

Commissioners of Leonardtown
Leonardtown Planning & Zoning Commission
Tuesday, January 17, 2006 ~ 3:30 P. M.

Attendees: Jean Moulds, Chairperson
Frank Fearn, Vice Chair
Jack Candela, Member
Tom Collier, Member
Gary Simpson, Member

Also in attendance were: Laschelle Miller, Town Administrator; Colleen Bonnel, Planning Director; Jackie Post, Fiscal Clerk; Teri Dimsey, Recording Secretary; Mike Mummaugh, Paragon Properties; Tony Redman, Redman & Associates; Chip Norris, Mayor; Leslie Roberts, Council Member; John Wharton, The Enterprise. A complete list of attendees is on file at the Leonardtown Town Hall.

Chairperson Moulds called the meeting to order at 3:30 p.m.

Approval of Minutes: December 19, 2005

The meeting minutes for the December 19, 2005 Planning and Zoning Commission meeting was presented for approval.

Chairperson Moulds entertained a motion to approve the December 19, 2005 Planning and Zoning Commission meeting minutes.

Member Tom Collier remarked that he had a correction on page two regarding his comments on PIRD. He believes he brought up two issues: one, regarding the single family district properties along Washington Street and two, the fact that the PIRD document allows for change in the use of a specific district. He does not see any of his comments about changing the usage of a specific zoning.

Ms. Bonnel will have the secretary re-listen to the tapes to clarify Member Collier's remarks and correct the minutes if necessary.

Member Candela stated that page nine makes reference to his remarks but thinks he actually responded that WCI would build the facilities and then turn them over to the Home Owners Association (HOA). It said Mr. Schwartz explained that this specific area is for the use of the 750 residents of Tudor Hall Village community and that the HOA would cover that.

Ms. Bonnel commented that the next line refers to the public and private amenities that will be built by WCI and turned over to the Tudor Hall Village HOA.

Chairperson Moulds asked if there were any additional corrections or additions?

Member Fearnis moved to approve the minutes with the changes stated, seconded by Member Candela; motion passed unanimously.

Town Administrators Report - Laschelle Miller

Ordinance No. 122 - Road Construction & Maintenance Bond - This Ordinance was introduced at the December 12, 2005 meeting. The Council took action at the January meeting and did approve the Ordinance to require a two-year maintenance bond on any roads that we take into the Town system and new development. It will go into effect at the end of this month.

Re-Introduction of Ordinance No. 123 - Planned Infill and Redevelopment District - This Ordinance was discussed at the December 12, 2005 meeting. A public hearing is scheduled for the January 17, 2006 at today's meeting and another is scheduled for the February Town Council meeting.

Appointment of the Election Judge - The Council voted to reappoint Mr. Ernie Bell as the Election Judge for the May 2, 2006 election. A copy of the Election calendar is also included for your information.

Streetscape Area Water and Sewer Proposal – Approved Stearns and Wheler to begin the design and engineering for the water and sewer replacement along Washington and Fenwick Streets and the areas affected the State Highway Streetscape Project. The purpose is to get these lines upgraded before the streetscape projects begins so that we would not have to tear up the streets later on down the road.

Member Candela asked to explain what the SHA Streetscape improvements are going to be and what changes they are planning on making?

Ms. Miller responded that this has been a five-year process with the committee and the committee finally chose a design. Coming into Town there will be sidewalk improvements on the St. Aloysius side to provide a wider (eight-foot) sidewalk for more of a mixed use, such as, bicycles, with street trees on both sides and street lighting. There will be a lane change of one less lane coming into Town to allow for a center turn lane in front of Bell Motor, but there will not be any changes going out of Town.

Member Candela questioned if it was advisable, with the amount of traffic we have, to reduce the lanes coming into Town to only one lane.

Ms. Miller remarked that it was at the recommendation of the SHA. They did traffic studies to determine the feasibility. She explained that coming into Town you can no longer go straight

from Rt. 245 you have to come in from the left hand lane. According to the traffic studies there will still be the exact same configuration going out of Town, which is where the back-ups usually occur and there is now a longer center turn lane to make a left onto Rt. 5. The only change is the lane reduction coming into Town. With Tudor Hall coming in and Fenwick Street extended out to Rt. 5 this will become a major access to the Town and will significantly reduce the traffic on Washington Street.

Parking Lot Update - The parking lot is nearing completion. A ribbon cutting will be scheduled when the weather clears. It is anticipated that this project will be a showcase for low impact development around the area and an article will be forthcoming in the newsletter.

New Business – None Presented

Old Business

Chairperson Moulds announced that the Planning and Zoning meeting would close at this time and re-open after the Public Hearing.

Member Collier asked if the properties have been posted?

Ms. Miller responded that the properties have not been posted. The Town's attorney was consulted and he did not feel that, according to our Ordinance, the properties needed to be posted.

Member Collier remarked that he did not necessarily agree with the attorney. He referred to Article 21 under our Amendment and referenced Chapter 139 regarding buildings. It states that the properties involved need to have signage posted on it ten days prior to a hearing and we have not done that.

Ms. Bonnel pointed out that as this is an overlay district, our attorney advised us that the individual parcels do not need to be posted, only advertised.

Member Collier remarked that there are no provisions in the Municipal Code that makes a distinction between an overlay and text amendments, it just states that the Commissioners have the right from time to time to amend, supplement and change by Ordinance.

Member Fearn asked if the property owners were notified otherwise. Did we send anything to the property owners?

Ms. Miller responded that there are a tremendous numbers of properties here. Two Public hearing notices have been advertised.

Member Collier commented this is the reason he has concerns.

Ms. Bonnel explained that our attorney reviewed the PIRD, which is an overlay district and the requirements within the PIRD, which require going before the Planning and Zoning

Commission, a public hearing for that specific parcel and then go before the Town Council.

Ms. Miller acknowledged that at that time, the properties are to be posted fifteen days prior to a public hearing if this is going to be brought to land. If this is going to be applied to a certain property then the adjacent properties are notified. There is a detailed process to follow, starting with today's public hearing and then applying for the overlay to come to land on a specific parcel.

Member Fearn asked if we would post the property prior to actually changing the zoning?

Ms. Miller explained that it does not change the zoning, this is an overlay, it just relaxes certain items such as the setbacks and parking requirements, but the zoning still stays. In order for any parcel to go through, it will be posted, then there must be a public hearing before the Planning and Zoning Commission, a recommendation from Town Council and another Public Hearing.

Chairperson Moulds remarked that the purpose of this is not to change the property at this time but, when someone asks to make a change on an individual property, it is giving the Planning Commission the power to make those decisions and this would encourage the businesses to make the improvements on the property.

Ms. Miller noted that the intent is to provide the Planning Commission flexibility. It is the same process as a PUD, they bring in their master plan, post the property, hold a public hearing before the Planning and Zoning Commission who then makes a recommendation to the Town Council, another public hearing is held and then a decision is made.

Member Fearn moved to close the meeting, Member Candela seconded, motion passed unanimously. The Planning and Zoning meeting is closed.

Chairperson Moulds opened the floor for the Public Hearing.

Ms. Bonnel introduced Tony Redman of Redman and Associates. Mr. Redman drafted the overlay district for Leonardtown to accomplish a more flexible redevelopment of parcels within a limited area. Mr. Redman will go through the general outline and then open the floor for questions.

Mr. Redman stated that there are a number of things he is prepared to discuss and remarked that it appears that a few members of the Planning Commission have some apprehension about the creation of this district. Mr. Redman explained that what he calls the PIRD, Planned Infill Redevelopment District, exists now in at least three Maryland towns, Chesapeake City, the Town of North East, and the Town of Denton, all on the eastern shore or in Cecil County. In two of these cases, is it called IDOD, Infill Development Overlay District. Only one of the three Towns have approached it in the same way these provisions have been drafted for application in Leonardtown. Two of those towns brought the zone to land, that is to say they went ahead and designated a particular area of the community where they wanted to at least encourage reinvestment/redevelopment or use of vacant lots, but were concerned about how it would be done and wanted to be sure it would be in keeping with the character of the areas that they so

mapped. Once they mapped them, then the Planning Commission has the authority to determine the compatibility of the proposed redevelopment or infill project with the site and with the context in which that site is located.

The other one, which is Chesapeake City, took an approach with more checks and balances, like this one, where the Planning Commission conducts a public hearing and makes a recommendation to the Mayor and Council, but the ultimate findings regarding the compatibility of the proposed addition to the building, redevelopment of a site or infill of a lot between existing developed properties rests with the elected officials. There was some apprehension at the outset of this kind of assignment on my part on whether or not the Town would be comfortable, so we prepared a version of this Infill Ordinance that is basically more restrictive, not as elastic, to provide checks and balances. Much of the language that you see in the text of this Ordinance is based on guidelines that are provided by the Maryland Department of State Planning. I do not want to represent that all of the language in this document, which includes a model Infill Ordinance, has been lifted and brought into the text of the draft that you have before you, but much of it has, there are provisions for example for the development and capability standards that do derive from this document. To assure you that I did not reinvent the wheel, this is the model Infill Ordinance that the State provides and this is just one booklet of a series of booklets that the MD State Department of Planning has put out to try and foster smart growth initiatives around the State. Having said that, just to give you some background, the three towns I mentioned have only had these ordinances in place for about two years, but it has triggered response in all three Towns. In the case of the Town of North East, they have permitted a restaurant to expand that otherwise would not have been able to expand and it gave authority to the Town to waive some of the parking requirements or to accept a shared parking arrangement with a neighboring property owner and that restaurant would not have been able to expand absent their Infill Development Overlay District (IDOD).

In the Town of Denton, there is a new single-family home right next to their county office building that would not otherwise been built. In that case, the property had a history of commercial use and wasn't viable for commercial use, but was not utilized at the time so it fostered redevelopment to residential. It can go both ways from residential to commercial and also from commercial to residential. The Town of Port Deposit also has this kind of provision and an existing single-family residence followed this process and added a rear addition with additional height and the single-family residence was converted to a duplex. Each of these projects was assessed by the Planning Commission or by both the Planning Commission and the Mayor and Town Council in each of these communities. The test in the draft Ordinance is that there must be a finding that what is proposed is compatible. There is a lot of language that amplifies accessing compatibility, or at least, by the language in the Ordinance, that is going to require property owners to do some homework to secure approval once the District is brought to land. For a particular site it would be expected to take photographs. A book that the Town of Denton finds particular useful is entitled "A Field Guide to American Houses" and may be a good reference to help non-historians or a non-architects identify period architectural in residential structures.

Mr. Redman informed the members that one of the three Towns previously mentioned does not include this language and references this as it pertains to one of Mr. Collier's concerns. You will

find it on page 3 under permitted uses, “the Town Council may permit a mix of uses, including residential small-scale commercial service and retail establishments.”

Member Collier stated that there is no definition of small-scale commercial service and has found nothing in our Municipal Code, this term needs to be defined.

Mr. Redman stated that it could be defined in square footage. One of the three Towns do limit use to residential if the base site is residential, however, they do allow a duplex or multi-family structure where a single-family structure might be. The other two Towns are more comfortable with having authority. You make it what you want it to be to foster or engender what you want to see happen in Leonardtown, it provides an incentive and has been reasonably successful in other areas. The specifics of language are somewhat different across the communities, but if I sent you the Town of North East, which you will see is titled IDOD instead of PIRD you will find a lot of common language there. I have more respect for Ordinances that have passed some type of use test administratively or provisions that have been used successfully by a community.

Member Candela noted that on page eight it states that before taking action, applicants must submit an application to the Planning Commission, who then conduct a public hearing and make a recommendation to the Town Council. You mentioned earlier that there could be two versions, one, the Town Council makes the ultimate decision and two, to have the concurrence of both the Planning Commission and Town Council.

Mr. Redman acknowledged there is a difference to bring the zoning to land. You are adopting the text of the Ordinance but you are not really bringing this zone to land. The only way it would come to land is upon application by a property owner who wants to utilize these provisions and at that point, they submit an application, post notices, conduct public hearings because it will be a site specific project. You would use the same criteria that the Mayor and Council use but you will be their first cut in the sense that you’ll assess that project in light of all the standards. Upon completion of your review, the Planning Commission will determine if it is or is not compatible. The Planning Commission would then forward a recommendation to the Mayor and Council if this project should be approved or not be approved or approved subject to a series of conditions to assure compatibility. Mayor and Council get the recommendation; they conduct a public hearing and go through the same process of making findings with respect to whether or not the project satisfies the standards that are outlined.

Member Candela asked where are the checks and balances? If the Planning Commission is just holding public hearings and making a recommendation and the Council does not have to act on the recommendation?

Mr. Redman responded, that is correct, but maybe he used the wrong term of “checks and balances.” A contrasting approach is when the zone is brought to land at the same time the Planning Commission adopts the text. It is brought to land and everybody is now zoned PIRD and because the zoning decision has already been made by the elected officials (Mayor and Council) the application comes before the Planning Commission and the Planning Commission makes its decision to approve or not approve based on its evaluation of consistency with the Ordinances. Only the Planning Commission is involved. But only one has real authority and that

is typical in any Ordinance framework. Maryland Law states that any action to rezone is reserved for the elected officials of the jurisdiction, be it county or town. Planning Commissions do not have the statutory authority to rezone under the authority granted in Article 66B of the Annotated Code.

Ms. Miller communicated that it is the same process as a PUD. The Planning Commission would see concept plans first, make any comments/recommendations and then it would go before Town Council for final decision.

Member Fearn remarked that his concern was with actual property owners and how this may impact property taxes. Suppose in two or three of the cases we decide to opt for this change, how does it impact the additional people in the overlay?

Mr. Redman addressed the first question and does not see it impacting the property taxes simply by adopting the text of this Ordinance. However, once it is adopted and someone applies for an upgrade of an existing property and they grant that, they make an investment in that change, then like any improved property it would modify the assessed base of the property and the taxes could increase. It might not impact adjacent properties, but you cannot rule out how the assessment department might apply its rules. But, it is important to note that the Town would be raising more revenue due to the benefit of stimulating reinvestment.

With respect to neighboring property owners, there may be someone located in this district that wants to do something that is not consistent with the surrounding character or use of properties immediately surrounding it. That is why these provisions are here to assure compatibility to not recommend approving that project if the Planning Commission finds it is not compatible and before making that finding there will have been a public hearing, the property would have been posted so that a neighboring property owner would be aware if they see the sign or read the paper and the Planning Commission will hear their concerns before making any recommendations to the Mayor and Council.

Member Collier asked how to control the use of the overlay from one piece of property to another when you have approved one scenario for a piece of property, but don't approve of a like piece of property. How do you say no to the next person? How do you deal with setting your own precedent? Once you get started there is no way to turn it off.

Mr. Redman remarked that when you see your first application and look at the neighboring properties, the Planning Commission might be concerned about setting a precedent with approval or recommending approval. The Planning Commission must make findings of fact.

Ms. Miller communicated that on page two it states that it shall be determined on a case-by-case site-by-site basis and on page seven spells out the six findings that must be used to help decide your decision.

Mr. Redman remarked that the Planning Commission could make a finding that the proposed development would not provide any housing opportunities, services, jobs or amenities that would not improve the character of the site. The Planning Commission would have to make a finding

that the approval would promote the general welfare of the Town and not be detrimental to Town residents. It will be compatible with, and not adversely impact, the surrounding neighborhoods. And when you look at those impacts, it lists traffic noise, lights, parking and signs; some characteristics could create adverse impacts.

Mr. Redman stated that he has no hard and fast answers for the Planning Commission, but the approval processes and precedents are a problem beyond this particular zone district that happens with or without the PIRD.

Member Collier remarked that the fact that this overlay is so flexible leads you to a lot more susceptibility than other types of zoning. Have any of the other Towns you cited had any denials?

Mr. Redman replied no, not to his knowledge, but I would recommend you contact Jennifer Shaw, Town Administrator for the Town of Denton or Melissa Cook-McKensy, Town Administrator for the Town of North East, and talk to them about their experiences.

Member Collier asked if the reference material was required to be part of the zoning?

Mr. Redman remarked that the reference material is just a tool to assist the Planning Commission on assessing architecture compatibility. The Planning Commission can use anything to help with deliberations.

Member Collier asked Mr. Redman if he would provide a definition of small-scale commercial service.

Mr. Redman responded that small-scale commercial service is primarily personal service shops, such as Doctor's offices, copy centers, those services that are not retail commercial.

Member Collier requested a more detailed definition that could be added to the definition list.

Ms. Bonnel interjected that we have commercial services described as plumbers, electricians, and bricklayers.

Member Collier stated that small-scale commercial is just a relevant term. How do you tell an applicant their project isn't small scale and they say it is compared to Wal-Mart?

Mr. Redman remarked that could be true and both personal services and small scale would need to be clearly defined in square footage.

Member Collier referred to the mapping paragraph 155.46.2 where it states that parcels indicated on Exhibit A, and attached hereto, are zoned and you list the different zones. Can you answer why these particular properties were picked in Exhibit A?

Ms. Miller stated that these properties were included in the Community Legacy Areas that were mapped for redevelopment projects. At this time, the PIRD does not include residential single-

family but these parcels have been included in the Community Legacy Area that in the future we felt could be some potential change. Ms. Miller explained that the Community Legacy Areas include all of Lawrence Avenue and the last time we applied for Community Legacy Area money we had to come up with a Community Legacy Area about five years ago and adopted it at that time. The Community Legacy Area applications were submitted to the State along with a map. We started looking at the properties because the Community Legacy Area money is specifically for redevelopment type projects. We looked at parcel-to-parcel at what properties would qualify for redevelopment or infill.

Member Collier asked why the Mattingly's property was selected?

Ms. Miller stated it was selected because it is in the same commercial zoning category and there is potential for a project to be proposed there. The PIRD includes the gas station and Burch Mart and the entire commercial area along there. The rest of the properties in that area were residential multifamily or residential single-family and so we just tried to look at the specific parcels that may benefit from this category.

Member Fearn remarked this redevelopment/reinvestment would benefit the Town.

Member Collier then asked why that paragraph does not have single-family residential as a zoning category?

Mr. Redman stated that what you see on this map in yellow does not apply. It applies to anything on this map that is also zoned single family residential but I am not sure if that was the intent.

Ms. Miller remarked that parcel #192 is New Town Village and that is still zoned residential single family, but it is multifamily use right now. The Council felt that at some point it could qualify as a redevelopment project, so it was included. In order to qualify, it would have to go through a rezoning as it is still zoned residential single-family, but there could be a potential down the road for it to come forward as a redevelopment project.

Mr. Redman stated that if we don't list residential single-family they would not be in the candidate area. The applicant has to follow the process for it to come to land.

Member Collier stated that the designation has to be in the paragraph, otherwise there could be potential problems later; if it is on the map it needs to be included in the paragraph.

Member Fearn asked what do you include that is residential single-family along Lawrence Avenue on the other side of the street?

Ms. Bonnel stated they are all currently being utilized as residential single-family as opposed to Washington Street where there are mixed use offices and multifamily already existing.

Member Collier noted that the section just sited on Washington Street, as single family there is only one mixed multi-family use.

Ms. Bonnel replied, correct multi-family then an office.

Member Collier asked why not include just those two sites, why all the other single-family residents?

Ms. Bonnel explained that this tied into the Comprehension Plan, which states this area will be addressed in the future.

Ms. Miller noted that with the wharf project, redevelopment of downtown and Tudor Hall, it was proposed that those properties be included to ensure this becomes a viable commercial area, but these properties are going to have to go through the rezoning process. There is a non-conforming use there right now.

Member Collier asked if the others are still single-family do you plan to propose to change that?

Ms. Miller replied no proposed change at this time.

Member Fearn commented that if significant change occurred on the other side of the street, someone may want to rezone, that is growth and we do that all the time, but there is a process that they must follow.

Mr. Redman replied that the applicant would have to demonstrate change in the character of the neighborhood or the state of the original zoning to warrant the change, it would be their burden of proof.

Chairperson Moulds opened the floor to the public.

Mayor Norris stated that from an appraisal standpoint, you could only appraise a piece of property on what it legally can be used for and at that point, this Ordinance is not going to change that use. I do not see any appraiser looking at this overlay and changing the value.

Member Candela interjected that the value of the adjacent property could change if you utilize this for a neighboring piece of property and all of a sudden put an incompatible type of use beside an existing use, it could effect the appraisal of the existing use.

Mayor Norris remarked this would be the same if you rezoned it. Chairperson Moulds mentioned earlier that the biggest asset of this overlay is that it eliminated the appeals process. Specific areas along Lawrence Avenue were considered for improvement that most would agree the current owners and potential buyers would like to see improved. How could we get from A to B for improvements, there are so many variances and so many appeals processes which included parking, setbacks, and height, it got to the point that it was decided that we really should look at a redevelopment plan. Specifically, how we could do it throughout the Town. This isn't the only piece of property that requires improvement; we really needed a tool. But it is not just about saving time, it was to assist us to get beyond situations that we couldn't without coming up with some type of solution.

Ms. Miller remarked that this wasn't just Mr. Redman's recommendation. When this issue came up we talked to Mr. Redman, to the Maryland Department of Planning and to the Town's attorney. All three were in agreement with this recommendation.

From the floor, Leslie Roberts remarked that there are two things she would like to point out. One, is that the Planning Commission and the developers have a list of projects that they would love to see redeveloped in Leonardtown and this provides the Town a tool to work with people that are willing to commit to working in Leonardtown. There are companies out there who are not willing to work in Town because there is nothing the Town can do to help them, such as tax breaks to help them with these projects. Zoning is not static, it changes all the time, and this is what the Planning Commission and Council do. The Council has had several different properties that have been rezoned, but it had to be compatible use. The Council struggles with every decision and the main reason it ends up with the elected officials is because if we make the wrong decision, we will hear about it which makes it even more important for us to make sure the Council makes the right decision.

Member Candela noted that the reason why the Town of Leonardtown adopted the zoning Ordinance in the first place goes back to when Bell Motor Co. purchased property on Washington Street and made it into a commercial establishment when prior to that it was all residential. The moment you put a piece of commercial property in the middle of a residential area then every adjoining piece is ultimately going to become commercial. I applaud the intent of this because there are isolated pieces of properties that really do need some attention, but my concern is that it is a form of spot zoning. As you start approving these projects then you are going to have some non-compatibility. If you take a single-family residential property and make it multi-family or a duplex that is a compatible use, but when you start coming up with a use that is not compatible then you change the complex of the neighborhood. One of the reasons the Ordinance got adopted in the first place was to protect adjoining property owners. My concern is whether it is going to affect adjoining property owner taxes because now a nice piece of property is next door. Does that make this property more valuable? Will the tax assessor come along and raise the taxes?

Ms. Roberts remarked that the same thing happens in residential areas. Do you think the tear down and build-out at Clinton is not going to affect assessment if it were to sell at twice as much as anything in the neighborhood. The same thing happened to the brand new home built on my street. That happens in residential even if you leave it residential.

Ms. Miller asked the Planning Commission to look at page two specifically A through F. Compatibility to the neighborhood has to be proven by the applicant. That the project is not going to adversely affect the neighborhood, such as the traffic, noise and parking and that it is consistent with the purpose and intent of the district. They will need to follow the process.

Ms. Roberts commented that if it is non-compatible then the Planning Commission should not be recommending it and the Council should not give approval.

Mr. Redman noted that one of the hallmarks of zoning, when it first began, was a strict separation of uses. A district for homes, a district for business and never the two shall meet.

What has been learned over the years is that towns are activity centers and to make them activity centers and to encourage spending, that the mix of uses can be a good thing.

Member Fearn remarked that some of the homes are fixed income and have been here a long time, what happens to these folks?

Ms. Roberts responded that if Tudor Hall Village begins building and selling \$800,000 homes isn't that going to affect those homes. Leonardtown is not going to stay the same. The Town needs to manage growth the best way possible and it will require the necessary tools to do so.

Member Fearn request clarification on page two regarding the six items. What makes that different than someone coming in and saying I want to rezone? They are going to have to do these things, why can't that process take place; these changes take place all the time.

Ms. Roberts remarked that the Town would have the tools to determine if the project, such as tearing down a rundown multi-family unit and turning it into a suite of law offices would meet the necessary compatibility criteria for the neighborhood. The Town may think it would be a great move but the project may not meet the setback requirements.

Mr. Redman suggested another difference between a normal rezoning versus the use of the overlay. Someone comes in and wants to rezone from residential single-family to commercial. They have the burden of proof to demonstrate change of mistake. The applicant and Planning Commission members agreed that some of the development that has occurred in the area makes the community feel different, but the question to ask is: Was the development that occurred permitted by the current zoning? If it was, that in and of itself does not constitute change in the character of the neighborhood. So we are already off and running disagreeing whether the rezoning is warranted. If you bring a zone commercial to land, technically, I don't have to show you what I plan to build. The Planning Commission may want to see what is proposed to be built before making a decision to rezone, but even if the applicant shows you what they want to build and the Planning Commission approves rezoning, then the applicant walks away and sells it to somebody else, that somebody else may build anything they want in the commercial zone district, as long as they meet the standards in the commercial zone. The PIRD is tighter and provides the Planning Commission with more control than a rezoning.

From the floor, Mike Mummaugh of Paragon Properties commented that he hopes to propose a project along Lawrence Avenue and asked if they have to see everything he is going to build? This is not like building a house, if all of the improvements have to come before the Planning Commission, will I have to bring a picture of the duplexes and elevations of the what the new apartments will look like?

Mr. Redman interjected that it would also be a good idea to provide pictures of all the neighboring property owners too, to help access the compatibility.

Mr. Mummaugh commented that through due processes the Planning and Zoning Commission could say they do not approve of what it looks like.

Mr. Redman remarked that they could make a recommendation not to approve and the Mayor and Council could find it compatible and approve it.

Ms. Miller mentions that page eight describes everything required to show on your plan.

Member Candela remarked that he has previously served on the Board of Appeals and that sometimes something would come before the Appeals Board and that made a lot of sense at that time to make an exception to the rule. Then the next time somebody came along with a similar type of request maybe it wasn't as desirable. But, as we mentioned earlier, sometimes you set a precedent and many times we would stop and say are we setting a precedent. But you have to think of the long-term consequences, not just what will happen with the one approval. But we run into that now and this just makes the exception easier than the current process.

Ms. Miller explained that it is spelled out in the document that it is determined on a case-by-case, site-by-site basis and a lot of things have to be proven. This would provide the Planning Commission with more flexibility and assist in not setting a precedent, whereas going through the appeals process would much more likely set a precedent.

Chairperson Moulds remarked that everyone has expressed a lot of different opinions and have bounced a lot of ideas back and forth. I would like to bring this public hearing to a close, are there any last statements?

Member Candela moved to close the public hearing, Member Simpson seconded, the motion passed unanimously.

Chairperson Moulds re-opened the regularly scheduled Planning and Zoning Commission meeting.

Old Business

Chairperson Moulds began with the Planned Infill and Redevelopment District "PIRD".

Member Collier questioned when allowing permits for mixed use for residential, small-scale commercial services and retail establishments, if a plan was approved just for that specific function and design, can it be changed later? If another owner comes in and wanted to change it a Doctors Office to retail, can they do that?

Mr. Redman explained that the plan is tied to the approval. If you approve it and they have given you a specific plan and somebody else wants to do something different then they will need to come back before the Planning Commission. Plan approval does not transfer across ownership, unlike zoning.

Mr. Redman commented that if there were no physical changes in the building when they change the use then that might make it debatable and the Planning Commission might interpret whether or not this would constitute any significant change to what was approved by the Council in the first place.

Ms. Bonnel explained a change would also require consideration of traffic and pedestrian flow and meeting the other criteria.

Mr. Redman noted that if it reduces traffic and goes from retail to a Doctor office it may require less parking and the activity generated would be the lower level of activity so it might be arguable that it might not have to come back before the Planning Commission for another approval process. Unless there is an exterior change to the building, in which case, we are back to a set of plans that will require going through the process again. Most often there will be a specific series or single use to utilize a site.

Member Candela asked if another paragraph could be added to the proposed Ordinance that basically states that any change of use of the original plan or structure as approved would be required to start the process all over.

Mr. Redman stated that this could be done.

Chairperson Moulds remarked that if the Planning Commission wanted to make a recommendation to the Town Council then it would be a condition of the recommendation, and would also include the definition of the small-scale commercial services that would include the square footage. Setting a square footage may not be something we want to do.

Mr. Redman asked if they had any thoughts regarding the square footage and what would be a reasonable square footage gap. Most structures that aren't already commercial in the district, and the ones that are commercial are larger in size, but many of the smaller ones that are residential probably aren't going to exceed a first floor of 1,200 to 1,300 square feet.

Chairperson Moulds expressed concern regarding the Mattingly property; someone could come in and put in something larger.

Ms. Bonnel stated that property is in a commercial zoning category.

Chairperson Moulds remarked that we wouldn't want something to come in there and be built bigger than the Mattingly store, but also noted that the Town has a square footage minimum requirement of 10,000 sq. ft.

Mr. Redman commented that it would be much too large in the middle of a neighborhood.

Member Collier expressed concern that there are a lot of properties along Lawrence Avenue that are multifamily. The Town would not want someone to come in and change a building and put in a commercial establishment. We wouldn't want them to be able to build an entire lot into a commercial establishment in the middle of a residential development. A commercial service seems to be Doctor and Lawyer's offices and the like.

Member Fearn remarked that once they come in they will have setback and parking issues on a case-by-case basis and they will be back again before the Planning Commission.

Mr. Redman replied that it is the decision of the Planning Commission to recommend approval of this, subject to establishing a square footage ceiling but is concerned that a square footage ceiling could be problematic in certain circumstances.

Chairperson Moulds asked Mr. Redman how he was going to define small-scale commercial services not considered retail?

Member Collier announced that both, retail and small-scale commercial services, needs to be defined.

Mr. Redman questioned if retail was already defined in the Ordinance.

Member Fearn remarked that looking at the items required in A through F the applicant will come back before the Planning Commission. Each one of these items reflects the size and the type of development and is required each time they present to the Planning Commission.

Ms. Miller asked if they would agree to a definition on small-scale commercial services and not a limitation on square footage.

Member Collier again described his example of small-scale commercial services as Doctor and Lawyer's offices, things that fit in with the community.

Chairperson Moulds asked Mr. Collier to describe what he thinks would not fit in with his scenario of the Doctor and Law offices.

Member Collier commented that a commercial outfit such as a mason or bricklayer, that required a large amount of equipment and trucks, would not be acceptable.

Chairperson Moulds agreed those types of businesses requiring that type of equipment would not be compatible.

Member Collier contents that compatibility could be argued quite heavily.

Ms. Miller clarified that the Planning Commission would like to see verbiage for the change of use to come back through the process, a definition of small-scale commercial services and add residential single-family to the applicability section. Adding verbiage on page eight that a public hearing will be held at Town Council was the intent and this does not specifically state that. The Planning Commission should conduct a public meeting; forward the recommendation to Town Council and Town Council will hold another public hearing.

Member Collier commented that he would like to see the residential single-family removed.

Chairperson Moulds disagreed stating that there were areas that needed to be kept.

Chairperson Moulds asked for comments about residential single-family.

Member Candela agreed that residential single-family needs to stay, as many of the properties are residential single-family and the Planning Commission will need to be very careful recommending changes, but the option should be included.

Member Simpson noted that even if we leave it in there, each application will be decided on a case-by-case basis and in regards to setting precedent, he believes compatibility is more important. He has full confidence that the Planning Commission will make an informed recommendation to the Town Council.

Chairperson Mould asked the members for a recommendation to send on to the Town Council. Is this subject going to be a favorable recommendation?

Member Fearn moved to send a favorable recommendation to the Town Council, for the PIRD with the following changes; adding residential single-family, a definition for small-scale commercial services, verbiage that a change of use comes back through the process and that a public hearing will be held by Town Council.

Member Simpson seconded, five members in favor, one opposed (Tom Collier), the motion was passed.

Chairperson Moulds continued the discussion on Old Business.

Leonardtwn Elementary School Final Site Plan.

Ms. Bonnel suggested this project should be tabled until the next meeting as the engineer who submitted the plan was absent. Please inform her of any questions or concerns to be passed on before the next meeting.

Member Fearn inquired about the fencing he had asked about previously, would Ms. Bonnel note that and pass along. Ms. Bonnel responded yes.

Member Candela questioned covering the entrances from the parking lot. He did not notice where it was addressed. They had one in the previous plan and took it out. He would like to press the issue especially covering from the parent's parking lot and bus drop-off to cover the walkways to/from the school. They have coverings at Bannecker Elementary and another local school.

Member Candela moved to table the project, Member Fearn seconded the motion, motion passed unanimously.

Chairperson Moulds asked if there were any questions on the monthly in-house permits. There were none.

Ms. Bonnel remarked that she included in the members packets the Town's main project information sheet. The members expressed their thanks; it was very informative.

Chairperson Moulds asked for any comments on Town Council minutes.

Member Candela moved to adjourn, Member Fearn's seconded, motion passed unanimously. The meeting adjourned at 5:30 p.m.

Respectfully Submitted:

Teri Dimsey, Recording Secretary

Approved:

Jean Moulds, Chairperson

Frank Fearn's, Vice Chair

Jack Candela, Commission Member

Tom Collier, Commission Member

Gary Simpson, Commission Member