

**Planning and Zoning Commission Regular & Teleconference Meeting
September 10, 2020 @ 7:00pm**

In attendance were P&Z Chairman Pat Plocek; P&Z Secretary Marshall Gevinson; Commissioners Cathy Scheck and Tim Roe; Town Manager Debbie Botchie; GMB Representative Andrew Lyons, Jr.; and Town Clerk Matt Amerling.

1. **CALL TO ORDER:** P&Z Chairman Pat Plocek called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** P&Z Chairman Pat Plocek stated everyone was present except Commissioner Glen Faden.
3. **PLEDGE OF ALLEGIANCE**
4. **ADOPTION OF MINUTES**
 - A. July 9, 2020

P&Z Commissioner Cathy Scheck motioned to adopt the July 9, 2020, P&Z minutes. P&Z Commissioner Tim Roe seconded the motion. Motion carried 4-0. Mr. Plocek stated due to the first guest running late, the items on the agenda will be switched so Dickens Parlour Theater will go first.

5. **NEW BUSINESS**

- A. Discussion, Consideration, and Possible vote on a recommendation to the Town Council, a Preliminary Site Plan submitted by Garth Enterprises on behalf of RIB Services for a rebuild of Dickens Parlour Theater. The proposed business is located at 35715 Atlantic Avenue, Tax Map Parcel #134-12.00-282.00, and zoned C1 - Commercial. *Synopsis:* The application is to remove the existing theater and building a new theater in the same footprint, not changing any of the seating, parking or use. This rebuild will make the theater more handicap-friendly for performers and patrons as well as making appropriate spacing for seating to conform to COVID-19 social distancing guidelines.

Mr. Richard Bloch, of Dickens Parlour Theater, stated Dickens just celebrated its ten (10)-year anniversary in Millville, and tonight's request is a task of great interest but also great necessity. Mr. Bloch stated the building is very old and it's having structural problems; and they have had structural engineers out to examine the building and it's safe. Mr. Bloch stated what was stated in the synopsis Mr. Plocek read is the essence of why he is here tonight, and they will remain in the same footprint the theater is in now but because they would like to have more space both for the performers and the audience, they are not changing the capacity but are changing the structure to propose a balcony to seat twenty percent (20%) of the audience and the rest would be on the main floor as they are now. Mr. Bloch stated there would also be a six (6)-foot distance between the seating rows to follow the COVID-19 social distancing guideline. Mr. Bloch stated they would also be replacing all the heating and air conditioning units with updated equipment.

Mr. Andrew Lyons Jr., of GMB, stated he reviewed the plan and there is a letter he wrote with

seven (7) or eight (8) items on it. Mr. Lyons stated most of the items were very minor for this plan, and the elevations were not shown but the applicant has gone and remedied that aspect, which is key as this is in a flood plain. Mr. Lyons stated the new floor will be above the flood plain by about twelve (12) inches. Mr. Lyons stated anything else with the actual site plan is not changing, just the fact there will be a second floor. P&Z Chairman Pat Plocek asked if there is anything else which needs to be added to Mr. Lyons comments at this time. Mr. Lyons stated no, not at this point in time. P&Z Commissioner Cathy Scheck asked if the Town got validation the handicapped accessible seating needed to be on the primary floor. Mr. Lyons stated no, the applicant is still looking into that. Ms. Scheck asked if the Town needs affirmation of that beforehand. Mr. Lyons stated no, but that is a question which has arisen, particularly if the mezzanine seating requires handicapped seating or not. Mr. Plocek stated the Town needs the applicant to go to the State and get something from them stating whether handicapped seating is required in the upstairs seating or not. Mr. Bloch stated he can certainly go do that but the current theater – and the proposed – has a handicapped accessible seating section directly in front of the stage and it accommodates ten (10) persons. Mr. Bloch stated whether handicapped accessible seating will be required on the balcony or not, he is not sure and will have to investigate it. Mr. Plocek stated since the applicant is basically doing one-hundred percent (100%) new construction on the building, the applicant may fall under handicapped requirement regulations of the State; so Mr. Plocek thinks the applicant needs to get something from the State stating whether it's required or not. Mr. Lyons stated there are other ways to provide handicapped accessibility to the upstairs without an elevator. P&Z Commissioner Tim Roe asked if this is a conditional use. Mr. Lyons stated the use of a theater is a conditional use, but the applicant is taking the existing building and rebuilding it. Mr. Roe asked if the conditional use carries on to this project. Mr. Lyons stated yes.

Ms. Scheck motioned to recommend to Council for approval the preliminary site plan submitted by Garth Enterprises on behalf of RIB Services for a rebuild of Dickens Parlour Theater with the condition of submitting a letter from the State regarding whether handicapped seating is required on the balcony or not before coming to Town Council. P&Z Secretary Marshall Gevinson seconded the motion. Motion carried 4-0.

- B.** Discussion, Consideration, and Possible vote on a recommendation to the Town Council, a Preliminary Site Plan submitted by Adams-Kemp Associates on behalf of Beach Properties Inc. for Bethany Bay Town Shoppes. The proposed business will be located at Tax Map Parcels #134-12.00-141.00, 141.01, and 141.02, on the corner of Atlantic Avenue and Railway Road, and zoned C1 – Commercial with an existing entrance on Railway Road. Synopsis: The plan proposes to combine the three (3) lots into a single lot as well as constructing a 5,167.5-square-foot retail space comprised of four (4) units.

Mr. David Hutt, of Morris James, stated he represents Beach Properties Inc. who owns three (3) parcels located at the intersection of Railway Road and Atlantic Avenue/Route 26. Mr. Hutt stated those three (3) parcels are somewhat discreetly small and uniquely shaped, and, with this application, the parcels will be combined into one (1) united parcel, with a missing corner due to the widening of Route 26. Mr. Hutt stated the original three (3) parcels combined had a square-footage of thirty-one-thousand-three-hundred-seventy-seven (31,377), but after the Route 26 widening, they now total twenty-seven-thousand-seventy-eight (27,078) square feet. Mr. Hutt stated the property is presently vacant except for a paved entrance off Railway Road,

the parking area and the Bethany Bay sign on the property, which used to be the location for model homes in the Bethany Bay community. Mr. Hutt stated over time, the entrance which is currently there has received approval from DelDOT, and over time has had various approvals from other State agencies. Mr. Hutt stated the current plan tonight is for a single-story commercial building which is just a little over five-thousand-one-hundred (5,100) square feet in size and the front of the building will be located on the western side as that is where the entrance and exit is located. Mr. Hutt stated Mr. Lyons has reviewed this application under the Town Code as well as the Development Design Standards and Guidelines, and Mr. Lyons' comment letter has two (2) comments which Mr. Hutt would like to focus on tonight. Mr. Hutt stated the two (2) comments result in two (2) waivers the applicant is requesting tonight. Mr. Hutt stated the first request is this application exceeds the Town's maximum sixty percent (60%) coverage by five-point-four-one percent (5.41%) and under the Town Code, an applicant can exceed it by up to seventy percent (70%) if certain features and characteristics of the site are there. Mr. Hutt further stated while this is a small property, it is hard to see because it gets a little cluttered along Route 26, but what is proposed is a raised planter system along that to dress up the property, and there is additional landscaping proposed to enhance the streetscape which is to allow the waiver to exceed maximum coverage. Mr. Hutt stated the second item referenced in Mr. Lyons comment letter relates to parking in the front yard setback. Mr. Hutt stated not only is the shape of this property unique but it also is a corner lot so it essentially ends up with two (2) front yard setbacks and two (2) side yard setbacks, but it has no rear yard setback. Mr. Hutt stated due to this as well as the takings along Route 26, the parking lot hasn't moved but a portion of Route 26 has moved into the property. Mr. Hutt stated there is a small portion for the corners of the parking area which fall within the front yard setback and this condition did not exist as properties were originally configured but is a result of the Route 26 widening. Mr. Hutt stated for both of those requests, the applicant requests the P&Z make a recommendation to Council for a waiver of those two (2) requirements so the site can be used as it is.

Mr. Lyons stated Mr. Hutt summed up most of Mr. Lyons comments from his letter pretty well, and this application has gone through an iteration of reviews. Mr. Lyons stated the only issues are the last two (2) items which are the waiver requests. Mr. Lyons stated Mr. Hutt is correct about the two (2) front yard setbacks and two (2) side yard setbacks, so it does compound the issue. Mr. Lyons stated the entrance shown is the location off of Railway Road where per Code it has to be placed; so the entrance cannot be located along Route 26. Mr. Lyons stated the application will still have to go before DelDOT for approval before going to final. Ms. Scheck asked if DelDOT will also need to approve the landscaping plan. Mr. Lyons stated the final landscaping plan will have to be reviewed right outside DelDOT right-of-way (ROW) for sight distances off the intersection. Mr. Gevinson asked if the landscaping has to be a certain height when located on Route 26. Mr. Lyons stated regarding the sight distances, there is a "window of height" so people can be able to see. Mr. Gevinson asked regarding the entrance on Railway Road, there is one way in and one way out. Mr. Lyons stated yes. Mr. Gevinson asked if there will be any kind of turn lane along Railway to get into the site. Mr. Hutt stated no, other than the turn off Route 26, there is not a designated lane, but, to follow up on Mr. Lyons' earlier comment, this entrance location is the location DelDOT permitted as DelDOT wanted to have the entrance as far off of Route 26 as possible. Mr. Lyons stated since Railway and Route 26 are both DelDOT roads, the entrance will be a part of their approval letter come time for final site plan review.

Mr. Roe asked, since the applicant is over the lot coverage and violating the setback, shouldn't this request go before the Town Board of Adjustment (BOA)? Mr. Lyons stated, regarding the coverage, it is up to Town Council for review and wouldn't go to the BOA. Mr. Roe stated the applicant is getting inside the setback and would require a variance. Mr. Lyons stated there are some things which are allowed within the setback and one of them is drive isles and the requirement that no parking be in the front yard setback, for which the applicant is requesting the waiver. Mr. Roe asked if this should be a waiver or a variance. Mr. Lyons stated as long as the plan goes in as it is – because the parking lot is already there – it is a non-conforming structure. Mr. Roe asked if it is “grandfathered.” Mr. Lyons stated yes, pre-existing non-conforming. Town Manager Debbie Botchie stated this is already a legally pre-existing non-conforming area, especially now that DelDOT has taken it. Ms. Botchie stated if this was a brand new site plan – like when P&Z review the Atlantic Auto application – and nothing was on the property at all, but they needed parking in the setbacks, the Town would tell them they would need to go to the BOA first for an area variance.

Mr. Plocek stated his only comment is on the plan the applicant keeps referencing the thirty-one-thousand (31,000) square feet of the property when it's only twenty-seven (27,000) square feet, so the applicant needs to remove any reference of the thirty-one-thousand (31,000) square feet from the plans. Ms. Botchie stated she would like to request on this site the Town receive a landscaping plan when this comes for final site plan review as well as the species of the plants being planted. Mr. Plocek accepted the request. Ms. Botchie asked Mr. Lyons if the building which is facing west is the front of the building. Mr. Lyons stated yes. Ms. Botchie asked, regarding signage, how will it be calculated? Mr. Lyons stated the west is the front but per the sign code, the store will get its own front sign with its size dependent on what five percent (5%) of the frontage size measures. Ms. Botchie asked about a freestanding sign. Mr. Lyons stated he would have to look at that sign exactly but he has not seen a freestanding sign on the plan at this time. Ms. Botchie asked if the applicant plans on having a freestanding sign. Mr. Charles Adams, of Adams-Kemp Associates, stated as far as he knows there won't be a freestanding sign. Ms. Botchie stated her concern is if the west side of the building is the front, the applicant will have a very small sign. Mr. Lyons stated it is the front in that that is where the entrance is located, but the front of the actual stores would be the side facing Route 26. Ms. Botchie asked the applicant if they've started any conversations with DelDOT with the entrance off Railway Road. Mr. Adams stated it is on the active list of DelDOT reviews. Town Clerk Matt Amerling asked if the sign will be located on the west side, will there be a sign on the Route 26 side because people may not see what shops are located there. Ms. Botchie stated the sign will still be facing Route 26.

Mr. Gevinson motioned to recommend to Council for approval the preliminary site plan submitted by Adams-Kemp Associates on behalf of Beach Properties Inc. with the conditions of removing any reference of the thirty-one-thousand (31,000) square feet from the plans and placing in the updated square footage; as well as submittal of a landscaping plan with the species of the plants being planted prior to Final Site Plan review. Ms. Scheck seconded the motion. Motion carried 4-0.

6. CITIZENS PRIVILEGE

There were no comments.

7. ANNOUNCEMENT OF NEXT MEETING

Mr. Plocek stated the next P&Z meeting is scheduled to be on Thursday, October 8, 2020.

8. ADJOURNMENT

Mr. Gevinson motioned to adjourn the meeting at 7:33 p.m. Ms. Scheck seconded the motion.
Motion carried 4-0.

Respectfully submitted and transcribed
by Matt Amerling, Town Clerk