

TO: Betsy Gardner, New Castle County Clerk of County Council
Robert S. Weiner, New Castle County Councilman - 2nd District
Paul G. Clark, New Castle County Council President
Wendy Danner, New Castle County Council Attorney

FROM: Kenneth R. Bieri
Assistant Planning Manager

DATE: January 6, 2010

SUBJECT: Rezoning Recommendation Report for Columbia Place at Garden of Eden Road
(Ord. 09-090) Clarified

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The Department of Land Use has clarified the Planning Board voting results on the above referenced rezoning. The revised report, dated January 5, 2010, is enclosed for all future use. The only changes to this report are in the first paragraph under the Planning Board Recommendation section beginning on page 7.

If you have questions or concerns about the clarification, please do not hesitate to call or email.

Thanks.

RECOMMENDATION

Ordinance 09-090 Application 2009-0201-S/Z

Columbia Place at Garden of Eden Road

November 17, 2009

Revised January 6, 2010

(see first paragraph under Planning Board Recommendation section)

DESCRIPTION

Location: 100 Garden of Eden Road (South side Garden of Eden Road, west of Concord Pike and east of Taunton Drive)

Councilperson: Robert S. Weiner, District 2

Rezoning: 15.4 acres from S (Suburban) to ST (Suburban Transition)

Applicant: Reybold Venture Group LLC

ZONING & DEVELOPMENT PATTERN

The surrounding area has a diversity of zoning districts that generally transition from commercial and office uses along the Concord Pike corridor, progressing westward to institutional uses and then to medium density residential neighborhoods that back up to Brandywine Creek State Park and the Brandywine River.

The subject parcel is set back approximately 500 feet from the west side of Concord Pike behind the band of commercial and office developments lining that highway. Both CN (Commercial Neighborhood) and CR (Commercial Regional) districts line Concord Pike. The nearby CN district, which extends south of the Silverside Road intersection, contains individual retail uses as well as small and medium size shopping centers. The CR district, which extends north of the Silverside Road intersection, includes a gas station, Talleyville Shopping Center, Quality Inn, FedEx office, Wendy's restaurant and Concord Square Shopping Center. Across from Concord Square is an ON (Office Neighborhood) district occupied by the Delaware Corporate Center.

Three small residential parcels, about one-half acre each, are located between the eastern edge of the subject parcel and the Concord Pike CN zoning district. Two are zoned NC15 and each contains a single family detached home built in 1951. The third, located closest to Concord Pike,

is zoned NC5 and is occupied by a three-story, walk-up apartment building constructed in 1960. These residential parcels are an anomaly in the line of parcels that long ago converted to commercial use.

The Pilot School, which is the existing facility on the subject parcel, forms the core of a swath of residentially-zoned, institutional uses forming the next tier of development behind the Concord Pike commercial corridor. The school is a permitted institutional use in the S (Suburban) zoning district. Likewise, the Jewish Community Center (JCC), directly across Garden of Eden Road, is a permitted institutional use in the ST (Suburban Transition) zoning district, and the YMCA and the Brandywine Valley Baptist Church, the adjoining parcels to the south, are also institutional uses permitted in the S zoning district.

To the west of these non-residential uses is an area characterized by single family detached-housing communities zoned NC10 (Neighborhood Conservation), Tavistock, and NC15, Sharpley, and Edenridge. The curbing of Westcliff Road and Hertford Road on the edge of Tavistock and Edenridge form an abrupt boundary with the protected natural lands in Brandywine Creek State Park.

TECHNICAL ADVISORY AGENCY REVIEW

Comments received from agencies participating on the Technical Advisory Committee (TAC) were general in nature and did not identify any problems. The following agencies provided comments:

Delaware Department of Agriculture
Delaware Health and Social Services, Office of Drinking Water
Delaware Air Quality Management
DNREC Division of Fish and Wildlife
DNREC Wetlands and Subaqueous Lands Sections & Wetlands/Soil Assessment and Small
Systems Permitting Branches
New Castle Conservation District

The New Castle County Department of Special Services indicated that sewer capacity is presently available.

BACKGROUND & ANALYSIS

The proposal is to rezone 15.4 acres from S to ST create a 149-unit, age-restricted, residential condominium community using the redevelopment option outlined in Section 40.08.130(B)(6) of the *New Castle County Code*. The site is currently occupied by the 53,600 square foot Pilot School, which is vacating the premises. All of the existing school building, parking lot, and athletic facilities will be demolished. The Department, during the exploratory sketch plan

review, determined that the proposed project meets the criteria for using the redevelopment option and is eligible for the 25 percent density bonus in Section 40.08.130(B)(6)(g) of the *New Castle County Code*. The 149 proposed units reflect the density bonus and result in a site density of 9.7 dwelling units/acre. Open space will total 6.43 acres or 41.5% of the site. While the rezoning from S to ST will increase the permitted density, the proposed project will convert the use of the property from institutional to residential.

Although this project is all condominium units, it does include three dwelling types: 17 single family detached homes, 50 townhomes, and 82 apartment units. The apartments are contained in two, four-story buildings with underground parking. The site design proposes one entrance on Garden of Eden Road and a private internal loop road. The layout is governed by a requirement to preserve specimen trees and the developer's stated preference to arrange the unit types to accommodate adjoining parcels. The single family units are located on the western side and part of southern side of the site adjoining the rear yards of the single family homes in Tavistock. The townhomes are located in the middle of the site adjoining the YMCA and Brandywine Valley Baptist Church to the south and the JCC to the north. The apartment buildings are located on the eastern side of the property. This layout places the lowest density units next to the existing medium density Tavistock neighborhood and the highest density units closest to Concord Pike. The progression of density on the site mirrors the progression of density on surrounding parcels. In addition, this plan will enable walking to nearby points of interest to the future residents. The site is located across the road from the Jewish Community Center, and the plan shows a walkway to the Brandywine Valley Baptist Church, which in turn has a connecting driveway to the YMCA.

A preliminary traffic analysis (PTA) was requested at the exploratory review stage and as a result of that analysis the plan did not warrant a Traffic Impact Study (TIS). It was determined the net traffic impact will be less than for the existing school and there will also be less peak hour impact. In particular, the proposed housing will generate less than 50 peak hour trips and the existing school traffic will be eliminated.

The proposed project will provide a stormwater management system meeting UDC and DNREC standards, where currently no stormwater system exists. This addition will be a substantial improvement to the property and a benefit to surrounding properties. Due to the limiting geology of the site, the system has been preliminarily designed to collect water in three underground storage tanks and a stormwater pond. Green Technology BMPs (best management practices) are also proposed to meet stormwater quality requirements.

The applicant sought and was granted a variance by the Board of Adjustment to exceed the 50-foot building height limit by 6.5 feet in order to accommodate a gable roof design for the two condominium apartment buildings (App. 2009-0523-A). Without the variance, the buildings could be designed with flat roofs.

November 3, 2009 Public Hearing -

At the public hearing Councilman Robert Weiner, District 2, expressed concerns over the use of the redevelopment density bonus for this project and questioned the accuracy of the traffic analysis.

Twelve members of the public spoke in opposition to the project. Most were immediate neighbors of the project residing in Tavistock and Edenridge. While they said they were not opposed to an age-restricted residential community, their preference was for a much lower density (about 60 units total) and more open space, particularly an open space buffer between their community and the proposed project. Their main areas of concern included the possibility of increased traffic, the design of the stormwater management system, and the height of the condominium apartment buildings.

Two State legislators spoke. Representative Dennis Williams was opposed to the density bonus and Senator Michael Katz expressed concern over potential traffic impacts and said he is drafting a letter to DelDOT requesting additional traffic study.

Steven Biener, Director of the Jewish Community Center, did not take a position on the project but raised two points of concern. He asked that future residents of Columbia Place have safe access to the JCC by means of a crosswalk and appropriate signs and signals to ensure safe passage. He also asked for sufficient buffers to minimize the effects of noise on the new residents when the JCC conducts its summer camp and occasional outdoor parties.

No one spoke in favor of the project.

In rebuttal comments made by the applicant and the representative of The Pilot School, information was presented regarding the economics of the project and the financial impact on the school resulting from approval or denial of this development project. The Department of Land Use cannot consider this information relevant to this rezoning application, as it is not included in the standards for zoning map amendment described in Section 40.31.410 of the *New Castle County Code* and discussed below.

Standards for Zoning Map Amendment - Section 40.31.410 of the New Castle County Code

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

A. Consistency with the Comprehensive Development Plan and the purposes of this Chapter.

The 2007 Comprehensive Plan Update classifies this parcel as “Low Density Residential” and this rezoning, if approved, would require an amendment to the plan to “High Density Residential.”

The Future Land Use chapter (Section II) encourages infill and redevelopment in northern New Castle County and says that “future growth would be, on average, denser and increase the mix of uses in the county’s Redevelopment Area, thereby making better use of the existing infrastructure, offering a fuller range of housing types and affordability and increasing the opportunities for transit use, pedestrian-convenient services and shorter average trip miles.” This type of growth is supported by Objective 2 and Objective 5. Objective 2 says: “The area will be characterized by a wide range of densities, reflecting existing development patterns, with higher densities encouraged along transit corridors and in areas that provide a transition between urban and suburban development.” Objective 5 further supports infill and growth in existing community areas. Concord Pike is one of the County’s prominent transit corridors and the proposed project is designed to provide a transition between the commercial corridor and the existing residential developments in the immediate area.

The plan’s housing chapter (Section V) says, “. . . the marketplace meets the needs of the dominant housing choice of county residents – the suburban single family home – niche housing markets such as high-density urban living may need county assistance such as zoning relief” The Needs Assessment in this chapter notes: “The most significant demographic change in the period 2005-2030 will be the increase in the population of persons over age 65.” In light of this statistic it is easy to see why age-restricted housing is in demand, particularly in Brandywine Hundred. In addition, Objective 1 of the chapter’s Housing Goals calls for compact residential growth.

These sections of the comp plan clearly show that the vision for future growth in northern New Castle County is intended to be less land consumptive and to make full use of existing infrastructure investments. The location of the proposed project is suitable for denser development, it will meet the needs of the changing (aging) population, and it will offer a variety of housing types. For these reasons an amendment to the Comprehensive Plan is appropriate.

B. Consistency with the character of the neighborhood.

The neighborhood surrounding this proposed project is the Concord Pike corridor, which includes commercial and office uses, institutional uses, and residential neighborhoods. These uses are fairly well segregated with the commercial and office uses fronting on Concord Pike, the residential neighborhoods located farthest from the commercial corridor, and the institutional uses located in between. The subject parcel is centrally located in a row of institutional uses that have developed their sites quite intensively. The JCC, YMCA, and Brandywine Valley Baptist Church have high percentages of impervious cover in contrast to the single family communities nearby. The Columbia Place project proposes a high density project, but it includes 41.5% open space. It is a transitional parcel located between medium density residential to the west, commercial to the east, and institutional uses to the north and south. The project design addresses this mixed zoning district context by transitioning the density and dwelling type so the neighboring residential communities will be adjacent to dwellings similar to their own and placing the highest density and tallest buildings closest to the commercial districts.

It must be recognized that Brandywine Hundred is a densely populated area with a high level of infrastructure investment and it is suitable for the denser, mixed unit developments advocated in the Comprehensive Plan.

C. Consistency with zoning and use of nearby properties.

While the proposed rezoning from S to ST would increase the density from low to high density, the use would convert from institutional back to residential. The property adjoins two ST parcels to the north totaling 56 acres, occupied by the JCC and the Village of Rocky Run, an age-restricted residential community. Otherwise, the surrounding zoning is mixed but generally organized with commercial and office districts fronting on Concord Pike and transitioning to residential away from the pike. The proposed project is consistent with the existing zoning pattern and the site design is sensitive to the use and density of adjacent parcels.

D. Suitability of the property for the uses for which it has been proposed or restricted.

With submission of a revised plan addressing modifications as described in the Department's October 22, 2009 Preliminary Plan review, this plan will comply with the zoning and subdivision standards for ST and the standards for a redevelopment project. There are no physical impediments to developing the site as proposed, and preservation of the specimen trees, a protected resource, is addressed in the site design. A suitable stormwater system is being designed where no system previously existed for the Pilot School.

E. Effect on nearby properties.

The nearby commercial and institutional uses will be little affected by the change in use on the parcel. It is the properties along Severn Road in Tavistock that could be most affected by a change in use. However, the plan for Columbia Place sites the single family homes and lowest density in favor of these residents. Their rear yards will adjoin the rear yards of single family homes similar to their own. A 0.3 opacity landscape buffer is also required between the proposed development and the properties on Severn Road. While the density of Columbia Place will be higher than Tavistock or Edenridge, 41.5 % open space will be provided. The reduced level of traffic resulting from the age-restricted status of the project and the addition of a stormwater management system will benefit all surrounding residents.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **APPROVAL** of Ordinance 09-090.

The Department is of the opinion that this rezoning furthers the goals in the 2007 Comprehensive Land Development Plan relating to future land use policies and is compatible with the existing mix of uses in the Concord Pike corridor, as well as with the adjoining properties. The Comprehensive Plan calls for denser, more efficient development in existing community areas and this project addresses that need while also providing an appropriate transition of density and use between the Concord Pike corridor and the existing residential communities.

Ideally, the Brandywine Hundred area would greatly benefit from a Smart Code type project that emphasizes pedestrian friendly, compact mixed use development. However, given code restraints and lack of suitable tracts of land, development such as the subject plan offer a viable and comparable alternative that addresses many of the goals of Smart Code by taking full advantage of the existing nearby commercial, employment, institutional and transit uses.

PLANNING BOARD RECOMMENDATION

At its business meeting held on November 17, 2009 the Planning Board considered the analysis and reasoning in the recommendation offered by the Department of Land Use. As per Section 40.31.370 of the *New Castle County Code*, the Planning Board on a motion by Mr. Wilson and seconded by Mr. Weinberg voted **4-3-1-1** (*YES: MacArtor, McDowell, Weinberg, Wilson; NO: Anderson, McGlinchey, Singer; ABSTAIN: Udo; VACANT POSITION: one*) to support the Departments recommendation. However, pursuant to the Planning Board Bylaws, Article V, Section 5 (c), on any action that involves later action by County Council or the County Executive, the motion must carry the affirmative vote of at least five (5) members of the Board. As a result, the motion to approve Ordinance 09-090 did not pass and the Planning Board makes **NO RECOMMENDATION** on this rezoning.

In discussion preceding the vote, the following comments were offered:

Ms. Anderson agreed that this site is ideal for an age-restricted community, but said she is hung up on using the redevelopment section of the UDC and thinks applying the redevelopment standards to sites like this one corrupts the code qualifications for different zoning districts. She asked why the age-restricted bonus was not used instead.

Mr. Udo questioned the Department's statement that trip generation (traffic count) is lower in age-restricted communities compared to other types of communities and to the current school use. -- Mr. Culver, General Manager of the Department of Land Use, reviewed recent communications with DelDOT supporting the statistics in the ITE manual confirming the reduction in peak hour trips.

Mr. Weinberg explained his difficulty in arriving at a position on this rezoning due to the diverse and strongly expressed opinions made at the hearing. However, he concluded this is a good project for an age-restricted community and that the project does agree with the Future Land Use section of the comprehensive plan, which he noted, people spent years working on to include high density infill development. He observed the site is adjacent to a major arterial road, mass transit, shopping and institutional uses, and is also fairly close to another age-restricted community (Village of Rocky Run) and noted he thinks the project is clearly oriented to Route 202, not to the nearby residential neighborhoods. He felt another positive aspect of the project is the diversity of housing types, which is lacking in other age-restricted communities in Brandywine Hundred. He further noted the Planning Board has struggled for a few years with the question of appropriate locations for age-restricted communities. In his opinion this project location addresses the needs of the 55+ community by its proximity to services and shopping, including some walkable destinations such as the church, YMCA, and JCC. He asked: If we can't do this type of development here, where can we do it? He said he does have some concern applying the redevelopment ordinance to residential projects, but overall, supports this plan in this location.

Ms. MacArtor said she agreed with Mr. Weinberg's comments.

Mr. McGlinchey asked if the developer is bound to an age-restricted project. -- Mr. Culver explained that he is bound because the rezoning application must be tied to a specific approvable plan.

Ms. Anderson said she consulted the County web site on redevelopment and noticed it does not indicate the redevelopment ordinance is for residential projects. She said it focuses on previously run-down and vacant properties. She remarked that she still agrees this is a good location for this project but she has problems accepting it as a redevelopment project.

Mr. Udo said he was surprised the Department analysis was light on the concerns of the community. From what he heard at the hearing he thought people did not oppose the project, per se, he thought they were primarily concerned about the number of units. Mr. Udo asked if 149 units are on the high side for this project. -- Mr. Culver explained that permitted densities for each zoning district are defined in the UDC and that the debate on appropriate density limits occurred when the code was adopted and later amended. He further explained the density for the project was calculated on the base density for ST, which is 8 du/acre, plus the 25% redevelopment density bonus. He said, even without the density bonus the permitted density for an ST-zoned project is 8 du/acre, still well above the 4 du/acre preferred by the residents.

Mr. Singer did his own density calculation based on the UDC-defined density for an age-restricted open space plan and apartments and arrived at a density of 124.7 du/acre. -- Mr. Culver explained that condominium units are considered to be the same as apartments, therefore the 8 du/acre permitted density applies to the project as a whole.

Mr. Singer noted that much testimony at the hearing focused on a presumed request by the developer to seek relief from code requirements relating to stormwater rate and quantity and asked if it were true that relief is needed. – Mr. Culver explained that the final stormwater design will occur at the record plan stage; the plan currently under review is the preliminary plan and it cannot be recorded without meeting code requirements on this issue. He noted at this preliminary plan stage, the Department has received enough information on stormwater design to believe the plan can meet the code requirements. Mr. Singer further inquired: if later study produces a different conclusion will waivers be denied? Mr. Culver replied that if problems with the stormwater design arise later and relief is sought, the Department must make those decisions in accordance with the policies and procedures established in the code for granting waivers from code provisions. But he said as currently planned, no waivers from the Drainage Code are needed.

Mr. Singer mentioned that several times during the public hearing mention was made of the great community need that the Pilot School serves, and also mention of the school's need for the revenue resulting from sale of the parcel. He asked if any information regarding the financial status of the applicant or the Pilot School had been submitted to the Department. Mr. Culver confirmed that no information of this kind had been submitted to the Department, and if it had, it would be irrelevant information.

Mr. Singer asked if there is anything in the UDC that equates the intensity of commercial use with the intensity of residential use. Mr. Culver responded by describing the relative intensity levels of the different zoning categories as outlined in the UDC. Mr. Singer was looking for a concise measure of what intensity of commercial use might be equivalent to the intensity of residential use. Mr. Culver explained there is some level of subjectivity in analyzing the existing development pattern and appropriate densities, but that this analysis is always based on the goals in the Comprehensive Plan and the Standards for Zoning Map Amendment in 40.31.410 of the UDC. He noted that the Comp Plan does call for high density growth in some areas of the County that do not currently have high density development (growth areas and redevelopment areas). He reiterated the Department's analysis for this rezoning application concludes that the proposed age-restricted project is compatible with the pattern of growth in this section of Brandywine hundred. Mr. Singer responded that in his subjective opinion 8 to 10 du/acre on this parcel is not a transitional density, it is the peak density. Mr. Culver observed that Tavistock is a medium density residential community and that the commercial zoning along Concord Pike is for the highest density commercial use permitted in the Code. Therefore, "S" zoning, which is low density residential, is not appropriate as a transition. Mr. Singer said he appreciates that point but notes the commercial development on Concord Pike, as it exists today, is not actually as densely developed as permitted.

Mr. Udo said he wanted to address the issue of subjectivity in this review process. He observed that everyone, including the community, seems to like the project, but that opinions differ strongly on the appropriate number of dwelling units ranging from 60 to 150. He said that since he views this as a subjective process the parties must be willing to move on this issue. In his opinion there must be an optimal number of units between 60 and 150 that everyone will be

happy with. Mr. Culver explained that the permitted density for each zoning district is not subjective; it is specified in the UDC. He noted the applicant chose to employ the maximum permitted density for the ST district and that the plan as proposed shows the project can meet the UDC standards. Mr. Culver reiterated the Department's position that the density yield shown on the plan for Columbia Place is appropriate.

Mr. McGlinchey asked about the Department's basis for awarding the 25% redevelopment bonus in light of the code language which says, "not to exceed 25%." Further, he wanted to know if the Department would ever say 25% is too great because of impacts on surrounding properties. Mr. Culver first explained that the redevelopment ordinance has been revised a few times because initially it was too limiting and the business community said it would not work without incentives, due to the difficulty and added expense of redeveloping property compared to greenfield development. Further, he said the percentage bonus would be reduced if the proposed development resulted in intersection traffic failures, for example. Also, some properties have physical limitations preventing full use of the bonus, or the applicant may have limited financial resources that affect the density of the project.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would promote the convenience, order, and welfare of the present and future inhabitants of this state.

NOTE: The applicant is advised that pursuant to Section 40.31.113 F of Chapter 40 of the New Castle County Code (UDC), the preliminary plan associated with this rezoning cannot proceed to County Council until it addresses all the issues identified in the TAC Report and TAC report letter dated October 22, 2009, and the conditions noted in this recommendation report. The preliminary plan must be deemed "approvable" by the Department of Land Use prior to County Council action.

NOTE: It is the applicant's responsibility to coordinate with the Clerk of County Council and the sponsor of the ordinance as to the date and time of the County Council hearing on this application.

[SIGNED 11/23/2009]

Victor Singer, Chair
Planning Board

[SIGNED 11/23/2009]

David M. Culver, General Manager
Department of Land Use