

**APPROVED BY UNANIMOUS PLANNING COMMISSION VOTE –
4/11/2024**

Town of Cheswold
1856



State of Delaware
1787

**PLANNING COMMISSION
MEETING MINUTES
THURSDAY, MARCH 14, 2024
691 Main Street
Cheswold, Delaware 19936**

ATTENDANCE VIA ZOOM WAS AVAILABLE

Planning Commissioners In Attendance:

Ms. Barbara Cooper Commissioner - via ZOOM
Mr. Dave Naples - Commissioner - via ZOOM
Mr. Michael Callender – Vice-Chairperson
Ms. Kara Naples – Commissioner – via ZOOM
Mr. Stephen Williams – Chairperson

Also in Attendance:

Ms. Sam Callender, Town Land Use Administrator
Mr. Tom Wilkes, PE–Town Engineer (Carroll Engineering)–via ZOOM
Mr. Kyle Burchard, P.E. (Mountain Consulting) – via ZOOM
Mr. Troy Adams, PE (Mountain Consulting) – via ZOOM
Mr. Austin Gray, DelDOT
Mr. Drew Boyce, PE (Century Engineering)

MEETING OPENING:

The meeting was called to order at 5:02 p.m., by Chairperson Steve Williams. The opening was followed by a Salute to the Flag and a Moment of Silence.

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MEETING PROPERLY POSTED

At the request of Chairperson Williams, Land Use Administrator Sam Callender acknowledged that the meeting had been properly posted.

ROLL CALL:

Chairperson Williams conducted a roll call, and it was acknowledged that a quorum of members were in attendance, and the meeting proceeded.

AGENDA REVIEW:

A call for a review of the agenda was made by Chairperson Steve Williams.

It was followed by a motion to approve the agenda as presented by Commissioner Dave Naples and a second to the motion was provided by Commissioner Barbara Cooper. The agenda was accepted as presented after the motion passed by an unanimous roll call vote of the Commissioners.

MINUTES REVIEW:

Chairperson Williams requested the Commissioners to review the minutes of the meeting of the previous month and to make a motion to accept them as presented or to provide notice of items requiring revisions.

A motion was made Commissioner Barbara Cooper to accept the minutes as presented and Commissioner Dave Naples provided a second to the motion. The following minutes passed with a unanimous roll call vote of the Commissioners:

Planning Commission Meeting
January 11, 2024 Minutes
February 8, 2024 – No Minutes – Meeting was Cancelled

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OLD BUSINESS –

a. **Application 2024-02-05-125**

- Concept Plan Review
- Culligan Water
- Address: 624 Main Street
- Map ID: 4-03-04600-01-0600-000
- Zoning Code = C-1 (*Neighborhood Commercial*)
- Acres = 3.8682
- Owner = DJ Shanahan
- Owner's Representative = Troy Adams, P.E., Mountain Consulting, Inc.
- Engineering Representative = Kyle Buchard, P.E., Mountain Consulting, Inc.
- Water = Well
- Electricity = Delmarva Power
- Gas = ????
- Sewer = Kent County
- Request = **There is no specific request on the application. The site plan, however, indicates a proposal for the construction of a 6,000 sq. ft., warehouse building, new parking area and a stormwater infiltration basin.**

The Proposed Use Information section supplied by the applicant specifies the following:

The current use and proposed accessory to the Culligan Water business at 624 Main Street, Cheswold, DE,, 19904 is for its existing and on-going Retail Sales Establishment. The retail product is bottled water and water purification supplies and equipment. The modest retail storefront area is supported by offices, stock rooms, delivery vehicle storage and maintenance areas, as well as space for storage and refurbishment of leased water coolers and other water conditioning equipment.

Chairperson Williams presented the application statistics as specified above. Land Use Administrator Callender clarified that she had been informed that the applicant prefers to refer to the space as “**active accessory space**”, rather than “**warehouse**” and Mr. Burchard agreed and stated that they are expanding the existing use.

Mr. Burchard asked for permission to expand upon his statement and the Commissioners agreed. He reviewed the prior submission of a Preliminary Plan and stated that definitions were conflated and misstated and questions about the existing use of the building. They then reviewed the situation and decided if they needed to understand if the zoning assignment was compliant with the existing use. So they filed a request for Zoning Determination and that request determined that the use is compliant with the zoning assignment, which added clarity to the submitted Concept Plan that the current use is as a Retail Sales establishment. Therefore, the applicant is seeking a response from the Commissioners for a non-binding review of inputs, questions, concerns about the expansion of this use to the proposed 6.000 square foot building.

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On the Site Plan, submitted with the Concept Plan is a drawing that indicates the existing and proposed buildings with lines that delineate the different areas of use and different square footages for the activities taking place in these areas. Mr. Burchard indicated that they view all these activities as incidental to retail sales as they understand it and that there are existing offices; a retail space; an existing stock area and an existing vehicle loading bay. In the proposed building there will be stock areas; vehicle loading bays and a cooling refurbishing area which is a product that is sold then it is cleaned and is part of the sale in there re-sold. So the plan also indicates the portions of the floor areas of the activities within the buildings. There is also a Zoning Compliance narrative that is a predecessor to formal Zoning Compliance request that was filed and some plan notes to go along with the Concept Plan to indicate that there is a known need to install an appropriate screen along the west of the property next to the residential area. There is stormwater that has to be addressed that is nominally the same as that which was on the Preliminary Plan and provided by KCD and will be finalized with them provided that it makes sense to precede with the Preliminary Plan after this review. He understands that this is a non-binding hearing or non-binding review he approaches the Commission with the request that it be looked at from the standpoint of how this application stopped before with the misunderstanding of nomenclature and what would be appropriate within the Zoning Ordinance of the Town. And because of the corrected and accurate definition and the expansion of what the use is that the Concept Plan will be able to be moved forwarded toward a Preliminary Plan. He concluded by saying thanks.

Vice Chairperson Mike Callender asked Mr. Burchard to estimate the amount of foot traffic and retail sales capacity of the business. Mr. Burchard answered that he thinks that it was specified in the Zoning Questionnaire that it was about 1%.

Commissioner Naples also asked a question, but first asked everyone to forgive him, because just prior to the meeting he had received some bad news but decided to participate in the meeting as best as possible. He asked Mr. Burchard that since he came to the Town for a Zoning verification and it seems that we’re pivoting on the term retail sales, are you suggesting that retail sales is the principal use of the building? Mr. Burchard replied “Yes”. Commissioner Naples then gave a brief analysis of what he came up with but for the record and as a member of the Planning Commission we are permitted to give non-binding comments and that was what he was going to offer tonight. He further stated that we are under no obligation to give or take any formal actions on a informal application such as this and that the application itself states that sales is the current use of the building. He then proceeded to expound upon the concerns that he has with the application which included the following:

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- Warehousing/storage is not a permitted buy-rite use in the C-1 Zone and his analysis is for the application to move forward as presented that they have to get to a place where the space is called an accessory use. And he believes that the term was introduced the last time that the Commission met with the applicant’s representative and the representative indicated that pretty much everything is permitted in every zone as an accessory use. Mr. Burchard interjected that they were misunderstanding that and it was not what they were asserting. Commissioner Naples asked Mr. Burchard to clarify if they were seeking accessory use permission for a warehouse. Mr. Burchard responded that it is not a warehouse and that’s a warehouse, it’s a part of the retail sales establishment. Commissioner Naples re-phrased and asked Mr. Burchard how he wishes the new building to be classified and what is the use of the building and Mr. Burchard responded that it is part of the retail sales establishment. Commissioner Naples responded that he must have the wrong plans because he doesn’t see sales anywhere on the plans. Mr. Burchard responded that sales and delivery to the retail sales is part of that. Commissioner Naples stated that he didn’t want to engage in a back and forth because the last time it became what he would consider unprofessional, so he was going to make his statements and then he would be quiet after he was done.
- Commissioner Naples referred everyone to the Land Use Ordinance and Section 5.4 which speaks of non-conforming uses and it states in Section B-1 that: ‘The use of portions of the structures accommodating the use may not be enlarged, increased, or extended to occupy a greater area of land than was occupied on the date when this Ordinance is adopted or amended.’ So in his mind it needs to be established what the principal use of the existing building is and whether or not the new building would qualify as an accessory use. And he went through some rough mathematical calculations and honestly he completely disagrees that the accessory use is being proposed in any way as an extension of the sales function and he is standing by that.
- At present the current building occupies about 5-1/2% of your gross square footage for retail sales, as identified on the plan that was submitted by Mr. Burchard to the Planning Commission. There is 450 sq. ft. of existing retail and that equates to 5.6% of that building. There is over 5,000 sq. ft., of office space; 3,300 sq. ft., of stock which is storage and 1, 500 sq. ft., for loading. The least amount of square footage anywhere in the existing building is dedicated to retail sales per your plan. The new building, since it contains no reference to retail sales area, the percentage drops down to 2.75% since it stays at 450 sq. ft. and therefore there was no way, in his mind, that he could conclude that retail sales is the predominant use of the existing building and/or including the new structure. And without qualifying that the retail sales is the predominant use he can’t agree that the expansion of retail sales is warranted per the plans as presented.

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He further stated that these are non-binding comments and the terms and conclusions that he reached and that it strikes him that warehousing, and office space appear to be predominant uses in these buildings. He confirmed in conclusion that he is not in agreement that this plan is in any way a representation of an expansion of a retail sales use and that was all he really had to say on the matter.

Mr. Burchard then asked if there is accommodation of retail uses that are not store front? Commissioner Naples responded that when he first started speaking he made comments and he is standing by those comments based on the research that he did. And at this point he is not offering any voluntary comments on this Concept Plan and he was not engaging any discussion on what may or may not be approved at this time.

Commissioner Williams then asked if there were any further comments.

- Vice-Chair Mike Callender pointed out that in Article 5-3 Non-Conforming Structures; Section B-2, the Land Use Ordinance indicates that ‘A non-conforming structure may not be enlarged or altered in a way that increases its non-conformity. It may be altered in a way that decreases its non-conformity.’ And under Section B-3, ‘Non-conforming structures may not be used as grounds for the addition of structures or uses that do not conform to the standards of the zoning district’. And again, these comments are non-binding. Mr. Burchard replied that he was looking at the Section 5-3 Non-Conforming Structures and if it pleased the Chair he wanted to inform everyone that the applicant had requested a Zoning Compliance analysis so that they could identify if the existing building was non-conforming. Land Use Administrator Sam Callender interjected that Mr. Burchard should keep in mind that the results of the Compliance analysis was based on his answers to the questions. So if his response was that the principal use of the building was retail sales, then that was the basis of her decision. He agreed then asked what portion of the square footage of the building has to be dedicated as store front, retail sales in order to be considered a retail sales establishment. Mrs. Callender responded that she did not have an answer to that question.
- Commissioner Dave Naples stated that he was reviewing the Zoning Determination letter and it does not mention the word sales. It just states that the current use meets the standards of C-1, which he can interpret to mean that it is legally existing non-conforming as well and he thinks that the situation remains stuck in a place where anyone can call it whatever makes them comfortable, but he still sees it as storage. He sees where the predominant use of the building that is being proposed as storage and asked to be trusted, even though he realized that Mr. Burchard probably has no reason to trust

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him, but he approached the review searching for a way to get it approved, but he just cannot get there and the reason he can't get there is because he believes that Engineer Burchard has to establish as representative for the property owner that the primary and principal use of the structure is retail sales and there is nothing on your plans that suggests that other than the area that says existing retail. It's the only words on the plan that he can interpret as a sales function and with that even if the site plan indicated that 30% was retail sales, and you were asking for 30% in storage, he could at least find a valid argument for it at that point. But the retail sales portion of the business is not changing in any way, shape or form in the new building, it's staying at 450 sq. ft., and for someone to conclude that less than 3% of the building area is dedicated to an identified retail sales use and for anyone to conclude that that's the principal use which is the primary and predominant use of any lot or parcel is by definition, that he can't make that connection. And because he can't make that connection, he can see the only way storage comes into play is if this building comes into play as an accessory use and I don't think a rational person can conclude that's its accessory meaning that it is customary, incidental and subordinate to the principal use when it occupies over 50% of the square footage. He can't get there.

- Engineer Buchard interrupted and stated that he would like to respectfully assist Commissioner Naples in getting there and that he totally understands where the Commissioner is coming from. Mr. Buchard believes it's a matter of looking at the fact that the offices that are there; the retail storefront does the minority amount of the business but offices that are there and the stock area that is there is receiving retail sales calls for delivery, so that is part of that retail sales. Now if retail sales is only to reside with foot traffic coming to the building and walking away from the building with goods and if no aspect of delivery is considered retail sales then he understands Commissioner Naples point completely. He didn't see that exclusion in the Ordinance, and it is a fact of the matter that the offices, the retail storefront, the storage area, the vehicle delivery loading area are all part of serving those on-line or phoned in orders that do come in that follow a retail sales heading. So, it's the expansion of that use of on-line and phoned in orders sales that is being expanded into the proposed building. He is understanding and respecting Commissioner Naples interpretation and asking if there is another way to look at this that is, and he won't say more modern, but isn't just defined as retail sales as only from store front entry and has no aspect of on-line or phoned-in orders.

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- Commissioner Dave Naples asked for a second and then responded that if he considers Engineer Buchard’s position and what he just said and expands the office use and that he is reading the definition of retail sales and thinks it’s a stretch but is willing to go with it for a second. If he takes what Engineer Buchard represents as the office area on the Site Plan, that presents as the retail sales function that provides a bit over 5,500 sq. ft., combined from both the new and existing buildings which amounts to about 1/3 of the square footage of all the structures on the lot that will be dedicated to that function, whether it’s retail, walk-in traffic or the office sales. The balance of it, there is just no way that he can say storage is a sales function. It’s incidental to the sales function, but in and of itself it is not a sales function and the same goes for the loading of vehicles. He thinks it’s incidental to the sales function but in and of itself it is not part of the sales process. It still leaves you with 65% of these buildings not in any way related to a sales function as he sees it. So he remains at a place using Mr. Buchard’s analogy with 1/3 of the building being dedicated to sales and twice that being dedicated to supporting or an accessory to sales. He didn’t see anywhere where he could conclude that any of the functions shown in the new building are directly related to the sales function. They are in support of it, but he doesn’t believe they meet the definition of retail sales as defined by the Land Use Ordinance. He’s still at a place where he doesn’t see the primary use of the building as retail sales.
- Engineer Buchard again agreed that he understood and appreciated the hypothetical concession to just look at the numbers, as expressed by Commissioner Dave Naples. He wondered what percentage of a box store is storage and guesses the argument is that it has to be at least 51% where purchases can be made and the flexibility that there can be offices, maybe not on the store floor or a part of that and everything else is incidental. Commissioner Naples responded that from his experience as a Building Code Official for over 25 years, if you walk into a Wal-Mart the entire structure in and of itself is not classified as sales, from a building code standpoint. It’s a mixed occupancy structure. You have service function up front where they do hair; nails, which is purely service; you’ve got product sales which is shelves and the inventory and you have storage. The building code calls that S-1 or S-2, Storage Occupancy and it’s subject to different regulations than the retail sales area is. It is subject to different load regulations; it’s subject to different density regulations when you are installing a fire suppression system, it is different. It may be located inside the same concrete block building as the retail sales, but it’s a different use. That happens everywhere. If you go to a hospital, the entire building is not patient care. Cafeteria is an assembly occupancy, so that gives him some clarity on this building. And he would agree that the storage function, the refurbishing function and the loading function are subordinate and in support of the sales

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function but that in and of itself because they are subordinate does not allow them to be expanded. They are not a legally recognized use in C-1. The predominant use of the building is compliant so if that wants to be expanded that’s okay, but into a non-conforming use. So he can’t agree to take the existing storage and agree to expand it and then say it is compliance with the Land Use Ordinance. He’s just not at that place.

- Engineer Buchard agreed that he understands Commissioner Dave Naples position. And he appreciates the Commissioner bringing that viewpoint forward, at this time, to further define what happens here if anything. It seems that there is no possible way with that interpretation this project or expansion on this property with this mix of uses can be done.
- Town Engineer Tom Wilkes, P.E. of Carroll Engineering then asked for the opinions of other Planning Commissioners who may have a different opinion since this is a democratic process, so he would like to hear if any other Commissioner has a differing opinion because he does.
- Commissioner Babara Cooper confirmed that she agreed with Commissioner Dave Naples especially concerning the non-conforming aspects as specified in Article %-3. She is also a Building Code Official and has been for 20 years or so and her assessment of the occupancy agrees with Dave Naples. She believes the applicant will have a problem when it time for the building plan submission and the architect provides a S-1 or S-2 assignment, probably S-2 for the new building, which then is not permitted because S-1 or S-2 which is a warehouse and not permitted in the C-1 Zone. A warehouse is permitted in an I-1 Zone. For that reason, she is in agreement with Dave’s assessment.
- Vice-Chair Mike Callender responded that he made his comments earlier to a request from Chairperson Williams for any other comments.
- Chairperson Williams referred to the comments of Commissioner Dave Naples and stated he agreed with his assessment. He then asked Commissioner Kara Naples for her comments.
- Commissioner Kara Naples stated that she agreed with Commissioner Dave Naples and the other members of the Commission as it is being explained to her that the existing retail space is not expanding at least from looking at the submitted plans. She added that she doesn’t have much prior knowledge about building codes and zoning, but the way it’s being explained to her it does make sense that the retail space is not expanding, so it cannot be labeled as primary retail space.

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- Town Engineer Tom Wilkes was then given the opportunity to provide his opinion on the Concept Plan. He went back to the Zoning Certificate that was filled out and he thought they had gotten past the definition or designation that the current use was non-conforming, so I’m hearing tonight that we are still considering this non-conforming. So, hadn’t heard that so the work that Sam, (*Land Use Administrator*), and the applicant did on the Zoning Certificate that the current use was considered conforming. And Dave, you mentioned that Section 5-4; 5-3 in the Ordinance as being non-conforming so I just need help to how we got to non-conforming. Again is that because of the % of square footage within the retail space versus what is considered warehouse and other designations or just definitions within the current building.

NOTE: A Zoning Certificate was neither requested or granted. The applicant completed and submitted a Zoning Compliance Questionnaire and was issued a correspondence stating that the answers to the questionnaire resulted in the determination that the current use of the existing building meets the standards of C-1 Zoning per the Town of Cheswold Land Use Ordinance. The correspondence did not address if the use was either conforming or non-conforming and no formal determination has been made by the Land Use Administrator or Planning Commission as to whether the business is conforming or non-conforming. It is additionally important to note that the information provided on the Site Plan does not match the information provided on the Questionnaire.

- Commissioner Dave Naples responded that he knows no other way to determine primary versus accessory use. The information they have is square footage, they don’t have information such as how many dollars move through for the retail floor plan or how many dollars move through the office space – they don’t have that. The only information they have is the existing building broken down by use the proposed new building broken down by use. He believes that we’re getting to a place where the lines are going to be extremely blurred if not near impossible to enforce or at a place where we can simply say that anything that is located on the same premises as a retail store is also retail store or sales.
- Town Engineer Wilkes stated that he looked at it a bit differently. The way he looked at it was not on a square foot basis because that’s not a criteria for defining what’s retail sales or not. There is no definition or criteria for sales or square footage. His opinion as Town Engineer is the function of the current building, and he was not talking about the expansion or the proposed building, but the function or the current use of the building has been defined as retail sales and what goes on in that building all supports what goes on there. So, you need to receive, hold, store, warehouse or whatever word you want to use,

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material, or products to have them for sale, whether its walk-in or shipping or on-line or whatever, so for him he can come to terms with the building being a retail sales structure even with the square footage supplied by the applicant that still supports whether its incidental or otherwise it's a support function to make that building there for sales. He said that Dave mentioned Wal-Mart and a hospital and that he doesn't think they were great analogies, but again the overall function of that property is for sales or there might be services, but again services are sold for money for services, goods or what have you and then getting into the building code side of it, may be a bit of a reach. Again, we're looking at this section of the building as retail sales and the rest of what's under that roof supports that function. Commissioner Naples interrupted Engineer Wilkes by saying the Cheswold Fire Department has an assembly hall, so what is the use of the Fire Department. Mr. Wilkes replied that in that case it is a multi-use structure and Commissioner Naples asked for the difference. Mr. Wilkes hesitated in his response, so Commissioner Naples began to provide an answer that Mr. Wilkes' point is and suggesting that everything that goes here..... and Mr. Wilkes interjected that the conference space at the Fire Department is not part of the Fire support services, but the warehousing function of retail sales to support to have product on hand to sell when people want to buy it when they walk up or when they have it on-line or otherwise. Commissioner Naples stated that he doesn't disagree with that, what he disagrees with is where we're talking about expanding that function, we're talking about expanding the storage function to support the existing sales function. Storage is a non-conforming use. Engineer Wilkes replied in the negative and said that he's talking about the non-conforming aspect first. He wanted to tackle that first. Commissioner Naples noted that the letter he has from the Land Use Administrator does not say sales in it. He further stated that the letter he has says that the current use is compliant with C-1 and is compliant with the Zoning Ordinance, it does not say how it's compliant with the Zoning Ordinance. It can be compliant legally existing non-conforming and still be compliant and if it's that and it's non-conforming, they are not allowed to offer an expansion of a non-conforming use. That letter doesn't say that. Engineer Wilkes asked if that is the Commissioner's contention to dispute the findings of the Land Use Administrator in the letter. Commissioner Naples responded no and that he was going back to what he said initially that his concern is the way he sees it as presented the new proposed structure with this non-binding Concept Plan is just an expansion of the storage function. It has loading in it which is a completely separate use in the eyes of the building code and it has a refurbishment function, so if, an analogy there is the service bays n a new car dealership, that they don't sell cars there, they sell cars up front in the show room, that's in support of the new car sales, but it's not new car sales, even though they are in the same building. Engineer Wilkes attempted to say that they are in support of new car sales, however, Commissioner Naples continued that he is in a place where he is seeing

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that even if he gave everyone the benefit of the doubt 30% of the square footage is dedicated to retail sales, whether that is office, on-line or walk-in space, it's still a subordinate use of everything shown in the building. They are not expanding anything in an effort to expand the retail footprint, if you will, whether that's office or storefront. It's all just accessory to that. That's the way he sees it.

- Town Engineer Wilkes stated that he disagrees with Commissioner Naples point of view in that the Commissioner was pulling in the building code aspect of it which he doesn't think is applicable. Commissioner Naples responded that he pulled that in to add clarity to his position and it doesn't matter if the Town Engineer agrees with him or not, and he's okay with the Town Engineer disagreeing. Engineer Wilkes repeated that he did say that he disagreed and that he thinks the function, and getting back to the initial issue of the aspect being non-conforming he disagrees with that. And he thought he had support from the Town that the current use as it is, is conforming as C-1. And he wanted to talk about that first and they hadn't really gotten past that or agreed to that and that's fine too, so they can continue to disagree on that piece of it, but the whole purpose of the Zoning Certificate was really to lay the groundwork and establish that we did talk previously about accessory structures and uses and it came up that maybe this current use is non-conforming, but after Sam had done some more research, he thought that they had become comfortable with the fact that it was conforming. Commissioner Naples responded that for arguments sake, and quite honestly he was a little tired of being the only one being a lightning rod, let's say the existing building is conforming and the office, and the retail sales are all a function of the retail sales definition, then the majority of that building would be a retail sales function. And Engineer Wilkes agreed. Commissioner Naples continued to say if that establishes that that is the primary function of that building, (i.e., the existing building), then what is the purpose of the proposed building? Where in the proposed building does an additional sales function occur? Everything being offered in the new building is subordinate to the sales function and pointed out that Engineer Wilkes had just said so, by saying it's the inventory behind the sales. Engineer Wilkes responded that that function is needed as a retail service, you need to stockpile your stuff for sales. *(Both gentlemen were talking, and it was difficult to transcribe what was being said.)* Commissioner Naples then said that they were going to completely disagree on the matter and requested if the meeting could return to the meeting format instead of being conducted as a back and forth and he would greatly appreciate it.
- Engineer Burchard, put up his hand, and requested permission from the Chair and Commission to speak. On the previous question, he's not sure how much retail sales goes through the storefront versus the office. That was 1% was in the retail storefront versus 3% through the office, so to speak, as far as percentage of sales. Also, in

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Article 2 Definitions of the Land Use Ordinance, maybe he just read it and it will provide some clarity and in the Building Code versus the use.

‘Retail Sales - Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Characteristics of such uses include:

- usually a business place engaged in activity to attract the general public to buy.
- buys and receives as well as sells merchandise.
- may process or manufacture some of its products—a jeweler or a bakery—but processing is secondary to principal use.
- generally sells to customers for personal or household use.’

So in that he was seeing the selling and receiving of merchandise. It has to be sales, part of the receiving is part of that use and yes it may have a different building code classification but I think there may be a same use that may span building code classifications not to discount your many years of service, he was just pointing out the definition that is in the Ordinance.

- Chairperson Williams asked Tom if he had any other comments. Engineer Wilkes responded that again he saw that definition and that’s kind of what he based his opinion on for the retail sales definition which is in the Land Use Ordinance and that’s pretty much what captures certainly the current operations of the building and then without any sales function or facility you’re going to have support operations whether it’s insubordinate, secondary or whatever you want to call it, but you can’t have a single sales operation without having some warehousing, storage and in this case some inducement, (*speech was not clear – not sure if that was the word*), manufacturing, and he feels the current use is conforming and they are expanding on that use. And that’s allowable and his opinion and they could continue to discuss, but it’s a Concept Plan, so the Commission does not have to take any action on this, so he turned the meeting back to Chairperson Williams who moved the meeting forward. He welcomed Engineer Buchard to remain in the meeting if he desired to do so. Land Use Administrator Callender explained that a consensus does not have to be reached on a Concept Plan review and every Commissioner has provided their opinion. Engineer Buchard thanked and appreciated everyone for their thoughts and review of the plan and although there is no consensus he will try and advise his client as best he can.

The following items were put on hold until the next meeting, to provide time to review the Lot Line Application from the State of Delaware.

- b. Review and discussion of DRAFT Ordinance 12-05-23-073 Revision of Article 7. Use Regulations Section 7.2 of the Land Use Ordinance of the Town of Cheswold
- c. Review of Revisions to Article 4. Administrative Procedures
 - Pages 8 – 14

TOWN of CHESWOLD

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**APPROVED BY UNANIMOUS PLANNING COMMISSION VOTE –
4/11/2024**

**PLANNING COMMISSION
MEETING MINUTES
THURSDAY, MARCH 14, 2024**

NEW BUSINESS –

a. Application 2024-03-05-126

- Lot Line Adjustment Review
- Department of Transportation
- Address: 2008 Moorton Road
- Map ID: 3-03-04611-01-0302-000 *(to become 16.0 acres)*
- Map ID: 3-03-04615-01-0100-000 *(to become 3.9 acres)*
- Zoning Code = I-1 *(Light Industrial)*
- Acres = 19.9
- Owner = State of Delaware
- Owner's Representative = Austin Gray., DelDOT
- Engineering Representative = Drew A. Boyce, P.E., Century Engineering.
- Water = Well
- Electricity = N/A
- Gas = N/A
- Sewer = N/A
- Request = **Sub-divide lot into two, (2), separate lots with two, (2), separate Map ID's. One lot is to be used as the end of the runway of the Delaware Airpark. The other lot is to be used as an expansion of the Cheswold DelDOT maintenance yard.**

Chairperson Williams presented the outline of the Application. He was followed by Land Use Administrator Sam Callender who informed the applicant, Mr. Austin Gray of DelDOT, and his representative, Mr. Drew Boyce, P.E. of Century Engineering, that there were minor administrative corrections to be made to the Site Plan and a response to the review conducted by Town Engineer Tom Wilkes, which were provided to them in a separate email.

The Chair asked if the parcels were going to be combined and then split evenly? Engineer Boyce provided background history for the request. DelDOT has part of extension of the Delaware Airpark received some grants from the Federal Aviation Administration to purchase property to be able to secure the same safety zones at the ends of the runway approaches. And so DelDOT secured this eastern portion of the Diakos property a few years ago and it included areas that are somewhat outside the safety zones required by the FAA. To create a clear distinction between the Airport safety zone at the end of the runway and other properties that DelDOT purchased that they would like to use for different use, they decided to segment those pieces so that there would be a clear parcel that is strictly for aviation use, that will then permit them to complete their negotiations with the FAA for reimbursement of the cost of that property.

Chairperson Williams asked for additional comments from the Commissioners. Commissioner Dave Naples asked who owns the Delaware Airpark? Engineer Boyce replied that the State of Delaware owns it, and the Delaware Department of Transportation under Title 2 has jurisdiction over the public airports and so they are the assigned overseer and DelDOT has an agreement

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NEW BUSINESS – *“continued”*

a. Application 2024-03-05-126

with the Delaware River and Bay Authority for operations of the park. Commissioner Naples asked if the DRBA is just more or less a management company of the property? And Engineer Boyce confirmed that that was correct. Commissioner Naples explained that he asked the question because he was under the impression that DRBA owned and he was curious as to how they felt about the lot lines, but that the answers provided by Engineer Boyce clarified his curiosity.

Vice Chairperson Mike Callender asked if the remaining portion of the Diakos property was also going to be acquired by DelDOT? Engineer Boyce advised that it is the intention of DelDOT to purchase that remnant that sub-divided out when DelDOT purchased the larger piece several years ago. And they had planned to combine that with this project, but there was a sense of urgency to get the parcels subdivided in order to get the records and accounts cleared with the FAA and ultimately he believes that DelDOT will come back to the Tow, once they secure that piece to combine these lots into one parcel just for the ease of maintenance and management and all the associated benefits. Mr. Callender stated that he asked because he observed that the building on the Diakos property is almost in direct line to the proposed extended runway. Engineer Boyce agreed and added that he believes once the property is acquired by the State that structure will most likely be removed.

Engineer Boyce addressed one of the comments of Engineer Wilkes which asked if the remnants of this sub-division be combined with the balance of the DelDOT Maintenance Yard operations parcel? He answered and said that he cannot say with justification that DelDOT wants to do that with this plan, but they may at some point. Additionally, he doesn't think it is as critical as this piece and working with the FAA and their desire to have a clear distinction between the properties that they are paying for, which are strictly for aviation purposes, and not investing in any property that is not necessary for the airport.

Chairperson Williams asked if there would be anytime in the future where there would be an intrusion into the buffer? Engineer Boyce responded that under the current FAA regulations which establishes all the clear zones and approach zones and purposes for how you come into the airport, the line that is established is that clear zone line. And under current regulations it meets the standards and if the FAA ever changed the regulations, it would probably fall under a legal non-conforming status and would affect a lot of airports, therefore it is highly unlikely.

Chairperson Cooper asked if Engineer Wilkes' comments were going to be incorporated into a new plan that will be signed or is this the final plan. Engineer Wilkes replied that it can be done either way – ask them to come back before the Commission or send it through as a Prelim/Final contingent upon them meeting the comments of the Land Use Administrator and the Town Engineer.

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**PLANNING COMMISSION
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NEW BUSINESS – *“continued”*

a. Application 2024-03-05-126

A motion was made by Chairperson Williams to recommend the Application to the Town Council for approval contingent upon the applicant addressing the following as stated above:

- **Administrative Corrections - Plot Plan:**
 - ID Formats should be: X-XX-XXXXX-XX-XXXX-XXX
 - Owner: State of Delaware Map ID: 3-03-04615-01-1000-000
 - Add Signature Stamp: Town of Cheswold

- **Town Engineer’s Comments:**
 - It would be helpful to show the entire boundary of both of the affected parcels in question on a single plan.

 - Will the lot line between the two parcels, (3-03-04611-01-0302-000 and 3-03-04615-01-0100-000 be extinguished?

 - What is the significance of the Boundary Line Table on the plan?

 - Note 4: Is the Chesapeake utility easement being created under this plan?

A second to the motion was provided by Vice Chairperson Mike Callender and a unanimous roll call vote of the Commissioners approved the motion.

The meeting was then concluded after receiving comments as noted below:

ATTENDEE COMMENTS: Nothing to Report

COMMISSION COMMENTS:

- **TOWN ENGINEER’ S COMMENTS:** Nothing to Report

- **LAND USE ADMINISTRATOR COMMENTS:** She received an email on March 11, 2024, from Ms. Carrie Joles, Executive Assistant for Alston’s Walk. Arrangements were made to receive and sign revised plans for the Tidewater connection to the proposed development. Change did not require Planning Commission or Town Council approval, as they were construction changes for a previously recorded plan. They maintained their rear entry easement, but are going to provide access from Main St.

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COMMISSION COMMENTS: – “continued”

- COMMISSIONER BARBARA COOPER: Nothing to Report

- COMMISSIONER DAVE NAPLES: Nothing to Report

- VICE-CHAIR MIKE CALLENDER: Had a concern for discussion because someone is desiring to purchase a lot in the Business Park. And it’s related to use regulations. In Table 7-2. Permitted Uses under Transportation Related Sales & Services, under Non-Permitted is Motor Vehicle Sales, Repair and Storage, in the I-1 Zone. And the same title is Permitted with a Site Plan in the C-1 and C-2 Zones. And the question is why is vehicles sales, repair and storage not permitted in I-1?

After some discussion, a motion was made Chairperson Williams, with a second from Commissioner Kara Naples to revise Table 7-2 to include permission and a site plan as a requirement for Motor Vehicle Sales, Repair and Storage, in the I-1 Zone. A unanimous vote of the Planning Commissioners passed the motion.

- COMMISSIONER KARA NAPLES: : Nothing to Report

- CHAIRPERSON STEVE WILLIAMS Nothing to Report

NEXT MEETING DATE: Thursday – April 11, 2024; 5:00 p.m.

Meeting to be Held at:
Cheswold Town Hall - Commissioners and Applicants only

- **ZOOM** will be available for all others

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**PLANNING COMMISSION
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MOTION to ADJOURN:

A motion to adjourn was made by Commissioner Mike Callender at 6:40 p.m. A second to the motion was made by Commissioner Babara Cooper and a unanimous roll call vote passed the motion.

Minutes Submitted by: Land Use Administrator Sam Callender March 30, 2024