

The City of Lewes



STAFF REVIEW

FEBRUARY 7, 2019

Application Title	Fishers Cove
Application Type	Preliminary Consent - Major Subdivision
Owner	Burke & Rutecki, LLC
Tax Map and Parcel	SC Tax Map# 335-4.14-100.00, 115-4.14-1.03, 335-4.00-15.00
Size and Location	12.06 acres and located off Rodney Avenue, southwest of Pilottown Road
Comprehensive Plan Designation	Residential
Zoning District	R-2 – Residential Low-Density
Present Use	1 residential dwelling and agriculture/vacant
Proposed Use	18 additional residential dwellings
Online application material	https://lewescommissions.wordpress.com/reviews/dev_reviews/fishers-cove/

I. BACKGROUND INFORMATION:

Fishers Cove is a 19 lot single family home subdivision on 12.06 acres. The applicant is proposing 18 new single family homes, new roads to access the properties, and dedicated open space. According to the proposed plan the lots would average 17,925 square feet and there would be 2.97 acres of dedicated open space. The property is bordered by existing residential properties along the south and east, the University of Delaware to the north and the Great Marsh Preserve to the west. Connection to proposed roads that would provide access to the new dwellings would be through an extension of Rodney Avenue.

II. PLAN APPLICATION

- An official application package was submitted to the City on September 18, 2018¹.
- On October 10, 2018 the Applicant's Engineer provided a revised grading plan sheet that was incorporated into the original plan packet.
- On October 29, 2018 the Applicant's Engineer requested to meet with City staff and Engineer to review the status of the plan, that meeting occurred on November 7, 2018. During the discussions the City Engineer indicated inconsistencies between information provided on the grading sheet and other plan sheets (this was attributed to the use of LIDAR data vs. field survey data). Other items of discussion included elevation (below base flood elevation) for portions of the proposed road network and some structures, geotechnical testing and the status of other agency reviews (see attachment 1 for full list of discussions). It was agreed that the applicant would make revisions to the set of plans and would include a key that listed the changes to assist with tracking prior to resubmitting the plan set for a full City review.
- A revised set of plans was submitted to the City on December 10, 2018 incorporating the changes discussed at the November applicant/staff meeting. A full City review was initiated at that point.

Prior to the current application the City of Lewes reviewed a proposed subdivision for the property in 1987. The earlier subdivision proposed the construction of 26 building lots on the 10.83 acre parcel that is a portion of the property. That earlier application was denied by City Council in May 1987 after determining that access was available to Pilottown Road across land that was held by the current property owner, the 1.03 acre parcel that is also part of this application.

As part of the submission the following information was provided as part of the initial application:

- Written documentation identifying the applicants;
- A conceptual plat plan;
- A letter from the Lewes Board of Public Works certifying that utilities are existing and available;
- Payment of major subdivision application fee;
- Documentation of Public Notification
- An Applicant Engineer's Report;
- A Delineation of Wetland Report;
- A Boundary, Topographic and Wetland Location Survey; and
- A copy of Plats and Deeds of Record.

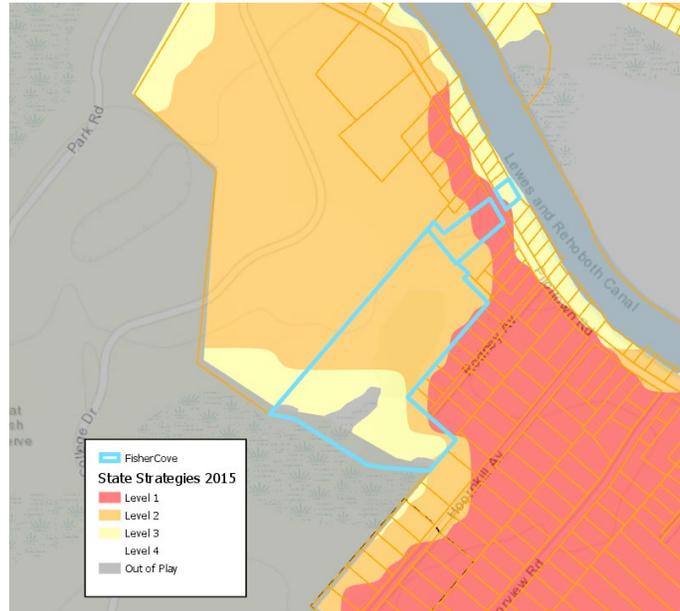
¹ Prior to the official submission the applicants met to discuss the project with City staff on July 23, 2018. At that meeting they provided a 2016 conceptual site plan that displayed 11 new residential dwellings for discussion purposes.

III. Compliance with adopted policies:

Based upon the information presented, the City of Lewes Code and the Comprehensive Plan, staff submits the following regarding the application for Subdivision Preliminary Consent approval:

A. State Designation

Portions of the project are located within Levels 1 and 2 according to the Strategies for State Policies and Spending. Levels 1 and 2 includes lands in the City that are adjacent to or intermingled with areas that are developed although environmentally sensitive features or other infrastructure issues may present issues that will need to be addressed during the review and permitting processes. Portions of the tract near the Canal and adjacent to wetland areas fall within Level 3 which are areas that are not designated for near term development according to State policies. Areas on the western perimeter of the property contain wetlands that are adjacent to the Marsh are designated Out of Play due to significant legal and/or environmental constraints suggesting those areas should be held in some form of permanent open-space protection. The Applicant's Engineer Report indicates that the property is designated as Level 1 on the State Strategies Map, this reference should be revised to reflect the designation as Level 1, 2, 3 and Out of Play.



B. City Comprehensive Plan

- a. Use designation - The proposed residential lots are consistent with the use designation "Residential" for this area as defined in the City of Lewes Comprehensive Plan, Future Land Use Map (see Map 10 at http://www.ci.lewes.de.us/pdfs/Appendix_B_Maps2.pdf).
- b. Several portions of the City Comprehensive Plan address concerns with development on properties containing wetlands or within the floodplain. As mentioned in the Comprehensive Plan strict attention will be placed on ensuring that any future development meets or exceeds floodplain requirements contained in the City's zoning ordinance and building code. These issues will be addressed more fully in latter sections of this review.

C. City Zoning Ordinance

- a. Permitted Uses – The proposed use, single family detached dwelling, is permitted by right and are in compliance with the R-2 Residential Low-Density zone.

- b. Lot Dimensional Regulations - The proposed lots comply with the lot area and bulk regulations, as listed below, for development in the R-2 zone.

From Section 197, Attachment 2 of the City of Lewes Zoning Code.

Lot area (square feet)	10,000
Lot width (feet)	75
Lot depth (feet)	100
Setbacks (feet)	
Front yard	30 or EBL *
Side yard	8
Rear yard	15

* "EBL" means established building line. See Article XVI, Definitions.

- c. Floodplain regulations – The development of buildable lots, as proposed by the application, should address the need to ensure that each lot could meet or exceed the requirements outlined in § 197-73, Floodplains of the Zoning Code. In addition prior to any construction activity applicants would need to obtain a building permit ensuring that all proposed construction activity would be in compliance with the zoning provisions and applicable Building Code requirements. As part of these subdivision review evaluations should address § 197-73 E (3) which states that no development activity that would affect the flood-carrying capacity of the flood plain be permitted. Additional information on these considerations, as well as addressing compliance with State and Federal regulations will be covered in the later section “Flooding”. In addition the City Engineer’s Report will address compliance issues concerning lots and facilities.

D. City Subdivision Ordinance

- a. Process Requirements - The submittal for Preliminary Consent approval has complied with all of the required provisions for Initial Application under § 170-19 A, making it a complete application.
- b. The Planning Commission preliminary consent review evaluates the proposed application to criteria listed under [§ 170-19 E](#) of the City Code.
- c. Other Subdivision Ordinance considerations:
 - i. Water, Sewer, Electric and Stormwater systems – Planning Commission review requires evaluation of compliance to ordinance provisions. Refer to City Engineer’s Report for details and recommendations on these requirements.

E. City Agency Reviews

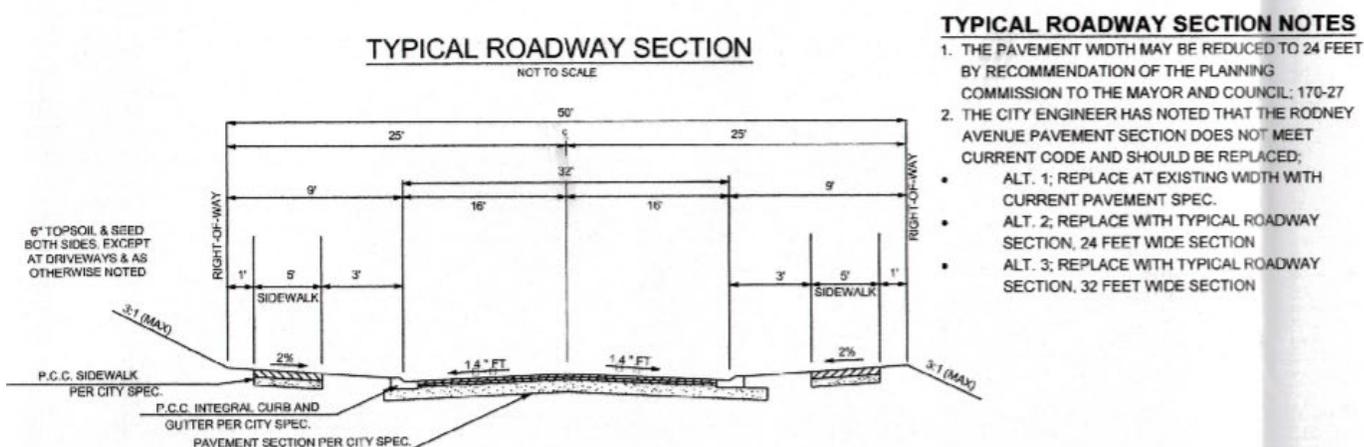
- a. Parks and Recreation Commission (PRC) review² – The application for Preliminary Consent has been reviewed and submitted for consideration by the Planning Commission (see attachment). As noted in § 177-11 of the City Code applicants are responsible for the street tree plantings. The applicant is advised to coordinate the placement and type of street trees as well as the review of long-range landscape projections and plans with the Lewes Parks and Recreation Commission prior to final plan approval.
- b. City Engineer and Board of Public Works report – The report for Preliminary Consent has been completed and submitted for consideration by the Planning Commission.
- c. Reports from other agencies – Copies of reports that have been created by other agencies, that are required as part of the subdivision approval, must be submitted to the City of Lewes.

IV. Considerations

In addition to review for consistency with current policies and regulations a number of considerations are evaluated as part of the review for preliminary consent. Some require evaluations conducted by City agencies, others are overseen by external agencies. Some can be addressed completely as part of the preliminary consent review whereas others require detailed assessments that are typically addressed during final plan review.

A. Site Access

According to information provided with the application vehicle access will be provided by extending Rodney Avenue to the proposed intersection with Burke Road. The applicant is proposing to build



² The PRC review occurred on November 5, 2018 using a version of the site plan that was subsequently updated. The revised plan (submitted 12/18) has resulted in changes (removal of buffers) that are addressed by PRC. The Planning Commission should consider if PRC should do an additional review as part of preliminary consent or conduct a review as part of final plan review.

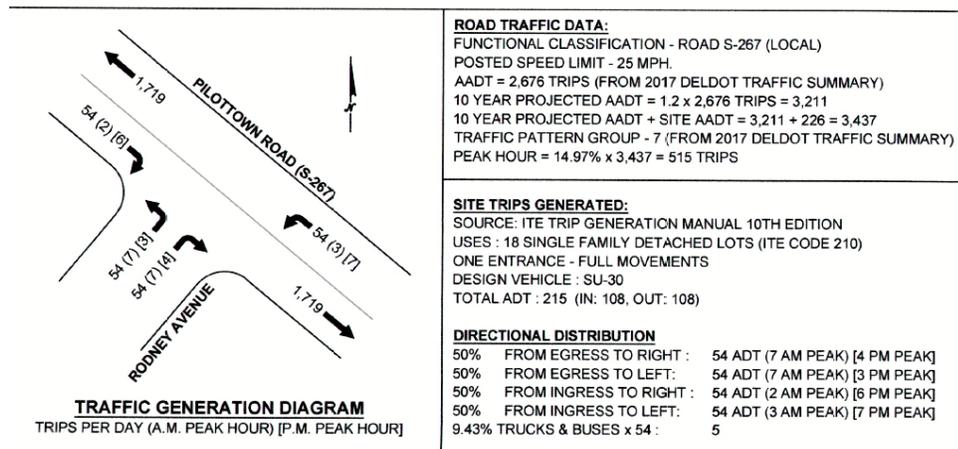
the new roads to City standards using a 50' ROW comprised of 2 travel lanes (16' lanes), with curbs/gutters and 5' sidewalks on each side along with 3' unpaved section between the sidewalks and curbs (see typical roadway section below).

The applicant has also noted in the plan a possible option to allow the pavement width to be reduced to 24' by reducing cartways to 12' pending recommendation by the Planning Commission and approval by City Council (Section 170-27). Decisions regarding residential road widths typically involve balancing the need to accommodate vehicular traffic or providing opportunity for on-street parking (if needed) while avoiding concerns related to excess impervious cover or making wide roads that tend to increase vehicle speed.

The proposal to use an extension of Rodney Avenue as the access to the proposed development triggers evaluations of that existing corridor. Preliminary evaluations indicate that Rodney Avenue is currently not constructed to City standards. The paved width is estimated to be less than 20' and narrower in several stretches. The City Engineer also suggests that road and base is also not built to current standards which could degrade rapidly should it be used to accommodate heavy equipment that would be expected with site development. As part of the application the applicant has proposed 3 alternatives intended to improve Rodney Avenue to enable it to accommodate the additional traffic which are listed under #2 of the notes in the Typical Road Section image above.

Included within the plan application is a panel that describes traffic generation and distribution. The information indicates that the development would result in an additional 215 average daily trips per day. As suggested in the panel distribution of the current and additional traffic (estimated to be 500 average daily trips), at the intersection of Rodney Avenue with Pilottown Road, would be evenly split (see Trip Generation image below).

TRIP GENERATION - PILOTTOWN ROAD (S-267) AND RODNEY AVENUE



The plan shows the proposed cartways and ROW lines. Additional details on cartway width, curb radii, sight distance, curbing and sidewalks (required by code on both sides of all streets) will be addressed when the City Engineer report is provided. It should be noted that wheelchair ramps would be required at all intersections as per § 167-13 of the City Code.

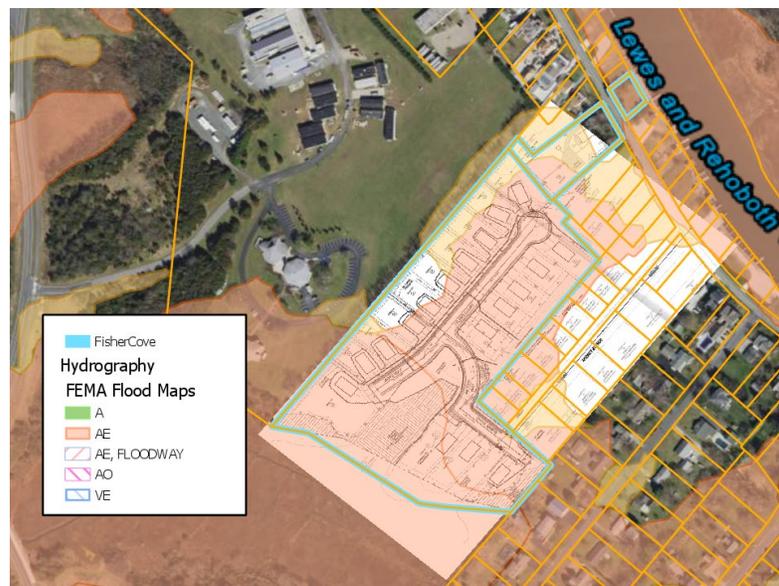
The proposed Tylers Court dead ends at a cul-de-sac adjacent to the Fisher's Paradise parcel which fronts Pilottown Rd. An aspect that will need to be addressed as part of the review involves the provision that a cul-de-sac not be used when there is a potential for a connection [§ 170-27 H \(1\)](#) of the City Code. As proposed the 18 additional dwellings would rely on a single access road that is within a flood hazard zone. Although the application includes provisions to flood proof the roadway (using current elevation data), guidelines provided by the State suggest that infrastructure be designed to address potential coastal hazards. For these reasons alternative access evaluations, at least for emergency access should be considered as part of the review.

B. Sedimentation and Erosion Control

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees. According to the Applicant's Engineer letter of December 7, 2018 this application has been initiated and will be available for final plan review. The site topography, soils mapping, pre- and post-development runoff, proposed method(s) and location(s) of stormwater management and discharge into state regulated wetlands should be evaluated as part of that plan review.

C. Flooding

A significant portion of the planned development area lies within the mapped 1% and 0.2% annual chance flood zone as mapped by FEMA on the effective Flood Insurance Rate Maps (FIRMs). The image on the right (from the digital or DFIRM Maps) shows the areas in the 1% (AE) or 100 year flood zone in orange. The 0.2% (X) or 500 year flood zone is shown in tan. These areas correspond to the mapped flood areas shown on the Environmental



Constraints Map submitted with the application. As noted above the Final Plan will need to demonstrate compliance with current City floodplain regulations and permits for development will need to be met for all construction of residential structures within the floodplain which includes construction of all living facilities above the identified base flood elevation plus 18 inches of freeboard. In addition to the structures the proposed roads and support facilities must be designed and constructed to avoid failure as a result of the identified flooding conditions. In

addition to on-site impacts on-site construction or disturbance must avoid increasing off-site flooding problems resulting from construction. Due to the proposed grading and use of fill in the flood hazard area the applicant has been advised to apply for a FEMA Conditional Letter of Map Amendment (CLOMR). According to the Applicant's Engineer letter of December 7, 2018 this application has been initiated.

In addition to existing flooding conditions this area is subject to increased flooding as a result of sea level rise as documented by the State which has recommended that those conditions be factored into land development decisions. State maps depicting future inundation risk from sea level rise (see <http://www.dnrec.delaware.gov/Pages/SLRMaps.aspx>) indicate that much of the upland portion of this site, as well as adjacent areas, could be increasingly inundated by sea level rise. In the short-term, sea level rise in and around this tract, combined with periodic coastal flooding events, may result in repetitive flood damage to homes and significant difficulties maintaining stormwater and drainage infrastructure. In the long-term, this increased flood and inundation risk could result in costly public and private flood abatement and drainage projects and an eventual abandonment of homes. The State maps are based on current conditions, meaning changes such as onsite grading could alter the extent of this projected flooding on the property. Onsite changes could also aggravate flooding conditions on nearby properties. As part of the application the Applicant's Engineer Report indicates that the project would not cause additional downstream flooding. The City is in the process of evaluating the cumulative and localized impacts of flooding from development in conjunction with coastal storm impacts and sea level rise. Information resulting from this analysis is expected to provide greater understanding of these conditions and be factored into development decisions.

According to the submitted application each of the proposed dwellings would be located in the 1% flood zone although the lowest floor would be elevated above the current base flood elevation plus the required freeboard. Elevating the structures will help address flooding of living spaces under current conditions however additional measures should be considered as part of the application review, as follows:

- a. The use of fill to elevate new structures should be restricted (in accordance with code requirements);
- b. Yard areas for many of the proposed dwellings (especially the lots adjacent to the marsh) will remain or would be graded to elevations below current base flood elevations making those areas susceptible to periodic flooding. If the plan is approved these areas should be subject to special precautions such as:
 - a. avoiding the placement of any structures that cannot withstand periodic flooding;
 - b. limiting vegetation to types that are flood resistant and do not require specialized nutrients or chemical treatment that could migrate into the adjacent marsh;
- c. Additional freeboard, beyond that required under current ordinances should be considered for portions of structures to address projected sea level rise as an added measure to limit property loss or ensure safety.

The proposed access road is also located within a mapped floodplain and projected future sea level rise inundation area. Based on the submitted application, the road corridor is expected to be

constructed above the current base flood elevation. Overtime, based on projections established by the State, the proposed roadway would be subject to periodic flooding on a more frequent basis.

D. Utilities

The submitted application contains information on water supply, sewage collection and stormwater collection. A report provided by the City Engineer of behalf of the Lewes Board of Public Works contains additional details regarding the systems and compliance with the City Code.

One aspect that impacts site layout is the addition of storm water management facilities. The City Engineer's report addresses the operation of these proposed systems. From a site layout standpoint the location of an additional basin behind proposed lots 4-7 raises concerns. In an earlier iteration of the site plan (submitted in October 2018) that area was identified as forested uplands and was to be reserved through easement as a landscaped buffer which would serve as a screen for adjacent residential properties. In the revised plan, submitted in December 2018, a stormwater basin was added to that area, which was still identified as open space. The landscape buffer would be replaced by a 6' high vinyl fence installed along the property line. Although a vinyl fence could provide some screening it along with the addition of the stormwater basin does not provide the same level of buffer or help address impacts that are listed in [§ 170-19 E](#) of the City Code. Although it is understandable that changes are required to address evolving stormwater collection needs, the removal of the buffer area would seem to be only one possible option. As part of the preliminary consent review it is suggested that additional options be considered. Another issue related to the stormwater collection systems involves responsibility in terms of operation and maintenance. It is not entirely clear if the basin areas are to be located entirely on common property. The plan should provide additional details that clearly indicate that the system components are on common land and descriptions of how the system components will be maintained.

E. Historic Structure

The residential structure located on parcel (SCTM # 335-4.14-103.00) is the historic Fisher's Paradise house built in 1740. The main house has been listed on the National Register of Historic Places since 1972 (see [https://services3.arcgis.com/SQCfgWRY8UNIOwRo/arcgis/rest/services/HistoricProperty_Public/FatureServer/0/42127/attachments/6045](https://services3.arcgis.com/SQCfgWRY8UNIOwRo/arcgis/rest/services/HistoricProperty_Public/FeatureServer/0/42127/attachments/6045)). According to the applicants there are no changes to be made to the main house as part of the proposed subdivision. The proposed application would reduce the existing lot by subdividing a portion of the western edge which would become part of proposed Lot #9. In addition the application proposes that a pedestrian walkway would be established that would traverse the lot to provide access for subdivision residents to the open space area that is proposed for the canal front lot (SCTM# 335-4,14-100.00). In order to make room for the proposed pedestrian walkway 2 outbuildings, a shed and a garage, would be demolished. Although no changes are proposed to be made to the main structure it should be noted that any such changes would require submittal of an application to the City Historic Preservation Commission prior to make any alterations. A copy of the brochure with additional guidelines can be obtained at <http://www.ci.lewes.de.us/pdfs/HPC.2014.Brochure.pdf> . It would be helpful for the applicant to include some description as to the intended use for the main structure. The plan indicates that the walkway will be used to provide resident access to open space area "E" but does not indicate how that walkway should be maintained, through easement or other method should the parcel be sold.

Since the walkway also suggests the addition of a pedestrian crossing over Pilottown Rd. the applicant should contact DeIDOT to determine if there is a need for any review or permit.

F. Other Note

According to deeds on file for the property, easements exist for access by the University of Delaware. These easements, along with any other reserved for utilities, should be located and identified on the site plan to ensure that they are maintained.