



**PLANNING AND ZONING COMMISSION
PUBLIC HEARING
SEPTEMBER 26, 2011 – 7:00 P.M.
TOWN HALL**

I. CALL TO ORDER

The Planning and Zoning Commission meeting was called to order at 7:00 P.M. by Chairman Bill Atwood. Present: Planning and Zoning Commission members Jack Cannon, Joe Conaway, Sandie Rementer, Rob Richey, John Shockley, Ruth Ann Tull and ex-officio member Code Enforcement Officer (CEO) Jerry Butler. The Town was represented by Solicitor Dennis Schrader. Mr. Mark Hunsberger, Mr. and Mrs. Brian Butler and Mr. Jeff Tull were present as applicants. The public was represented by Commissioner McCarron, Mr. Mike Ballenger, Mrs. Marjorie Flynn and Mrs. Anna Thomas.

II. QUORUM PRESENT

Chairman Atwood reported a quorum was present to conduct the business of the Planning and Zoning Commission, as all Planning and Zoning Commissioners are in attendance.

The meeting began with Solicitor Schrader advising the Planning and Zoning Commission that Town Commissioner McCarron is in attendance at the meeting this evening. He may only observe, due to the fact that he has the responsibility of appointing Planning and Zoning Commission members. He has assured Solicitor Schrader that he will not participate in favor of or opposed to. He cannot use any of the matters on the record tonight as a basis for his vote at the next level or any future hearing. He assured Solicitor Schrader that he will abide by the rules.

III. DEVELOPMENT PLAN REVIEW

**Mark Hunsberger (owner) SCTM: 1-31-10.12, Parcel 126.00
East Coast Restorations – Mr. & Mrs. Brian Butler (renter)
Car Repair/Body Shop at 114 N. Main St., Bridgeville**

101 North Main Street, Bridgeville, Delaware 19933

Phone: (302) 337-7135 Fax (302) 337-7817

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A. Discussion of Request

Mr. Brian Butler introduced his wife, Hannah, and the owner of the property at 114 S. Main St., Mr. Mark Hunsberger. Mr. Butler advised he has been in business for approximately ten years. Their main stay has been the restoration of old cars. They have outgrown their current facility outside of Greenwood and want to move into Town to attract insurance work. They want to follow Town rules so they will receive our business. They have been upgrading the property at 114 N. Main and intend to construct 600 feet of PVC, white privacy fencing and will keep all cars behind that fencing. The fence will be located far back on the property. There will only be one entrance to the property, at the front door. There will also be privacy fencing between the front building and the house next door which is a part of the property. They are making major improvements by demolishing the old lean-to and pouring concrete. The property was in disarray and they are improving it.

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Commissioner Conaway asked where Mr. Butler's operation is in Greenwood. It is located on Route 404 on Sand Hill Rd. in Greenwood, operating on a conditional use. They are located close to the Vanderwendes. Hours of operation have been Monday – Friday, 8:00 A.M. to 5:00 P.M. and a half day on Saturdays; however, they would like to work a little earlier and later to accommodate customers who don't get off work until 5:00 P.M. and to perform last-minute work before car shows. The work would not include loud noises. Mr. Butler advised they are installing spray-in cellulose foam insulation (R-40) to combat noise. He intends to use both buildings; one will be office space/showroom/assembly room. The other building is where the real work takes place. They are rebuilding \$60,000-\$100,000 cars. The main objective is not to sell vehicles, although he has sold some. Their main objective is to restore vehicles. CEO Butler advised you need two acres and a license to sell cars. Mr. Butler advised the property is three acres. Any cars for sale could be taken to another of Mark Hansberger's properties, where the sale would be sanctioned.

It was questioned whether the house on the property is rented. Mr. Hunsberger advised he will need to put heat and air in the house before it can be rented. It was determined that the property is going to stay pretty much as we see it now, except for the addition of the fence. Commissioner Conaway advised they are reverting (somewhat) to the original use, which was a gas station with a shop. Commissioner Tull reported there used to be five similar businesses between this property and her house next door to the Town Hall. She said they made out fine, even without noise suppressing measures.

Mr. Butler advised DuPont is helping them lay out the building; it will be state-of-the-art. They are switching to water paint, so there won't be any issues with fumes. It will be a green business. DuPont is their manufacturer and supplier by contract. Mr. Butler stated they use DuPont products and DuPont uses our cars as advertisements. One of East Coast's cars, owned by Tom Jefferson, is going to be included in the new DuPont calendar.

It was questioned whether they will close their operation on Sand Hill Rd. Mr. Butler advised the auto body shop will abandon the Greenwood property, but the sandblasting business will remain open.

The business currently employs 6 individuals and they will all be moving to the Bridgeville location. There is the potential of adding more employees if business is good. They hope to service all the large insurance companies: Nationwide, Progressive, State Farm, etc. under the DRP program and work directly for them.

B. OPENING OF PUBLIC HEARING

Chairman Bill Atwood opened the Public Hearing at 7:11 P.M. Mr. Mike Ballenger from 119 N. Main St. advised he has owned antique cars in the past and he has a great respect for Mr. Butler's business. Bridgeville needs new businesses to come into Town. His only concern is that he lives very close to the building and does not want to see a junk yard with cars and parts outside his window, as is true of a business further along N. Main St. That is one thing this part of Town doesn't need. Mr. Butler advised many of the customers they attract are on the higher end of the scale and are people who don't want to do business with a place that looks like a junkyard. Trash gets thrown away and scrap metal is moved immediately. He understands Mr. Ballenger's concern and would be glad to have Mr. Ballenger come and see him if things aren't up to par. His door is open. Mr. Ballenger asked about the height of the fence. It is six foot, white PVC privacy. The gate will have slats so you can't see the back yard. The fence will be 80 feet back, between the house and front building. The fence on the other side of the front building will be 120 feet off the road. There will be no fencing close to the street. The entire property will be surrounded in fencing. CEO Butler advised if you have a fence in the front of the property, it can only be 3 feet tall. In the rear of the property, it can be 6 ft. 6 in. tall.

Mr. Ballenger asked if Mr. Butler has hazardous materials disposal capabilities. Mr. Butler advised they don't have many hazardous substances (lacquer thinner), but they use "Safety Clean" Company when they need to. They do a lot of recycling. What hazardous waste they do have is in a dry condition, not wet and oozing and kept in a 55 gallon drum. The floors in the buildings are cement.

Commissioner Conaway questioned Mr. Hunsberger about the property being a brownfield site with extensive well systems. Mr. Hunsberger understands from realtor Elwood Hunsberger that it is no longer a brownfield site. It was cleaned up appropriately years ago. Commissioner Conaway said it would be good to verify that; however, he is glad the cleaning system works. It is possible to clean up a brownfield site. Mr. Hunsberger added that the site is no longer being tested, since it has been cleaned.

Chairman Atwood asked when the front building was constructed. They believe it was 2002 or 2004. The back building was built in 2010.

Mr. Ballenger asked if the gas tanks from the previous gas station at that site were ever removed or filled in. The previous brownfield discussion was about the gas tanks and possible contamination from leakage, etc. The tanks are gone and the site is clean.

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Various wells in the vicinity are periodically checked to determine contamination. Commissioner Conaway stated that this site is the “poster child” site for doing the right things and taking care of the contamination.

Mrs. Anna Thomas from 126 N. Main St. advised she and her sister have no complaints concerning the new business.

C. CLOSING OF PUBLIC HEARING

The Public Hearing was closed at 7:20 P.M. Chairman Bill Atwood advised because this is a development plan review, the Commission’s action tonight will be to approve or deny, not to make a recommendation to the Town Commission.

Solicitor Schrader had several questions for CEO Butler.

- Has he reviewed the plan and is he satisfied that it is a permitted use? CEO Butler responded Yes.
- Do the height, area, bulk and setback requirements meet in accordance with the code? Yes.
- Is there adequate parking? Yes.
- Is there adequate water and sewer to serve the purposes of this site and its proposed use? Yes.
- Are there any fire hazards that should be addressed? No.
- Commissioner Conaway questioned whether the buildings were over 10,000 square feet and needed sprinklers. They are not over 10,000 sq. ft.

Chairman Atwood added that the use is consistent with the Comprehensive Plan.

Commissioner Richey advised his questions were answered during Mr. Butler’s explanation of the plans for the buildings. He believes this business will be an asset to the Town. Aesthetically it will be nicer than the electric business that recently moved away from that location.

Commissioner Shockley asked if Mr. Butler has any intentions to put an LED sign in front of the business. Mr. Butler does not have any intentions at this time. Mr. Shockley does not want an LED sign at that location.

D. Decision of Planning and Zoning Commission

Commissioner Conaway made a motion to approve the site plans, based on the record and the testimony of Mr. Brian Butler and Mr. Mark Hunsberger. Commissioner Cannon seconded the motion. Motion carried. The votes were recorded as follows:

Commissioner Jack Cannon	Aye
Commissioner Joe Conaway	Aye
Commissioner Sandie Rementer	Aye
Commissioner Richey	Aye

Commissioner John Shockley Aye
Commissioner Ruth Ann Tull Aye
Chairman Bill Atwood Aye

IV. CONDITIONAL USE APPLICATION
Mr. and Mrs. Jeffrey Tull (SCTM: 1-31-10.20-79.00)
2-Family Residence at 101 Elliott Drive, Bridgeville

A. Discussion of Request

Chairman Atwood advised this is revised request for a Conditional Use. The Planning and Zoning Commission’s responsibility will be to make a recommendation to the Commissioners of Bridgeville concerning this application. Solicitor Schrader advised it would be helpful to re-visit all of the facts concerning this application. It originally came before the Planning and Zoning Commission as a re-zoning request on August 16, 2011 and the Planning and Zoning Commission concluded that it would be more favorably considered if it were a conditional use request. A proposed ordinance for this conditional use was distributed. According to Solicitor Schrader, the record must be re-built, based on the request for a conditional use for a 2-family residence in an R-1 district. Mr. Tull acknowledged that he appreciated being heard a second time since there was confusion with his first application. The property is 14,320 sq. ft. at 101 Elliott Drive. It was originally built around 1963 by Dr. Baker. There are four bedrooms upstairs and there was a dentist office downstairs (which has been updated into two bedrooms). The HVAC/electric services are separate in this house (upstairs/downstairs) and the services have been updated. The house itself is approximately 2,800 sq. ft. – 1,000 sq. ft. downstairs with 1-1/2 baths and 1,800 sq. ft. upstairs with 2 full baths. There are two sets of stairs to access the upstairs w/o accessing the downstairs. This is an added benefit should there ever be a fire. The sidewalks have been updated in the front and there are new off-street parking spaces. When Dr. Baker saw patients years ago, they were allowed to park on the street. With two apartments, Mr. Tull believes there will be less traffic than when the office was open. Mr. Tull doesn’t anticipate any additional services needed by the Fire Company or the Police. These are upscale apartments with the rent at approximately \$1,000 per month for each. Mr. Tull has spoken to some of the neighbors; their letters were submitted with the previous application. Most have been very supportive, although some have expressed some concern about having an apartment in their neighborhood. Mr. and Mrs. James have lived there up to 50 years and, although they signed a letter of agreement, they have expressed some concerns. Other neighbors also signed the letter of agreement and some neighbors he does not know personally and did not approach. This apartment provides a service to the Town; it is close to schools and businesses. Teachers could walk to school; he believes it is an asset. The property currently has one water meter. He does not see that as a problem, due to the fact that the Town sends all water bills to the property owner.

Commissioner Conaway commented that Mr. Tull will need to put in new service for the second apartment. It is true that the water bills will come to Mr. Tull. Per Commissioner Conaway, since he is adding two bedrooms downstairs, Mr. Tull must pay two impact fees, if the application is approved. Commissioner Conaway questioned parking. Mr. Tull advised there are two spaces on the street and the Town has always

allowed people to park on the curved area. The two apartments will require four spaces. It was agreed that cars can park on the street. There is approximately 132 feet available. The concrete driveway is double and will accommodate several cars.

Commissioner Tull advised when she lived in apartments on Walnut St. they never had designated parking spaces; they just parked on the street in front of the building. The people who live there now do the same. Solicitor Schrader interjected that the Town now has a Land Use & Development Code that requires a certain number of parking spaces per unit. On-street parking is available for guests, but the site must provide the accurate number of off-street parking spaces. If the other apartments in Town were approved before the new Land Use Code went into effect, they are grandfathered in. All new applications must follow the code concerning off-street parking spaces. Mr. Tull must have two parking spaces for each apartment. Mr. Tull asked if the spaces must be asphalt or are other surfaces acceptable. Solicitor Schrader advised Mr. Tull should confer with CEO Butler concerning that information, but the spaces must be 10 ft. by 20 ft. and be marked.

Commissioner Cannon remarked that he has worked on Mr. James' property next door for a number of years. The Tulls have definitely improved the property.

Commissioner Richey commented he has visited the property and it is definitely a "higher end" property. He does not have any problem with Mr. Tull's intended use of the property. At the same time, Mr. Richey would be opposed to see a lot of older homes in Town being made into apartments. We really don't need new apartments. He feels this particular property is fine being split into two apartments.

B. Opening of the Public Hearing

Chairman Atwood opened the Public Hearing at 7:40 P.M. Solicitor Schrader asked to clarify a few points with Mr. Tull:

- During the first hearing you submitted to CEO Butler a survey of the property. Do you want that survey to be a part of the record for this hearing? Mr. Tull responded Yes.
- Should the floor plan sketch and 18 pictures be a part of the record for this hearing? Yes.
- Should the chart of room sizes be a part of the record for this hearing? Yes.
- Should the letters of support be a part of the record for this hearing? Yes.

Chairman Atwood expressed concern about the four bedrooms upstairs. He asked CEO Butler how the Commission could enforce that it be used for a family rather than four individuals living dormitory fashion in the apartment. Mr. Butler advised, according to code, you can have only three unrelated persons in the same dwelling; therefore, three un-related school teachers could live there. Other than that, it must be a family. Mr. Butler was asked how many times he has cited residents for having more than three un-

related people in the same household. Mr. Butler advised he has not cited anyone. The new rental license ordinance has just gone into effect this year and according to the applications, there are not more than three un-related persons living in the same dwelling. Mr. Butler agreed that this is the hardest part of enforcement. The Town does try to keep control. Commissioner Conaway is aware of problems in Georgetown with three separate families living in one apartment. He doesn't want to open the door for that issue here in Bridgeville. Rentals are a great concern to Commissioner Conaway. The owners take care of the property, but are not able to control the actions of the tenants.

Concerning the Tull property, Commissioner Conaway stated Mr. Tull has a very nice facility at 101 Elliott Drive; however Mr. Tull wants to sell the property; therefore, the new owner may be an absentee landlord and can do whatever he pleases. Commissioner Conaway is also concerned that with a price of \$259,000 on the property, investors could not buy that house for a rental property, because an investment property must pay for itself in 7 years to be viable. He is hopeful that someone will buy the house, live upstairs and rent the downstairs. This arrangement is doable. If the property is purchased by an investor, he is going to have to jam people in there to make it work.

Commissioner Conaway is certain there was a moratorium on changing from R-1 to R-2 and he understands that the current Town Commission ended the moratorium at their September Commission meeting. He believes that decision was short-sighted. The moratorium started with property across from the Fire Company which had been a single-family home and was divided into apartments, in approximately 1999. Understandably, there was no written record of that decision. He is concerned that if this application is approved, the Town will be limited in what it can do elsewhere because a precedent has been set. We don't need more apartment dwellers in Town than those who own their own property. There is a difference between renters and owners in the way the property is treated. He has no problem with Mr. Tull maintaining ownership and renting this house. Allowing the conversion of a single-family house into a rental property begins the process of more applications for the same thing. There are a number of vacant house on S. Main St. There will likely be applications to sell those as apartment structures and we will be overwhelmed with apartment applications. Georgetown paid dearly when homes were turned into apartments and two or more families crowded into them. This is setting a dangerous precedent. He does not want to get sued for turning down other applications if we approve this one. The moratorium protected us from these circumstances. This is said in spite of the fact that he knows Mr. Tull and knows he would be certain the property is well taken care of while under his ownership.

Chairman Atwood asked CEO Butler if he believes he can effectively manage the use of the upstairs apartment by inspection or whatever means, so that it will conform to the code? Mr. Butler responded that is his job; however, he is only one individual and it will be hard to enforce. We have to depend on the people in the neighborhood to help with enforcement; it takes a community. The excuse of "just visiting" is bound to be used. He will need to do repeated surveillance. He added that the location of this particular house and the neighborhood it resides in are very unlikely to disregard an over-crowded house in their vicinity. He believes neighbors would notify him. He can go into the building and, due to the registration process; he will have a list of who should be living in the structure.

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C. Closing of the Public Hearing

There being no residents in attendance wishing to speak for or against this application; the Public Hearing was closed at 7:51 P.M.

Chairman Atwood expressed a concern to Mr. Tull that, should this conditional use be approved, Mr. Tull has a responsibility of passing along to a new owner the full extent of the conditions involved.

Referring to precedence, Mr. Tull believes there already is a precedence set with the previous use of this house as an apartment upstairs and the dentist office downstairs. He believes that was true the entire time Dr. Baker owned the home and it was considered two separate properties. He can't remember very many homes on Market or Main St. that had businesses in them in the past. He remembers Joe Willey had an office in his house at one time. Commissioner Conaway still contends the 101 Elliott Dr. property was a single-family house with an approved business in it, not two apartments.

Speaking again about the moratorium, Solicitor Schrader advised no record was found of the moratorium, other than Commissioner Conaway's memory. After conversation between the Town Commission, CEO Butler and Solicitor Schrader, it was decided at the September 10th Commission meeting that, if there had been a moratorium, it could not be proved and it was therefore terminated. Commissioner Conaway explained that then Commissioner Correll pointed out the existence of a moratorium when he, Bill Jefferson and Pat Correll took office. The Town Commission certainly has the right to remove the moratorium, but they also have the right to be criticized by opening Pandora's Box, which he believes they have done. He added that zoning should be based on the application, not the person applying; problems will result. Past decisions must be in agreement with future decisions; consistency is vital. Mr. Conaway believes this application does not meet the Land Use Plan. CEO Butler re-iterated that they could not find any documentation of the moratorium. Concerning continuing applications of this type, Mr. Butler believes each application is a different situation and should be considered case by case.

Chairman Atwood advised he has visited the site and believes it could work well as a 2-family dwelling and it is a nice neighborhood. As a Town we do need to provide housing for those who are unable to afford to buy a home. He believes it is a good application; we can never know 100% if a decision is right.

D. Recommendation of the Planning and Zoning Commission.

Mr. Richey acknowledged that Mr. Conaway's statements about setting precedence and opening Pandora's Box are legitimate; however, he believes the application should be approved not because it is Jeff Tull submitting the application, but because of the property itself. He believes it is a suitable property for consideration. He has four properties next door to him on S. Main St. that are up for sale and none of them are suitable to be split into apartments. Their construction is not conducive.

Commissioner Conaway does not see any uniqueness in the Tull property that would make it suitable as a 2-family home, either.

Commissioner Richey made a motion to approve the Conditional Use Application of Mr. and Mrs. Jeffrey Tull for a 2-family residence at 101 Elliott Dr. with the following conditions suggested by Solicitor Schrader.

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1. The structure and its use and occupancy shall comply with all applicable rules, ordinances, statutes or regulations of any state, county, federal or Town regulation that would apply to the occupancy of this building as a 2-family structure, including Fire Marshall or anyone else with jurisdiction over the use of the property. Commissioner Richey added this would include the need to provide adequate parking spaces and make the necessary additional water connection with all attached impact fees.

Commissioner Conaway suggested the Commissioners could condition that the first floor apartment have no more than three individuals and the second floor apartment could be conditioned to no more than six individuals. Solicitor Schrader advised the Planning and Zoning Commission could limit occupancy; however the Town already has ordinances in place establishing the need for family relations, but it doesn't include high numbers of persons who are all related. The current ordinances are sufficient in terms of related persons or the definition of a family. Commissioner Conaway re-iterated that the CEO is responsible for making sure this property adheres to all of our codes all of the time. CEO Butler advised, per code, you must have 64 sq. ft. of bedroom space per person. The number of people in the second floor would depend on the square footage of the bedrooms. A bedroom of 130 sq. ft. could have occupancy of 2. The sq. ft. of bedroom space is controlled by the code book. The smallest bedroom on the second floor is 144 sq. ft. and the largest bedroom is 325 sq. ft.; the second floor could house a good number of people, but there is still the provision of only 3 unrelated persons can co-exist.

After the above discussion, Chairman Atwood asked if the Planning and Zoning Commissioners were satisfied with the recommendation from Solicitor Schrader and that we add the paragraph noted as #1 to the motion. They agreed that they are satisfied and desire to add paragraph #1 to the motion.

2. Per Solicitor Schrader, a conditional use is specific to this property and it is limited to the use that is permitted. Because it is a conditional use, it does require a site plan. He recommends to Chairman Atwood that within 60 days of approval by the Town Commission, that Mr. Tull files a final site plan to Mr. Butler showing all the requirements. The site plan must be brought before the Planning and Zoning Commission for approval at a future meeting.

Mr. Tull was asked if he plans to sell the property. He stated he is not certain. He may keep the property and run the apartments himself; however, if someone expresses interest at his \$259,000 price, he will likely sell it. Solicitor Schrader advised the conditions agreed upon tonight will follow the land, even if Mr. Tull sells the property. The same terms and conditions must be followed as when Mr. Tull owned the property.

Re-iterating, Mr. Richey made a motion to approve the Conditional Use Application of Mr. and Mrs. Jeffrey Tull for a 2-family residence at 101 Elliott Dr., with the following conditions, as suggested by Solicitor Schrader:

1. The structure and its use and occupancy shall comply with all applicable rules, ordinances, statutes or regulations of any state, county, federal or Town regulation that would apply to the occupancy of this building as a 2-family structure, including Fire Marshall or anyone else with jurisdiction over the use of the property. This includes the need to provide adequate parking spaces and make the necessary additional water connection with all attached impact fees.
2. A Conditional Use is specific to this property and it is limited to the use that is permitted. Because it is a conditional use, it does require a site plan. Within 60 days of approval by the Town Commission, Mr. Tull must file a final site plan with Code Enforcement Officer Butler showing all the requirements. The site plan must be brought before the Planning and Zoning Commission for approval at a future meeting.

Commissioner Tull seconded the motion. Motion carried. The votes were recorded as follows:

Commissioner Conaway Nay
He does not believe a record has been established that shows a need for additional apartments and there are empty apartment buildings in Bridgeville. It violates the Land Use Code and it is a dangerous precedent to set.

Commissioner Rementer Aye
She does not make her living knowing zoning; she makes her living as a printer. However, with all that has been said and with all the ordinances already in place that control dwellings, she believes that Bridgeville could use some nice apartments and she doesn't feel they are setting precedence.

Commissioner Ruth Ann Tull Aye

Commissioner Cannon Aye – You can open a can of worms, but you can also close it.

Commissioner Richey Aye

Commissioner Shockley Nay
If Mr. Tull were going to keep the property for the rest of his life, he wouldn't have any problem; he knows Mr. Tull would keep the property kept right; he just fears what might be down the road.

Chairman Atwood Aye

Chairman Atwood advised the Planning and Zoning Commission will prepare a letter of recommendation to the Commissioners of Bridgeville. Mr. Tull's conditional
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use application will be considered by the Town Commission at their October 10th meeting.

Mr. Tull appreciated being heard tonight and the members' concerns. His family has owned a number of properties in the Town of Bridgeville and has had very few problems, but there is no guarantee with any property.

V. ADJOURNMENT

Planning and Zoning Commissioner Tull made a motion to adjourn the meeting. Commissioner Rementer seconded the motion. Motion carried. The meeting was adjourned at 8:14 P.M.

Respectfully submitted,

Bill Atwood

Bill Atwood, Commission Chairman

Peggy Smith

Peggy Smith, Transcriptionist

The Planning and Zoning Commission discussed a regular meeting night. It was decided that the Commission will meet on the third Wednesday of each month, if they have an application to consider.