrees on some adjustments on landscaping and adding a few amenities for the recreation areas.

Mr. Holt stated that at first it sounded like Mr. Petrosky was going to pay DelDOT to put the sidewalks in. Responding to Mr. Holt, Mr. Petrosky stated no, he gave DelDOT his property; they were supposed to do the improvements.

Mrs. Townshend stated that DelDOT's comment indicates that Mr. Petrosky would pay them to put in the sidewalks. Responding to Mrs. Townshend, Mr. Petrosky stated that it was obvious. All they had to do was read the plan that was approved. It's kind of silly that they are even debating it.

Mr. Cregar questioned if there was an issue with providing the additional parking? Responding to Mr. Cregar, Mr. Petrosky no, it's probably a good idea because the old Code required two (2) extra parking spaces but this Code will require six (6). It will require six (6) additional parking spaces beyond the two (2) parking spaces per unit.

Mr. Cregar stated that there was a Record Plan that was recorded for the previous application so if they approve this plan, should there not be a Record Plat and then a cross reference so that anyone looking that plat up would know that there is a new Record Plat for this? Responding to Mr. Cregar,

Mrs. Townshend stated that the only portions of the plan that get recorded are any changes to the property lines. The buildings, the building footprints and the improvements that are proposed were never recorded. What were recorded was the parcel consolidation and the dedication. That's part of the issue that Mr. Petrosky has with DelDOT; the recordation didn't expire but the plan did.

Colonel Welsh stated that he thinks based on the elevations, it's really an attractive building and he is glad to see something finally getting done. He asked for an idea on the colors of the building? Responding to Colonel Welsh, Mr Petrosky stated that they haven't chosen the brick yet but it will be some sort of neutral beige color on the siding.

Colonel Welsh stated that it would really be helpful to have the color on the elevation. If not colored, some indication of what the color is with an arrow leading to specific things.

Colonel Welsh opened a public hearing.

Ms. Ethel Matney – 1689 Kenton Road Dover DE 19904

Ms. Matney stated that she was the only house next to where the development is going to be. She is very happy to see something go on that lot because for over ten (10) years she has had nothing but stumps, weeds and trees growing up next door. It hasn't been very attractive. One comment that she would like to make is that prior to when this was being discussed back in 2003 and 2004, there had not been a major housing development approved just down the street on Chestnut Grove Road. We now have a major development going in. There are lots of changes on Chestnut Grove Road taking away yards, etc. One of the concerns that she has is how are these people ever going to get out of the development? Obviously, there has to be a light now at Chestnut Grove Road and Kenton Road. Traffic is going to be backed up unbelievably and if you are coming out of the development onto Chestnut Grove Road you will have to make a left hand turn in order to get to Kenton Road. In the morning and evening that traffic area is backed up unbelievably. She doesn't know how these people will function to get in and out and this is one of the concerns that she has. She will be able to get out of her driveway but them getting in and out is going to be a problem. She wants to know if there are any considerations from this group in terms of the traffic pattern. Responding to Ms. Matney, Mrs. Townshend stated that typically in terms of the traffic they defer to DelDOT because they monitor the roads. It's a DelDOT maintained road; she knows that they are planning some improvements for Kenton Road but they control the access.

Ms. Matney further stated that there are a lot of improvements for sidewalks and lights, etc. but that doesn't address the traffic. Do they know if DelDOT has done a traffic study for that intersection? Responding to Ms. Matney, Mrs. Townshend stated that there has been quite a bit of traffic study for that intersection. The other development that was referenced is further on Chestnut Grove Road is part of a signal agreement that would straighten out that intersection which is part of the reason that DelDOT needed the land from Mr. Petrosky's property to be able to improve the geometry with that intersection.

Ms. Matney stated that they also have Fox Hall West and the other development there on the corner so there is a high concentration of cars. The other thing that she is concerned about is there is only approximately 2.5 acres of property and they are putting how many families there? Responding to Ms. Matney, Colonel Welsh stated that the proposed plan fits that area.

Ms. Matney further stated that that's an awful lot of people. Responding to Ms. Matney, Colonel Welsh stated that he lives in Fox Hall and he has been there for a long time. The traffic on Dover Kenton Road it's almost impossible at certain times of the day for him to get out of the development and the same on College Road as well. Signalizing that intersection is at least going to stop traffic in one direction to make it easier for those people coming out of the developments.

Ms. Matney stated that she thinks when the traffic is stopped, how are they going to get into the follow of traffic? That is her concern. Responding to Ms. Matney, Colonel Welsh stated that that would be up to DelDOT to determine. It's got to be an improvement; it can't be any worse than it already is. That may or may not have alleviated her concerns but he tries to be optimistic.

Ms. Matney stated that she also tries to be optimistic but after sitting there looking at a mess for over ten (10) years, she is not happy but Mr. Petrosky has worked hard to get this going and stepping up to the plate to regenerate the plan so she will stay optimistic about it. She does have concerns about that traffic flow and the amount of people who will be living in such a small space.

Colonel Welsh closed the public hearing.

Mr. Cregar questioned how to handle the waiver of sidewalk? Responding to Mr. Cregar, Mrs. Townshend stated that the motion could include not a full sidewalk waiver but flexibility on the timing of the sidewalk to allow the applicant to work with DelDOT.

Mr. Cregar stated that they are dealing with a timeline issue. Responding to Mr. Cregar, Colonel Welsh stated yes, they are not going to say that a sidewalk is not required but it's giving the applicant time to work with DelDOT to determine who is financially responsible for the installation of the sidewalk.

Ms. Still moved to approve S-14-18 Tall Pines at 1655 and 1665 Kenton Road inclusive of the DAC comments and waivers requested for the elimination of sidewalks in concurrence with DelDOT recommendations, seconded by Mr. Cregar and the motion carried by roll call vote 7-0. Mr. Cregar voting yes, it meets the DAC recommendations and we have a plan for how to deal with the sidewalk waiver and it meets the general area as well as the Zoning Ordinance for the Site Plan development. Mr. Tolbert voting yes, the site development is needed, the building is appropriate and consistent with what they are looking for in this area. The applicant is willing to work with DelDOT to resolve all outstanding issues. Mr. Holt voting yes, agreeing with previously stated comments. It's long overdue and it's time they got this project off the ground. Mr. Baldwin voting yes, for all previously stated reasons. Dr. Jones voting yes, based on the applicant being in agreement with the DAC comments and Staff recommendations. It's an unsightly corner and has been unsightly for a very long time and she also approves because she is comfortable with the flexibility in terms of the sidewalk waiver. Ms. Still voting yes, based on preceding comments. Colonel Welsh voting yes, based on all comments previously stated and also it's an attractive project and will surely look better than the vacant lot that has been there for ten (10) years.

2) MI-14-12 Text Amendment: PND Buffer and Setbacks – Public Hearing and Review for Recommendation to City Council of Text Amendments to the *Zoning Ordinance*, Article 3 Section 24 – Planned Neighborhood Design Option (PND), Subsection 24.62 – Buffers, Article 4 – Zoning Bulk and Parking Regulations, Subsections 4.10 and 4.11. The proposed ordinance revisions would

remove the required 40-foot buffer around the perimeter of developments utilizing the PND Option and would reduce the front and rear yards for houses being constructed under the PND Option. Ordinance #2014-18. *Staff Amendment #1 proposed.*

Representatives: None

Mrs. Townshend stated that this was a text amendment that was brought forward by a member of the public and sponsored by members of Council. It would do two things. It would eliminate the forty (40) foot buffer requirement around the perimeter of Planned Neighborhood Design Option (PND) developments. She thinks that the idea of a buffer was to ensure compatibility where housing styles are mixed. She thinks that as the PND has played out, they have not created a situation where that buffer is necessary. In many cases it's in the common open space but in the case where it's on individual lots, it has created challenges. They have had to deny people the opportunity to have fences, sheds, decks and other things that would be normal improvements on a lot. Staff has recommended in favor of this although Staff did not draft it. It is something that when Clearview Meadow came forward a while ago with their Active Recreation Plan amendment, there were a couple of people that came to speak. One person was very vocal about that forty (40) foot buffer and the impact that it had on his property. Where it is in the open space it wouldn't change it but this would allow for when that forty (40) feet buffer is on individual lots, it would defer back to the regular setbacks.

The other piece to this amendment is that it would change the front and rear yard requirements. It does not address the lot coverage. This would allow for flexibility in lot layout; it does not allow for more lot coverage. It would allow for the flexibility in how the lots are laid out in a development. They note that the Commission is able to relax bulk standards on any individual application. This would make it uniform in how it changes the bulk standards.

Staff did put forward an amendment because in their review, they note that it does not address the issue of retroactivity to previously approved PND development. In that end, they consulted the Deputy City Solicitor and added language to the ordinance that would not go in the Code that would state that "the provisions shall be retroactive to developments previously approved by the Planning Commission that utilize the Planned Neighborhood Design Option (PND) provisions of Section 24. What that would do is create a situation where Staff would need to contact property owners that are in that forty (40) foot buffer and give them the opportunity to come back and get something recorded that removes that.

Colonel Welsh opened a public hearing.

Ms. Nicole Faries – Prickett, Jones & Elliott P.A. 11 N State St Dover DE 19901

Ms. Faries stated that their firm represents a number of real estate developers in the City of Dover and they have worked closely with the Planning Commission and in the past and over the years have made sure that all of their projects meet City Code requirements. They try to help improve the City Code where it's needed. They think the Ordinance being considered tonight is a welcome improvement to the City Code. The Planned Neighborhood Design Option (PND) regulations as they are currently written, they dictate setback and building envelopes which are overly restrictive and unrealistic. With the result that the only projects that are able to be built in compliance with these regulations have very little demand in the current system. The Ordinance before the

Commission tonight will permit a great degree of flexibility in the design which will allow developers to offer residential dwellings that are in the current market demand and that are desirable. For all of these reasons, they support the proposed ordinance and respectfully request the Commission favorable consideration and recommendation for approval.

Colonel Welsh closed the public hearing.

Mr. Holt moved to recommend approval to City Council for MI-14-12 Text Amendment: PND Buffer and Setbacks to include retroactivity to previous plans and that notification of people affected will take place, seconded by Dr. Jones and the motion carried by roll call vote 7-0. Mr. Cregar voting yes, his vote concurs with the Staff comments and recommendations in accordance with this text amendment. Mr. Tolbert voting yes, Staff has obviously conducted a critical review of the situation and he feels comfortable with the conclusions that they have reached as indicated in the petition to amendment the Zoning Ordinance. Mr. Holt voting yes, it was well explained, much needed and long overdue for the community. Mr. Baldwin voting yes, it is a much needed change. He also agrees with the retroactive notification. Dr. Jones voting yes, for reasons that have been previously stated and especially because the past applicants are going to be notified and have the opportunity to make this change. Ms. Still voting yes, in concurrence with all previous comments and she too feel that the Planning Staff did a lot of work and a lot of effort to get this worked out to help better the community. Colonel Welsh voting yes, praising the Planning Staff for their work put into this.

3) MI-14-14 Text Amendment: Site Plan Development Approval – Public Hearing and Review for Recommendation to City Council of Text Amendments to the *Zoning Ordinance*, Article 10 Section 2 – Site Plan Development Approval. The proposed ordinance revision corrects the intent of Ordinance #2014-08 which rewrote commercial and office zone regulations and administrative processes. The adopted ordinance allows for existing building expansion by up to 15% to be reviewed administratively, but omitted a similar provision for impervious surfaces. The proposed amendment would also allow for expansion of up to 15% of impervious cover on a site to be reviewed administratively. Ordinance #2014-20.

Representatives: None

Mrs. Townshend stated that this amendment is actually a correction that Staff found after the adoption of Ordinance #2014-08 which was approved by City Council on July 14, 2014 after being recommended by the Planning Commission at the June 2014 meeting. That was the ordinance that rewrote the commercial zones but also looked at some of the provisions of Article 10 relating to Site Development Plans to work to streamline and do some more things administratively. One of the things that Staff did in that was create language that allowed for a 15% expansion of an existing structure to be done administratively. They did not make that same language change with the impervious cover. They found with their first applicant that intended to go through that process that if they are expanding their building footprint 15%, they are likely to be expanding their impervious cover by that same amount. They just added language that mirrors the language in Additions to Existing Structures to address Additions of an Impervious Surface to allow up to 15% or 5,000 square feet, whichever is greater, to be done administratively.

Colonel Welsh opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Mr. Cregar moved to recommend approval to City Council for MI-14-14 Text Amendment: Site Plan Development Approval for the reasons of correcting a needed part of a previous amendment of an ordinance, seconded by Mr. Holt and the motion carried by roll call vote 7-0 with Mr. Holden and Mr. Ambruso absent. Mr. Cregar voting yes, for reasons previously stated. Mr. Tolbert voting yes, the approval of this recommendation to City Council recognizes that the Commission recognized that giving the Planning Staff administrative ability to handle applications of this nature will facilitate the entire process and makes things considerably easier as well as recognized the competency of the Planning Staff. Mr. Holt voting yes, due to the explanation by Mrs. Townshend that it would make it a lot easier for Planning Staff. Mr. Baldwin voting yes, due to the need for uniformity. Dr. Jones voting yes, for reasons previously stated. Ms. Still voting yes, for reasons previously stated and it seems like it was the perfect thing to do to keep things tidy. Colonel Welsh voting yes, for all the reasons previously stated.

Meeting adjourned at 7:51 PM

Sincerely,

Kristen Mullaney
Secretary