

BEFORE THE TOWN OF MILTON PLANNING AND ZONING COMMISSION

IN RE:)
REZONING APPLICATION BY) **Tax Parcel Nos. 235-14.19-31.00, 32.00,**
PHOENIX RHCS HOLDINGS, LLC) **43.00, 39.01, and 42**
)
)

ADVISORY REPORT

Pursuant to a referral from the Milton Town Council under Town Code Section 220-98 via Resolution 2019-020, the Town of Milton Planning and Zoning Commission (“the Commission”) held meetings on the above-captioned application from PHOENIX RHCS HOLDINGS, LLC (“the Applicant”) for a proposed amendment to the Comprehensive Plan and a rezoning from R-1 to C-1 for the above parcels (“the Property”) that total roughly 7.77 acres.

The Property is roughly 7.7 acres of undeveloped farmland zoned R-1 located in the Northwest Quadrant of town on Mulberry Street bounded on the south by Clifton Street and on the north by Willow Street, both single block side streets between Union and Mulberry Streets. A portion of the acreage is in the Town’s Historic District; the entire property is in a Wellhead 2 Protection Area governed by the Town’s Source Water Protection Ordinance.

The immediate neighborhood in which the Property is located is predominantly residential. Mulberry Street, which dissects the quadrant from north to south, is comprised of modest older single-family homes. Shipbuilders Village, an approximately 50-acre housing subdivision (220 residences), adjacent to H. O. Brittingham Elementary School, has its sole entry/exit off of Mulberry Street. Tobin Drive, the single block between Union and Mulberry, is fully developed with 32 town homes. A variety of older residential homes and vacant residential lots are located on the other single block side streets between Union and Mulberry: Orchard; Betts Place; Tinley; Broad and Magnolia. A 3.75-acre parcel of undeveloped land zoned R-1 lies on Mulberry between Willow and Tobin Streets.

At the first meeting held on January 21, 2020, the Commission heard from the Applicant, who made a presentation and provided written materials: "Milton Medical Pavilion Presentation Outline"; "This Project Is Consistent With The Goals And Objectives Of The Town's Comprehensive Plan"; and "The Historic District Regulations Do Not Apply". The Commission also received public comment, none of which was in favor of the application and, at the conclusion of the matter, left the record open for purposes of receiving additional information that included the comments from the Preliminary Land Use Service ("PLUS") review by the Office of State Planning Coordination ("OSPS"), pursuant to 29 Del. C. Chap. 92. At the second meeting, held on March 11, 2020, the Commission heard from the Applicant with respect to the PLUS review letter dated February 19, 2020 (and the Applicant's engineer's responses thereto dated February 27, 2020) and concerns raised by public comments at the prior meeting. In addition, at the March 11, 2020 meeting, the Applicant submitted to the Commission a hard copy of the Applicant's presentation, part of which, referencing a March 10, 2020 letter from Rick Schaffner of Beebe Healthcare ("Beebe"), the Applicant's proposed "anchor" tenant, to Richard Trask, Chair of the Commission, stated, "Beebe will NOT provide its services at another location in the Milton Area should zoning for Milton Medical Pavilion be denied," and a proposed draft Declaration of Covenants and Restrictions.

SUMMARY OF APPLICANT'S ARGUMENTS

The application could allow for the Applicant to develop medical office space consisting of two 2-story buildings, each with a footprint of approximately 20,000 square feet (for an estimated total of 81,176 square feet of office space and 435 parking spaces), for a medical pavilion to include specialty medical, surgical and rehabilitative care providers. The Applicant emphasized the resulting: convenient access to health care, including a walk-in clinic; high quality jobs; and

benefits of a “good neighbor,” including considerable landscaping, additional parking for community and school events, and tax revenue for the Town.

Additionally, the Applicant’s representations included:

- The application’s support from OSPS, including its location in Investment Level 1 of the *Strategies for State Policies and Spending*;
- Little to no overlap with traffic from the school across the street due to different hours, and with the project co-locating its entrance with the new school entrance on Mulberry Street;
- DeIDOT’s preliminary conclusions that the sidewalk on Mulberry Street would be widened to 8 feet, that secondary entrance would be relocated to Willow Street, and that no roadway expansion or turning lanes or accel/decel lanes would be required;
- The project’s plans to comply with the Town’s Source Water Protection Ordinance for its location in a Wellhead Protection Zone 2, including not exceeding 50% impervious coverage and to submit in the future an Environmental Assessment Impact Report;
- The voluntarily offered deed restrictions intended allay any misgivings or concerns regarding to rezoning the Property without first seeing the results of a Traffic Impact Study and the Environmental Assessment Impact Report, and with the rezoning allowing a variety of uses;
- The complexity in the decision-making process for locating health services leading to this location and this location alone, with no other location in the Town of Milton being considered;
- The proposed inclusion of a community walking trail;
- The project’s stimulation of economic growth and development of the Town, including construction, long-term job opportunities, visitors supporting other businesses in the

Town, and adding to the Town's tax base while not adding children to the school populations; and

- The project's other benefits to the Town residents, including the needed growth identified in the Comprehensive Plan, the sidewalk and road improvements, expanded natural gas opportunities, and coordination and cooperation with DelDOT and the Town for a potential Transportation Improvement District.

SUMMARY OF PUBLIC COMMENT AND COMMISSION CONCERNS

The public comment at the January 21, 2020, meeting and the Commission raised issues that included:

- The status of a Traffic Impact Study ("TIS") and meeting(s) with DelDOT, as the Applicant was requesting the rezone before the TIS had commenced;
- The number of jobs the Applicant believed will be created;
- The size of the construction footprint; and
- The consistency or inconsistency with the Comprehensive Plan, including:
 - The priority of attracting new business, balanced against the location on a local road across from an elementary school in the residential heart of town;
 - Placement in an established residentially zoned area in the northwest quadrant;
 - Placement of a roughly 80,000 sq. ft. medical pavilion with an estimated 435 parking spaces which caters to the larger community and regional need for medical services;
 - The location of the proposed 80,000 sq. ft. medical pavilion between two commercial zones, the Town Center and Route 16;
 - Placement of the pavilion and its parking spaces in a Wellhead 2 Protection Area;
 - Connectivity;

- Whether commercial development of the size proposed is a good fit with the historic district;
- Availability of public services; and
- Inconsistency with how the Comprehensive Plan suggests residentially zoned in-fill lots should be addressed.

LEGAL STANDARD

Title 29, Chapter 92 of the Delaware Code controls the PLUS process.

The legal standard for a zoning decision is codified in 22 *Del. C.* § 303, which provides:

The regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

Town Code § 220-4A then also provides, in pertinent part, that the zoning “chapter and use districts... are made for the purpose of protecting the character of the community in terms of its design, mix of uses, scale, architecture and history, helping implement the Town of Milton Comprehensive Plan and facilitating community economic development in terms of job development, retention and investment.”

Finally, Town Code § 220-4D provides:

All such zoning regulations and maps shall be enacted for the purposes of:

- (1) Preserving and promoting the health, safety and welfare of the citizens of the Town of Milton.
- (2) Protecting and preserving the architectural and historic character of Milton's built environment and extending this character as growth occurs within the Town or through annexation.

- (3) Guiding the future growth and development of the Town in accordance with the Town of Milton Comprehensive Plan in a manner which results in positive and beneficial land use relationships among residential, nonresidential and public areas.
- (4) Providing for the orderly growth and development of the Town and its environs in a manner which will protect, conserve and stabilize the value of land, structures and neighborhoods.
- (5) Providing adequate light, air and privacy to building areas and lots, securing safety from fire and other danger and preventing overcrowding of land and undue congestion of population.
- (6) Providing for coordination between the use of land and structures and the street and highway system in order to avoid congestion in the streets and to promote safe and convenient traffic circulation.
- (7) Regulating and coordinating development activities to provide for the adequate provision of public facilities and services.
- (8) Providing for a diversity of housing types in varied living environments.
- (9) Providing open space to protect the archeological, historic, scenic and natural features of the Town, as well as providing recreation spaces for existing and future needs.
- (10) Facilitating the adequate provision of transportation, water, sewerage, schools, parks and other public facilities.
- (11) Preserving farmland and the agricultural land base.
- (12) Providing for the preservation and protection of high tidal and freshwater ponds, lakes, and rivers.

CONCLUSION

For the reasons stated on the record at the meeting of March 11, 2020, the Commission preliminarily voted 5 to 0 (with 2 members absent) to recommend that the application to amend the Comprehensive Plan and to amend the Town Zoning Map not be approved, with this Advisory Report to follow.

The Commission formally adopts and ratifies the following reasons for the recommendation:

- (1) Mulberry Street is designated as a local road and already services traffic from the schools, and neighboring uses, including all traffic entering or exiting Shipbuilders Village, a 220-home residential development, and the seasonal deluge of traffic from the Bay Bridge heading down Mulberry Street to the beaches. Thus, the application would increase congestion in that area of the Town, rather than

lessening it, especially during the peak travel times shared by the schools and the project.

(2) Willow Street is a single block Town-maintained street that would become congested as the secondary entrance to the project, and the street's narrowness would pose a challenge to the accessibility for emergency vehicles. Thus, the application poses a greater risk to safety from fire and other dangers. Willow Street will function as a path between Mulberry and Union Streets due to the driveway location and those two streets are for forecast by DelDOT to carry more than 80 percent of the traffic. Willow Street's present design is incapable of serving that volume of traffic, requiring reconstruction and impacts to the current neighborhood.

(3) While the Commission did not question that the Applicant would try to comply with the Source Water Protection Ordinance, without seeing the Environmental Assessment Impact Report that would be required for new construction with more than 20% impervious cover in a Wellhead 2 Protection Area, the site's more intense use of its location in Wellhead Protection Zone 2 poses a greater risk to the Town's water supply and, thus, the residents' health and the Town's general welfare, rather than facilitating the adequate provision of water.

(4) The direct proximity to established residences and neighborhoods in this the R-1 District makes the uses available in the C-1 district – including the proposed use - out of character and relates negatively to those residential areas, adversely impacting the general welfare.

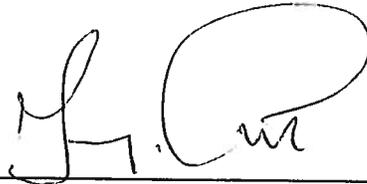
(5) The proposed Declaration of Covenants and Restrictions potentially places Town residents in a position of having to enforce limitations on use stemming from a zoning decision on the application.

(6) The application is not in accordance with the overall spirit of the Comprehensive Plan,¹ and a change in the character of the area since the Comprehensive Plan's creation and adoption has not been identified that would support reconsideration.

At its meeting on March 17, 2020, the Commission voted _____ to approve and accept this Advisory Report.



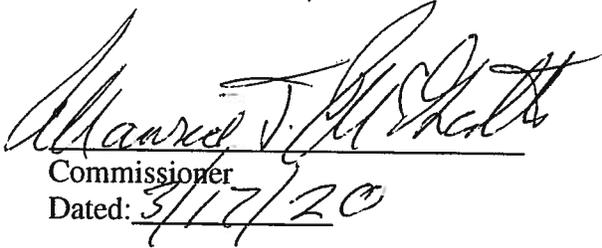
Chair
Dated: 03/17/2020



Commissioner
Dated: 03/17/2020



Commissioner
Dated: 3-17-20



Commissioner
Dated: 3/17/20



Commissioner
Dated: 3/17/20

¹ By way of example, p. 50 notes that the Town should consider an Economic Development Plan with considerations that include "Commercial development should be centered within the Town Center and along SR 16 and R5 corridors," and, on p. 93, "There are also several parcels of undeveloped land ranging in size from 0.5 to approximately 5.5 acres along Mulberry Street in this area, which offers more opportunities for infill-residential development."

