

PLANNING AND ZONING COMMISSION
MEETING MINUTES
July 20, 2023

1. Chairperson Liddle called the meeting to order at 4:00pm with the Pledge of Allegiance. Commission Members Curran, Sigvardson, Maly and Nicholson were in attendance. Planning, Zoning & Development Director Ken Cimino, Town Engineer Jim Lober, Town Solicitor Veronica Faust, Planner Jill Oliver, and Town Clerk Donna Schwartz were also in attendance. The meeting was held at 32 West Avenue.
2. **SWEARING-IN OF NEW MEMBER** – Ms. Faust read the oath of office to Tom Maly.
3. **APPROVAL OF AGENDA**
A motion was made by Mr. Curran, seconded by Mr. Sigvardson, to approve the agenda as amended with the addition of the swearing-in of Tom Maly. The motion was carried unanimously 5/0.
4. **APPROVAL OF MINUTES**
A motion was made by Mr. Nicholson, seconded by Mr. Curran, to approve the minutes of May 18, 2023. The motion was carried unanimously 5/0.
5. **OLD BUSINESS**

A. **P-342 142 Woodland Avenue (PIDN:034.000/CTM#134-12.00-470.00)**

Mr. Liddle read the notice for Application P-261 Silver Woods Villas.

Mr. Cimino read a prepared statement indicating that comments from the audience should be made relevant to the final site plan.

Mr. Lober made the following comments. He stated he reviewed the following:

- Final Land Development Plan – Silverwoods Villas dated 4/18/22 and as revised through 6/7/23; and,
- Record Plan Overall – Silverwoods Villas dated 4/3/23 and as revised through 6/5/23; and,
- Seller Disclosure Agreement – Silverwoods dated 6/7/23.

Mr. Lober said the comments from our review of the most recent documents are included below. Previous comments are included as applicable.

General

1. At the time of this letter, outside agency approval from Tidewater Utilities had not been received.
2. Add the title “Final Land Development Plan” to the construction plan set.
3. Revise the cover sheet and C002 of the final land development plan to remove all references to villa, mixed use, and assisted living districts. Ensure that all the site data for the final land development plan and the record plan match.

Pavement Design

4. Addressed

- I don't see the soils investigation required by 187-4 to provide the necessary information to design a proper pavement section. Also, the section detail provided is insufficient for even the smallest number of units on good soil.

5. Addressed

- Is a geotechnical study underway? If so, the pavement section will need to be designed based on the findings and meet the minimum requirements of the code as listed in 187-5 Table 1.

6. Addressed

- In the past, we have accepted a design based on an assumption of poor soils in lieu of a geotechnical study. However, please be aware that Town staff will be inspecting construction of the streets and it is possible that conditions could be encountered that would require over-excavation and backfill. A geotechnical investigation could identify these problems ahead of time providing the opportunity to plan ahead.

7. Addressed

- Moving forward Roads A, E and F should be designed based on 51-100 Units. Roads B, C and D should be designed based on 0-50 units.

8. Addressed

- Please make sure to add notes to the construction plans referencing the report and the recommendations.

ROW section

1. A variance application has been made and will be heard by the Board of Adjustment prior to plan approval. Should the variance not be granted, the plan will need to be revised to provide PCC Curb type 1 with 8" reveal.

- The code requires PCC Curb type 1 with 8" reveal. The plan currently proposes PCC curb and gutter type 2. A variance will be required to provide this type of curb.

2. Addressed

- The 30' required road width is to be measured from face of curb to face of curb. If the plan pursues type 2 curb and is successful in obtaining the variance, the 30' will be measured from flowline to flowline.

Roads

1. Addressed

- I don't see horizontal alignment geometry for the roads anywhere. I need centerline tangents, curve radii and lengths, etc. Everything to bear out code compliance with respect to §187-2. If I'm missing it, please let me know.

2. Addressed

- It appears that the vertical curves provided are too short. Please refer to §187-2-E-2. The curve lengths should be calculated by prorating the 25 ft / 1% change and rounding up to the nearest foot. Please note that these changes could shift the low points at sumps and ensure that the catch basins are placed appropriately.

Grading

1. The grading in this area is sufficient for now. We would like to work with the developer moving forward to possibly coordinate filling of the ditch on both the single family and townhouse lots.

- Appear to be conflicting existing contours in the area of the pump station parcel and single-family lots 84 and 85. Depict the as-built topography from the constructed condition of this area on the plan and design the proposed grades for the adjacent areas accordingly. Given the slopes off the rear corners of single-family lot 85 and townhouse lot 1, and the fact that the drainage area to the existing ditch in this area has been eliminated, it may make sense to fill the ditch to a point beyond the southeast corner of townhouse lot 1. It appears that the current grading doesn't provide sufficient cover for SD-16A as well. Please revisit the grading in this area.

2. Addressed.

- There appear to be conflicting existing contours in the area of the clubhouse. Depict the as built topography from the constructed condition of this area on the plan and design the proposed grades for the adjacent areas accordingly. Provide proposed grading for the amenities area.

3. Addressed

- We have learned through experience with the single-family phase that much more attention needs to be paid to the pedestrian path through the open space. I've marked up the detail you provided and included it as a screen shot at the end of this email. Please revise the details as noted.

4. Lower the top of CB 19D to 17.2 to provide additional overland slope to drain the area. The HGL will still be within the system.

- Grading proposed along the eastern edge of Road I behind the parking spaces creates a sump defined by the 18 contour. Design grading provides a positive outfall for runoff in accordance with the minimum slopes required by the code.

5. Addressed

- Grading proposed in the northwest corner of the site behind lots 40-42 doesn't appear that it will provide code minimum slopes to sufficiently direct runoff to the roadside swale. I'm concerned that water will pond in the open space south and west of the ped path. Design grading in this area to provide a positive outfall for runoff in accordance with the minimum slopes required by the code. An inlet and pipe to the network in road D or the roadside swale along Beaver Dam may be necessary.

6. No Further Comment Necessary

- The grading shown within the lots appears sufficient at this time. Please note for the record that the final on-lot grading will be reviewed and approved with single lot grading plan submissions for each townhouse block prior to building permit issuance.

7. Addressed

- More apropos to drainage, but I just noticed, the existing 18" and 24"x38" culverts under Beaver Dam that drain to the north should be fitted with personnel safety grates. These are within DelDOT's jurisdiction, but if they aren't currently in place, they should be installed with this project.

Drainage

1. Addressed

- What is the plan for the upstream end of SD-28D? It appears to be a stub intended to drain the future commercial portion of the site. How will that area be drained in the meantime? It seems it should be treated like SD-27D to provide an outlet for the upstream undeveloped area and avoid ponding.

2. Addressed

- All open-ended inlets to the system like that at SD-27D and potentially SD-28D should be designed with flared end sections and personnel safety grates in accordance with DelDOT details.

3. Addressed

- SD-4D is modeled in the HGL as a 30" pipe, but it's listed on the plan in the schedule and depicted in the profile as a 24" pipe. It's downstream of SD-6D, which is also a 30" pipe.

4. Addressed

- The HGL at the outlet of SD-1D should match the 25 yr. storm elevation from the pond 7 routing. It's currently modeled at 14.42, only 0.11 below the elevation from the routing of 14.53, but please correct the starting HGL and rerun the calc.
5. Addressed
 - Realign SD-19D and SD-20D to meet at MH 19-D at a 90-degree angle. (Note that it appears a number of manholes including 19D are mislabeled as CBs on the plan).
 6. Addressed
 - Realign SD-23D and MH 22D to create a 90-degree angle between SD-23D and SD- 22D.
 7. Addressed
 - The overflow parking spaces along Road I are currently graded with a break mid- space directing runoff from half of the parking space back to the road and half off into the grass to the rear. It seems unlikely the spaces will actually be graded or paved this way. Move the ridgeline to the rear of the space and revise the drainage calcs to include the additional area.
 8. Addressed
 - Realign SD-13B and MH 10B to create a 90-degree angle between SD-13B and SD- 10B.
 9. Addressed
 - Realign SD-4C and MH 4C to create a 90-degree angle between SD-4C and SD-10C. (note that it appears some of the catch basins including 3C and 2C are labeled as manholes on the plan).
 10. Addressed
 - The paths through the open space should be graded as ridgelines with drainage on both sides to eliminate ponding. Add a catch basin along SD-8B south of the path opposite CB-8B, another north of the path opposite CB-13C, and another north of the path opposite CB-21B.
 11. Addressed
 - SD-4C is modeled in the HGL as an 18" pipe, but it's listed on the plan in the schedule as a 24" pipe.
 12. Addressed
 - Revise the HGL output to include the roughness coefficient for the pipes that was factored into the calculations.
 13. Addressed

- There are a number of locations within the B network where the freeboard falls below the code required 1' between the 25 yr. HGL and the grate elevation. Revise the design or provide justification for why the system can't be designed to provide the minimum freeboard.

14. Addressed

- Include the rise and the span dimensions for the elliptical pipe in the schedule for clarity. BMG Comment response: The pipe sizes have been updated in the schedules.

15. Addressed

- Please add an entry to the narrative under design parameters noting that the starting HGL elevation for the pipe run starting at SD-16A was taken from the HGL analysis for the pipe network in the single-family phase.

16. The revised HGL calculations have been reviewed and found to be acceptable.

- The minimum freeboard requirement of 1' is not provided at structures SD-16A – SD-19A. Revise the design or provide justification for why the system can't be designed to provide the code required freeboard. (Note that the known flow added to the system from pond 7P of 15.63 doesn't appear to correspond to the 25 yr. outflow from the routing of 13.1).

Landscape

1. Given the necessary revisions to the area breakdown on the record plan, this value is yet to be determined. Revise the note on the landscape plan regarding the planting rate to remove any reference to a "villa" district.
 - Ensure that the area of development on which the tree calculation is based matches the area breakdown from the overall cover sheet for the subject parcels.
2. Addressed
 - The landscape plantings need to include low evergreen shrubs in accordance with §140-74-A-3-a above and beyond the tree requirement included §140-74-3-C.
3. Any landscaping that might interfere with drainage will need to be relocated prior to placement during construction.
 - Ensure that trees and shrubs are not located such that they will impede drainage.
4. Addressed

- Provide plantings in the red highlighted area in the screenshot below to provide buffering for the rear of single-family lots 1 and 2 since there is no existing vegetation in that area.
5. Addressed
 - Ensure that the plan is designed in accordance with the requirements for Protection and Retention of Large Trees included in §140-74-3-b.

Street Lighting

1. Addressed
 - Include a note on the plan stating that the streetlight design is conceptual and final streetlight locations will be determined by Delaware Electric Coop.
2. Addressed
 - Provide a detail on the plan for the type and height of light standard proposed.

Amenities Area

1. Addressed
 - a. Specify and provide site design and details for the proposed amenities.

Record Plan

1. The cover sheet for the record plan needs to depict the entirety of the area, including all of the tax parcels, that are part of the overall MXPC. The site data column needs to address all of these areas, specifically open space and each district required by the MXPC requirements within the code.
 - Provide a cover sheet depicting the overall MXPC subdivision and correcting the site data column.
2. The wetland certification has been updated, however there are no wetlands shown on the plan and no updated delineation or report has been provided. The wetland notes on the final land development plan and the record plan will need to be revised so the language is consistent. General note #4 will need to be revised to specifically address the townhouse district once all of the areas within the MXPC are shown on the plan as noted in note #1 above.
 - An updated wetland delineation needs to be completed. The notes on the record plan addressing wetlands will also need to be revisited upon completion of the delineation.
3. To be addressed after the BOA hearing taking place prior to final plan approval.

- Should the applicant be successful in obtaining the variances for the curb type and driveway setback, notes referencing the BOA decision will need to be added to the plan.
4. Addressed
 - Reflect the wellhead protection area on the record plan.
 5. The cover sheet needs to address all of the areas within the entirety of the MXPC. See note #1 above. When that data is incorporated ensure that all the values agree.
 - Verify the open space area provided. The numbers from the site data column, item 9 and item 22 don't agree.
 6. The Townhouse district areas are mislabeled as single family.
 - The record plan should not refer to a "mixed-use" or an "assisted living" district. These are specific uses that may or may not be proposed within the commercial district required by the MXPC. These areas should simply be labeled as commercial districts.
 7. See note #1 above. All of the parcels and areas that are part of the MXPC need to be included in the site data column.
 - In site data column item 10 – list the 2 commercial lots as existing. No new commercial lots are proposed.
 8. Provide verification that the road names have been approved by Sussex County. Please note that there are two Exeter streets on the record plan. The name Ashley Avenue is too similar to the name of an existing street in Town and must be changed regardless of the County's opinion. Merrick Way does not need to be a separate street. It can simply be the turnaround at the end of Scranton. Postal addresses will be determined post-recording.
 - Provide proposed road names on the plan and verification from Sussex County that the road names are acceptable. Also, provide proposed postal addresses for each lot.
 9. The easement labels need to specify who benefits from each easement. Please revise the cross-access easement labels to note that the easements are to benefit the interior lot residents. Also please note that the drainage easements are to be dedicated to the town and the HOA.
 - Depict the cross-access easement between abutting townhouse lots in accordance with the revised MXPC ordinance.
 10. Setbacks for the commercial district should not refer to mixed use.
 - The record plan should only list setbacks for the single-family district, the townhouse district, and the commercial district.

11. Addressed

- Verify that the 36.5' wide end unit lots are wide enough to accommodate the end unit footprint while maintaining the required 15' building spacing. Please note that the 15' applies to attached accessory structures and that if only 15' between the base footprints is provided, no accessory structures will be permitted in the future along the sides of the end units.

12. Addressed

- Specify that the maximum allowable building height for the townhouses is the same as the single families. Remove the multiple references to building height in the site data notes.

13. Revisit the parking calculation, the numbers appear to be incorrect for the townhouse district. All of the code required parking needs to be shown on the plan. A note addressing on lot spaces is sufficient, however off-street overflow spaces need to be shown.

- Revise the parking calculation to reflect that two parking spaces per unit are being provided on lot for all of the lots.

14. Addressed

- Add a commercial district parking note stating that the parking requirements for the commercial district will be determined based on the specific use at the time of development of those parcels.

15. See note #1 above. Ensure that all of the areas are accounted for.

- The overall open space value doesn't appear to match the total of the various open space values for each district. Once the layout of the districts is finalized, please ensure that these values match.

16. Addressed

- Remove the list of active open space amenities included in site data note #22.

17. Addressed

- Update the FEMA FIRM Panel reference.

18. Addressed. Notes regarding the overflow parking are included herein.

- Include the improvements within the ROW on the plan, as well as the overflow parking. Provide dimensions for cartway, sidewalks, parking etc. Although a portion of the overflow parking spaces exists within the ROW to be dedicated to the Town, the HOA will be responsible for the maintenance and any repair necessary for the spaces. Notes will need to be developed for inclusion on the plan addressing this situation. The PD will provide language at a later date.

19. Addressed

- General note # 20 needs to be revised to remove reference to another document and simply say per this plan.

20. Addressed

- Remove GN #31.

21. Addressed

- Revise GN # 32 – to specify all paved walkways within the residential open space areas, remove reference to the villa district and specify the performance guaranty required by §187-6-L.

22. In ordinance note #5 please edit the language to read “...10’ from rear lot lines (OR 20’ on townhouse dwelling units)...”. In ordinance note #13 please correct “tots” to “lots”

- Include all of the notes from the revised MXPC ordinance in the site data column. Reference the ordinance number and date of adoption on the plan.

23. The exhibit needs to include a clear designation of the area available for the addition of code compliant structures, using hatch or color, etc.

- Provide a generic sellers disclosure exhibit in accordance with the requirements from the revised MXPC ordinance for review. Seller’s disclosure exhibits specific to each lot will be required as part of the single lot grading plan submission for each block of townhouses prior to building permit issuance.

24. Addressed

- The title of the plan of Silver Woods Villas is acceptable. However, remove all references to any other residential unit names other than single family or townhouse. Villa, townhome, single family townhouse, single family villa etc. are not terms that exist in the code.

25. See note #9 above regarding easements.

- Show all required easements on the plan, including but not necessarily limited to those required in §140-79.

26. Addressed

- The plan date of the record plan is the same as that of the preliminary plan. If that is indeed the case, it can remain, but it could create confusion down the line. Be sure to include a revision and description in the revision block on the revised plan.

27. Addressed

- Provide the requisite plan certification blocks from §140-105 Figure 7.

28. Addressed

- Provide a note on the plan labeling the amenities area and noting the amenity improvements are specified on the final land development plan. The land development plan will need to specify and provide site design to support the proposed amenities.

29. Addressed

- Provide a note on the plan referencing the other plan approval, including but not necessarily limited to the final land development plan, and the sediment and stormwater management plan

Ms. Faust asked Mr. Lober to verify that all these comments come from a letter dated July 18, 2023. Mr. Lober stated they did.

Chairmen Liddle read the meeting rules and asked everyone to put their phones on airplane mode.

Mr. Seth Thompson, Parkowski, Guerke, and Swayze, PA, introduced himself as the legal counsel for the builder of Silverwood's application.

Mr. Mike Riemann, Becker Morgan, introduced himself as the head architect for the Silverwood's project. He noted that this project started in 2011 with the approval of annexation Ordinance #282 by the Town Council. Mr. Riemann reviewed the history of the development for the last twelve years. He stated that he would be happy to include Mr. Lober's letter in the approved final plan.

Mr. Seth Thompson also commented on the minimum lease agreement. The discussion was presented that they have a one-year lease agreement. The residents can govern this agreement themselves through their covenants. Mr. Liddle asked for clarification on this topic. Mr. Thompson agreed that the HOA can set parameters. Mr. Curran asked Mr. Thompson about whether covenants for the Townhouses will mirror that of the existing HOA.

Mr. Liddle questioned the setbacks between Silverwood's and Forest Landing. Mr. Riemann replied that 40ft was the minimum, most areas are wider to a maximum of 83ft. Mr. Liddle also questioned the buffer on Luzerne Drive. Mr. Riemann stated they will not be touching the buffer at all.

Mr. Sigvardson questioned if there were trees in the swale that would be removed. Mr. Riemann replied that there would be no tree removal, no cleaning of the ditch, not changing anything about the ditch. Mr. Cimino stated that they would follow proper ditch management practices.

Mr. Curran questioned the lack of proper amenities for a development this size. He feels they will have a hard time selling these townhouses with the small number of amenities to new people. Mr. Curran noted that it would have been wise to add an additional pool to service the villas. Mr. Thomson stated that they have tried to work with the residents and the HOA. The town code does not cover amenities; however, his comments make sense.

Mr. Curran also read a prepared statement regarding the approval of the final site plan. He said, "The past history of this development has shown that they have not properly delivered what was promised to the residents of the community.

I understand the relationship between the developer and the builder or builders. In this case, there is only one builder, Beazer Homes. It is obvious to me who is driving the bus. It is also obvious to me who the bus driver is throwing under the bus. The current residents and whomever the new townhouse owners will be.

I find it unconscionable that now they plan on deliberately skimping on the amenities that are needed to make a community a nice place to live. An adequately sized clubhouse and pool. Instead, they are tossing the residents a few desiccated bones by offering bocce and pickleball courts. It's not that they didn't have the space for the amenities. The first rendition of the project called for 133 townhouses. After the Town Planning Department showed them a number of irregularities, wherein they had to realign their plan, instead of adding an adequate pool and clubhouse, something that would have pleased the residents and most likely allowed for Beazer to charge a higher price for the homes, they chose instead to add another 21 home sites, raising it to 154. Now it's 161 townhouses. All of which will NOT have adequate amenities. They had the space to do it right and still make a good profit in one of the hottest real estate markets in the country, but instead, they opted to disenfranchise the existing residents of proper and adequate amenities and ensure that any future residents will be equally unhappy with the existing amenities. All so they could jam more cash into their own pockets.

I understand business and the need for profits. I operated transportation services companies in an intensely competitive environment for forty years. Never once did I find it necessary to stick it to the customer, in order to earn those profits. Instead, I focused on motivating my employees, most of whom were union members, on how to do things better and more efficiently so that all of us, employees, employer, and especially the customer were satisfied.

To the extent that I, as a member of the Planning & Zoning Board, have the legal power to do so, I intend to ensure that there are no more "promises" but only enforceable agreements. To that end, I am requesting that the developer take another hard look at the proposed "additional amenities" and consider revamping them to be more in accord with what is actually needed in the community.

Accordingly, since everyone is allowed to have their say, I would like to hear from the representative of Beazer homes on this matter before we proceed any further."

Mr. Thompson replied to Mr. Curran saying that there are additional concessions that have been made. He also noted that there is nothing in the Town Code that deals with amenities.

PUBLIC COMMENT

Along with the many letters and emails received by the Planning & Zoning Department, the following public comments were made.

Mrs. Laura Giorgianni, 7 Favata Place, in addition to her letter, she made some comments regarding the new amenities that have been promised, saying they may want to expand the clubhouse in the future so they should do away with the new pavilion. The pool deck expansion is favorable. Mrs. Giorgianni noted that the parking lot is too small. She commented that she is concerned with the placement of the pickleball court and the noise. She also spoke of tree buffers and the covenants for rentals. Mr. Mike Reimann noted that the one buffer she spoke of belongs to Forest Landing Development. They are not planning to modify those ditches.

Mr. Joseph Giorgianni, 7 Favata Place, spoke about trees in the ditch.

Ms. Judith McDermott, 27 Luzerne Drive, also sent a letter and spoke about the tree ordinance in the Town Code. She said based on this ordinance the Town should require the developer to follow those standards by hiring an arborist to oversee the project.

Ms. Nora Marques., 15 Luzerne Drive, stated she was concerned about the headlights of the cars on Exeter Drive.

Ms. Karen Lackaye, 20 Old Forge Drive, wanted to mention a lot that is for sale.

Ms. Ann Pauley, 17 Luzerne Drive, suggested they keep the tree canopy for the birds and animals.

PUBLIC COMMENT CLOSED

Mr. Sigvardson commented that he would like some clarification on the trees in the swale. Mr. Riemann stated there would be no grading or clearing they are not changing the ditch. Mr. Cimino mentioned that the homeowners are concerned about the clearing of the ditch. Mr. Maly commented that it is up to this committee to find a balance between the homeowner and the developer. Mr. Lober stated that the amenities need to be designed for the future.

Mr. Curran made a motion, seconded by Mr. Nicholson, to approve Application P-261 requesting approval of a final land development plan for the Townhouse district within the mixed use planned community of silver woods subject to the following conditions, all of which should be met to the satisfaction of the Ocean View Planning Department prior to the recordation of a final record plan for the Townhouse district. The conditions are:

1. The final land development plan shall be revised in accordance with the comments provided by the Town engineer dated July 18, 2023.
2. The Record Plan overall shall be revised in accordance with the comments provided by the Town Engineer dated July 18, 2023.
3. The Seller disclosure Exhibit shall be revised in accordance with the comments provided by the Town Engineer dated July 18, 2023.

Mr. Curran added the following issues addressed in Mr. Lober's letter dated 7/18/2023 be clarified and resolved in accordance with Mr. Lober's written comments:

4. A definite date and method of filling in the relevant ditch as grading item #1, grading comment #1, be established which shall not be later than the issuance of the first Certificate of Occupancy and the filling in of said ditch shall be completed by no later than the twentieth Certificate of Occupancy. Subject to the approval of the owner of the private property.
5. An exact list and placement of plantings shall be provided prior to the issuance of any certificates of occupancy and a completion date for said plantings which shall not be later than the issuing of the appropriate certificate of occupancy as stated under Ordinance #389.
6. The developer's response to this item in Mr. Lober's letter to Mr. Cimino dated June 7, 2023, is vague and partially nonresponsive. Prior to any clearance of this parcel, in the 22' buffer area, a certified arborist is to inspect all said areas to determine what is a large tree, as per the Town Code, whether native or non-native to the area, and mark said trees accordingly. None of those said marked trees are to be removed from the site. If any of those trees are determined to be an invasive species and considered by said arborists to be harmful to the immediate environment, then those trees may be removed.

Vote: Sigvardson, yes; Nicholson, yes; Curran, yes; Liddle, yes; Maly, yes. Motion passes unanimously 5/0.

6. **ADJOURNMENT**

A motion was made by Mr. Curran, seconded by Mr. Sigvardson to adjourn the meeting at 5:20pm. The motion was carried unanimously 5/0.