

**Planning & Zoning Meeting  
Minutes  
July 21, 2008**

**ATTENDANCE:** Betty Thompson, Michael Fortner, Matthew Oberholtzer, Evelyn Hansen, Commissioner James Hansen, Town Engineer Chris Rogers and Planning & Zoning Coordinator Dianna Battaglia.

Meeting called to order: 6:35pm.

**APPROVAL OF MINUTES**

**MOTION** was made by Evelyn Hansen and seconded by Matthew Oberholtzer to approve the April 21, 2008 Planning and Zoning Meeting minutes as written. **All in Favor; Motion Carried.**

**MOTION** was made by Betty Thompson and seconded by Matthew Oberholtzer to approve the May 19, 2008 Planning and Zoning Public Hearing and Meeting minutes as written. **All in Favor; Motion Carried.** Michael Fortner abstained.

**MOTION** was made by Evelyn Hansen and seconded by Matthew Oberholtzer to approve the June 30, 2008 Planning and Zoning Public Hearing and Meeting minutes as written. **All in Favor; Motion Carried.** Michael Fortner abstained.

**NEW BUSINESS**

**File No. FP2008-01- Final Site Plan/Plat Principio Health Center Phase II.  
PROPERTY OWNER: Perryville Medical Center I, LLC; APPLICANT:  
Clark Turner Construction, LLC; LOCATION: Route 40, Perryville, MD;  
Tax Map 29, Parcel 484 & 545, Zoned C-2.**

Mr. Fortner asked for comments from the representatives of the request.

Rowen Glidden, with G.W. Stephens of Harford County, stated he is representing the Principio Health Center Phase II, the second of the larger of office buildings in this park, with Ryan Woerner representing Critical Medical Center I, LLC as the owner, and developer also. We appreciate Chris Rogers' comments and looked over them and don't have any major issues with them. They are the same type of comments that we dealt with on Phase I. We are here for Final Site Plan approval for this building to move forward to apply for a shell permit. Hopefully over the last seven months you have had a chance to drive by the site and see building number one go up, that shell is about 90% complete and we will start tenant bid out work real soon. To bring you up to date, the Sediment and Erosion Control Plans for building number two are in for final signature. There is overall approval for the grading of the site in December 2007 and fine grading is in for final signature. The Storm Water Management Plan for the overall site was approved last summer and they remain the same with no changes and the Forest Conservation Plan was also an overall plan with no changes and that was approved in April 2007.

We now have a complete Access and Median Break Permit from State Highway Administration that was recently issued. A copy has been provided to the Town. I have a copy here tonight if there are any questions about it.

We forwarded copies of the Site Plan to the Town and the town engineer as well as the final Landscape Plan for building number two. When submitting for this meeting we failed to include a copy of the architectural plans for this particular building. It is basically a twin sister to the original building. The minor differences are where the doors are located, it is still like the original building; the site falls from the west to the east and we are terracing down and these buildings are basically functioning as a riser like a set of stairs. We have the upper stair built, the riser, and the middle landing is built and we now want to build the second riser and it will include the lower step, and the bottom of the site. This will complete the rear part of the property. We have not submitted for anything along the front of the property yet, we still have those sites and they will come in individually as they are ready to be developed. Everything is consistent with the approved overall Preliminary Plan that was submitted last summer, along with the approved overall Preliminary Landscape Plan from last summer. There are minor technical disagreements in that we believe we are consistent with the spirit and intent of the landscape plan requirements from the code and it's consistent with the overall Preliminary Landscape Plan which was approved last summer. This continues that. The question did come up about whether we could add some more parking islands in this phase and as we pointed out to the reviewers in a phone conversation, part of the parking that is in this phase will serve the future retail building in the front. So if we start to eliminate parking in that phase, then we will affect the ability to develop the overall plan as was originally envisioned. We believe we are consistent with the spirit and intent of the original approved Preliminary Landscape Plan.

Mr. Fortner requested Chris Rogers to review his comments.

Mr. Rogers stated the Preliminary Site Plan for the entire site was approved by the Planning Commission in July 2007. As the individual specific buildings are coming in for the building pads, they are submitting Final Site Plans. That is what this is tonight. They received Preliminary Site Plan approval for the whole site and came in with the Final Site Plan for Phase I, which was approved by the Planning Commission on August 24, 2007. The other building sites on the property, the bank site, the restaurant, and the retail, will also have to submit Final Site Plans for their individual uses.

Mr. Fortner asked if the other sites would have to submit Preliminary Plans for the pad sites.

Mr. Rogers stated the other buildings, the bank, the Phase II building, the retail and the restaurant, were all on the Preliminary Site Plan, all the utilities were master planned knowing what it was going to be as the individual sites come on, but the purpose of this is to finalize and to confirm that the final grading and the final landscaping and the parking configuration is consistent with the overall Preliminary. That is what the function of the preliminary site plan and these findings.

Mr. Fortner stated that when the future restaurant comes on, we don't know what restaurant is going to be there, or what the restaurant will ultimately look like, the footprint that they

want. Wouldn't they have to come in with a Preliminary and say this is the way the parking will be laid out, and the drive through; wouldn't that be a Preliminary Site Plan, or still a Final Site Plan.

Mr. Rogers stated that we would anticipate the overall access to the restaurant would be consistent with the Preliminary Plan. If they start changing the overall circulation of the entire site, we would ask them to resubmit a new Preliminary, but if the traffic circle stays, and the access is still off the east/west internal road, then we would find that consistent with the Preliminary and most likely not have to submit one.

Mr. Fortner asked that the design of the buildings would be approved with the Final.

Mr. Glidden stated that the developers of the project are aware, much like we did last summer when the building footprint for the initial building changed significantly we had to come back and get the Preliminary Plan reapproved at that time. So they are aware that if there was a significant change to any of the three front buildings, then they are going to have to come back and get overall Preliminary Plan reapproved prior to Final site plan approval.

Mr. Rogers continued to review his comments. He stated the plans that you are looking at are the same architectural design as what was constructed out there. We would assume that if there are no other negative comments regarding the architectural design, the plans you are looking at would be part of your approval tonight, if you are happy with them. These are the same building architectural plans more or less as what is constructed out there.

Mr. Glidden replied that as far as the shell is concerned that is correct, the only difference is where there are windows and doors, the design of this building is such that those things could be switched out in the initial design. Over time, as things get re-leased, 15-20 years from now, they would have the ability to convert windows to doors and doors to windows, and if they need to do that they would change the landscaping plan in the front of that, as far as moving or removing sidewalks. The only difference here is where the windows and doors are, but the overall architectural design, the materials, the overall design and concept of the building shell is exactly the same. And much as we're doing with building one, the interior, we will come along later as those phases are released.

URS comments regarding Principio Health Center Phase II Final Site Plan and Landscape Plan are as follows:

*Mr. Rogers of URS has reviewed the above noted plan, prepared by George William Stephens, Jr. and Associates, Inc., (GWS) and dated June 23, 2008. In review of the Phase 2 Final Site Plan which consists of improvements in the northeast quadrant of the site with a 12,365 square foot medical office building, we offer the following comments:*

***Procedural / Administrative***

- 1. If the Final Site Plan is approved by the Planning Commission, prior to the Planning Commission Chairman signing the Final Site Plan, the Town should assure that the following plans have been approved by the following agencies:*

- *Sediment and Erosion Control Plans* - *NRCS*
- *Storm water Management Plans* - *County DPW*
- *Forest Conservation Plans* - *County OPZ*
- *Access Permit and Median Break Plans* - *SHA*
- *Parking, Grading, Water, Sewer Plans* - *Town Engineer*
- *Landscape Plan/ Lighting Plan* - *Town Engineer*
- *Architectural Design* - *Planning Commission*
- *Water Plans, Hydrant Locations and Internal Circulation Plans* - *Town Fire Chief*

2. *A Public Works Agreement (PWA) was executed for Phase 1 that guaranteed the off-site public water and sewer facilities which have been installed. The Phase 1 PWA also allocated 2500 gallons per day (gpd) of water and sewer capacity. No public improvements (improvements to be dedicated to the Town) are proposed for Phase 2. We would like to discuss with the applicant, the Town and the Town Attorney to what extent a PWA is necessary for Phase 2 to allocate water and sewer capacity and/or to assure that the private improvements will be installed consistent with the Site Plan.*

Mr. Rogers continued to review his comments regarding public water and sewer lines. Those lines have been installed and inspected. There are still plans being submitted that we are still reviewing. We don't feel there is a need for a Public Works Agreement for Phase II, however another purpose of the PWA is to allocate water and sewer. So we would like to work with the Town Attorney and the Town to the extent that additional water and sewer needed for Phase II, as to how to allocate that for this property. From what we understand, the PWA for Phase I, in addition to guaranteeing the water and sewer construction, it also allocated 2500 gallons per day of water and sewer capacity. As I understand it that also covers Phase II, so we will need to confirm that with the applicant and the previous water and sewer tables that were submitted, but the water and sewer allocation, the capacity is not an issue, we just want to confirm to what extent it's already been allocated for this Phase II.

Mr. Rogers continued that another item to add here is there was a portion of the Public Works Agreement for Phase I that required the applicant to construct a sidewalk across the front of this property if and when sidewalks were ever built on either side of this. And the PWA read that deed restrictions would be recorded that would require that for Phase I. I would like to add that to the list to confirm prior to the signing off on the Final Site Plan: that deed restrictions have been recorded that has that requirement in there. The Mayor and Commissioners agreed that sidewalks weren't necessary now, but when anything gets built on either side, they want sidewalks to be continued across the entire front of the property.

3. *A Landscape Agreement should be executed with the Town that guarantees the required landscaping and afforestation or reforestation.*

***Planning/Technical Issues***

1. *As has been noted in our previous review correspondence, the proposed site is within the Highway Corridor Overlay District (HCOD), which is measured 500 feet from the centerline of U.S. Route 40. Standards for development in the HCOD are found in Part VI of the Town's Zoning Ordinance, with specific reference to Sections 144 to 153. As part of HCOD requirements, building elevations should be made an integral part of the Final Site Plan review and approval. The applicant should submit building elevations to the Planning Commission as part of the Final Site Plan review.*
2. *The Phase 2 Final Site Plan for the medical office building has a different number of pedestrian entrances than on the Preliminary Site Plan. The Applicant should clarify any changes to the number of entrances and/or access ways.*

Mr. Rogers asked Mr. Glidden if the number of accesses has changed, and has he accommodated those changes with landscaping and pedestrian accesses and sidewalks in front of the building. Mr. Rogers stated to the Commissioners that between Preliminary and Final there was a minor change but the Final overall is consistent with the Preliminary, we just wanted to bring it to your attention.

Mr. Glidden stated the only difference is between the sidewalks along the parking and the face of the building; that is where the changes occurred. The overall pedestrian access is the same it's just the section between the sidewalk along the property and the building itself, where the doors are being accessed from the sidewalk.

3. *The building elevation Plans should demonstrate compliance with the Town's building height requirements in Article XII Section 234.*

Mr. Glidden demonstrated on the Architectural Plans the height of the building is in compliance with the Town's requirements.

4. *Prior to the issuance of any sign permits, the Applicant should submit a master signage plan to the Planning Commission consistent with the sign regulations in Article XV as well as the HCOD requirements in Section 150.1b.*

Mr. Glidden stated that he is aware of it and the developers are aware of it and are actively working and have been working on the signage plan. It's one of those things that get developed over time. Because there are already tenants involved in building number one, some of the building has been pre-leased then they get the opportunity to delve into that issue. It becomes a little more complicated than just when the developer can make the decision on their own. There will be ongoing negotiations as far as that is concerned. The developer is aware that they need to provide the overall signage package at the same time or prior to submitting for the first sign permit and that shouldn't be a problem.

5. *Water and sewer plans and road and drainage construction plans have been submitted to URS on July 16, 2008. These plans are currently under review. URS does not anticipate any major comments that would impact the Planning Commission's consideration of the Final Site Plan.*

Mr. Rogers stated that water and sewer that serves the site has been constructed. That was that construction that was across the front of the nursery, the furniture store, and Mary Martin Post Card building. Those are public utilities that have been constructed in accordance with the approved plans.

6. *The Site Plan proposes two retaining walls on the north and south sides of the building. As per Article IV, Part I Section 31.2j of the zoning ordinance retaining walls shall have plans sealed by Maryland licensed architect or engineer. The retaining wall plans may be submitted as part of the building permit plans.*

Mr. Glidden stated that he believes that is the intent to be submitted simultaneously with the building permit plans.

7. *The Planning Commission should discuss with the Applicant the need for crosswalks at designated pedestrian crossings. Additionally, the Applicant should clarify the plans for grading and stairs provided at the central pedestrian crossing/ island.*

Mr. Rogers and Mr. Glidden reviewed the site plan and Mr. Glidden stated that is handicap access, it is pressed ramps to allow access for the sidewalk to the center island and to the building.

### ***Landscaping Plan***

1. *The Landscape Plan should contain the proposed site lighting and comply with the standards of Section 150.1e. the Zoning Ordinance regarding the HCOD.*
2. *Our previous correspondence highlighted the HCOD Zone standards and the need for a “robust landscape plan” to compensate for the removal of all vegetation from the site for grading purposes. This comment was also made a condition of Preliminary Site Plan approval by the Planning Commission. The Phase 2 Landscape Plan has been reviewed as such:*
  - a. *Section 301.1b. Shade Trees: 1 tree per 50 feet of perimeter.  
1,377’ perimeter length. 28 shade trees required. 20 provided.  
It is recommended that shade trees be planted at a maximum 50’ on-center between the parking lot and the stormwater basin area.*
  - b. *Section 302.2. Understory Trees: 1 tree per 50 feet of perimeter.  
1,377’ perimeter length. 28 trees required. 13 trees provided. Assumes flowering tree equal to understory.  
Additional understory trees should be planted to satisfy this requirement.*
  - c. *Section 303.2. Evergreen Trees: 1 tree per 100 feet of perimeter.  
1,377’ perimeter length. 14 trees required. 25 provided.  
Requirement satisfied.*
  - d. *Section 304.2. Evergreen and deciduous shrubs: 1 per 15 feet of perimeter.  
1,377’ perimeter length. 92 shrubs required. 199 provided.  
Requirement satisfied.*

e. *Section 309 Parking Facility Perimeter Landscaping.*

- *1 tree per 40' landscaped area adjacent to street right-of-way.  
Requirement satisfied.*
- *Vegetative screen around all parking lots, 3' tall.  
Requirement satisfied.*
- *Grass or ground cover on all landscape areas not otherwise planted.  
Requirement satisfied.*
- *4' setback for plantings from edge of paving.  
Requirement satisfied.*

f. *Section 310 Parking Facility Interior Landscaping.*

- *Landscape areas should equal 10% of the parking area.  
The proposed 5,555 sf. of landscape area meets the 10% requirement of the 43,000 sf of parking area.  
Requirement satisfied.*
- *1 island per 10 parking spaces.  
With 137 parking spaces provided in Phase 2 there are 14 islands required. 14 provided.*
- *Section 310.5. Parking lot islands. Maximum size of island is 1500 sf. in parking areas greater than 30,000 sf.  
Requirement satisfied.*
- *Section 310.7. Minimum plant material.  
Requirement satisfied.*
- *Section 310.8. Landscaping for service structures.  
Only screening for dumpsters is proposed. Attention should be given to other utilities such as electric transformers and HVAC units when on the ground.*
- *Section 310.13. Parking lot shading.  
20% of the vehicle accommodation area must be under a shade tree spread when mature. A "vehicle accommodation area" is defined in Section 273 as that area of a parking lot that is used for access, circulation, parking, loading and unloading. 20% of the net parking facility is 8,600 SF. Note 4 on the Landscape Plan states that this requirement has not been met because "every available area (without underground utilities) has been heavily landscaped and shade trees are used as much as possible to meet the requirement as much as possible." It appears there is room for additional shade trees in the interior and*

*perimeter of the parking area. In addition, the number of parking spaces exceeds the minimum requirement; therefore the number of spaces could be reduced to allow for additional landscaped islands with shade trees. This should be discussed with the Planning Commission.*

2. *In general, the Landscape Plan meets most of the Zoning Ordinance standards, with the exceptions as noted above. We recommend that a revised Landscape Plan be submitted that exceeds the minimum standards of the Highway Corridor Overlay District to comply with the condition of Preliminary Site Plan approval by the Planning Commission. The Revised Landscape Plan should be accompanied by a response letter that addresses point by point how each item has been addressed.*

Mr. Rogers stated that except for the items he is going to mention, the Landscape Plan meets or exceeds the requirements. Section 301.1b regarding shade trees 1 per 50' of perimeter of the site, 28 trees required with 20 provided, we thought there could be room for additional shade trees to supplement the three or four on the east side of the site between the parking lot and the stormwater basin. He proceeded to review a copy of the Landscape Plan with Mr. Glidden showing where there is additional room for more trees.

Mr. Glidden replied the Landscape Plan along that edge is also integrated with the Storm Water Plan that was approved this way by the County and we want to stay consistent with what was shown on the Preliminary Landscape Plan which is consistent with what is on this plan. There are a significant number of evergreen trees along that border that will screen the parking from the stormwater management as well as the building from stormwater management and also from Route 40 east because this site does drop significantly in that direction. That also will screen the parking and approaching vehicles from the east. We think this is an appropriate proposal for this area and would like to maintain it as it was originally proposed.

Mr. Rogers asked what stormwater management has to do with the shade trees up here because they are not part of the treatment process for stormwater.

Mr. Glidden replied that it had nothing to do with stormwater management but thought a request came from the Planning Commission during the original overall review to have significant screening along the stormwater pond and if we take evergreen trees out to plant deciduas trees for shading it would impact the screening.

Mr. Rogers asked if all the trees shown as understory are evergreen trees.

Mr. Glidden replied they are evergreen trees.

Mr. Rogers stated that there is substantial screening here but could be room for more shade trees. In between the large shade trees shown there are a significant amount of shrubs and evergreens. He stated that his review of the plan used the perimeter as the landscape plan around the building.

Mr. Glidden stated that he understood the perimeter of the requirement is to do with the perimeter of the entire site, not just the developed area, and the perimeter of the site is naturally covered with deciduas trees. Overall, to include the existing natural vegetation



remaining along the north part of the property and the entire east part of the property we believe we more than exceed the landscape requirements for the overall site.

Mr. Rogers stated Comment #2 was a similar comment regarding the perimeter that we thought additional understory trees should be planted to satisfy the technical requirement of the perimeter. We were talking about the developed area perimeter.

Mr. Glidden again stated their position of the perimeter is the site perimeter and we feel we are addressing that and we addressed it correctly on the Preliminary Site Plan and Preliminary overall Landscape Plan which was approved last summer.

Mr. Fortner asked if the area between the perimeter of the development and the railroad track is all wooded area.

Mr. Glidden verified that area is a wooded area that is in Forest Conservation which will stay that way and is protected by the Forest Conservation easement, as well as this area below the stormwater pond and the wetland area, and in the perimeter of the site they did mix understory, evergreen trees and shade trees around the rest of the perimeter of the site.

Mr. Rogers continued that regarding the Highway Corridor Overlay District there is a high priority put on screening of dumpsters, which has been done.

Mr. Glidden showed on the plans that the dumpster is around the rear and they are actually using the building as well as the retaining wall in addition to the landscape screening so all you could really see of this dumpster would be if anyone drives into the parking lot all the way around to the rear of the building.

Mr. Rogers asked if there were any utilities or transformers on the ground, just like dumpsters are to be screened from view, we want to make sure that any ground level utilities are also screened from view.

Mr. Glidden replied that they are probably so well covered he can't find them on the plans. A review of the plans show the transformer is located at the rear of the building near the dumpster and is screened by small shrubs and the retaining wall, but will only be in clear view from the railroad tracks.

Mr. Rogers continued regarding the last comment, Section 310 for parking lot shading, that there is a note on the plans saying that one of the requirements, parking lot shade cover could not be met because it couldn't be met on the site and it looked like, to us, there is room for additional shade trees, to try to come up closer to the requirement for shade trees in the parking lot. He stated that Mr. Glidden had mentioned that we had asked them to possibly do away with some of these parking spaces but you're saying that some of these parking spaces over here are going to be for the future commercial over here.

Mr. Glidden responded that is correct.

Mr. Rogers asked that when we see the future commercial site plan, it's going to have less than the required parking spaces.

Mr. Glidden replied yes within that area, but we will show overall parking requirements. We view this as an integrated park as seemed to be the idea from the Planning Commission when we initiated this project that all these pieces be integrated, and that they really be designed so that people could park in one place and walk to multiple places in the park, so they wouldn't be getting in their car and driving to shop in another place or go to see another office or drive over to the restaurant. So that's why we integrated the pedestrian system the way we did and also took a holistic look at the parking so we wouldn't over park the overall site. Because of the nature of the topography of the site, we took a real hard look at how this would lay out so we believe we provided the best possible solution for that on this overall site and we don't want to box ourselves in and eliminate parking spaces for building two that would force us to necessarily reduce the size of the building for the future retail office building in the front because it is an overall park design. This plan is consistent with the overall Preliminary Landscape Plan in terms of the number of the plants, probably have a few more than was on the original plan but definitely no less.

Mr. Rogers further stated that when it is time for the design of the commercial office, they will want to maximize the number of parking spaces too and how are we going to do this, they will want to survive on their own as their own quadrant.

Mr. Glidden replied that what we were trying to do and part of the reason why the parking ended up being pushed to the rear of the site was because we wanted to have the landscaping along Route 40 that was requested. The pad sites across the front are suffering a minor bit in terms of parking near those buildings in order to have that landscaping across the front of the site that your code would like to have, but that is part of the trade off that we made in designing this overall site.

Mr. Rogers stated that as part of the PWA comment, he has been mentioning this on commercial retail buildings, that even though these improvements are private, the Town and URS are going to be inspecting some of these private facilities like the dumpster locations, the curbing, the cross walking, we just did it for Riverside even though they were all private. All of these private improvements are going to be part of the Town's inspection even though it's not part of the PWA and is not going to be dedicated. Because of the Highway Corridor Overlay District, the Town is taking a more intensive review of these private facilities. We did the same for Dunkin Donuts and found that there were some things that were inconsistent with what they had told you such as directional arrows, signage, outside tables, and those kinds of things are going to be part of the Town's inspection procedures, even though it's not part of the Public Works Agreement.

Mr. Fortner asked what kind of teeth these inspections will have as they find violations.

Mr. Rogers said he is still working on developing the procedure with the Town and ideally it will curb for occupancy permit. It didn't happen with Dunkin Donuts but they did have to improve the site, and the handicap spaces were in accordance with the plan.

Mr. Fortner opened the floor to public comment.

Mr. Robert Lay of 538 Franklin Street stated he has been living there for 44 years, asked where the building is located, and what will the Phase I be used for.

Mr. Glidden stated it is just down the hill and it will be a medical office building.

Mr. Lay asked with Union Hospital.

Mr. Glidden replied that he believes so.

Mr. Fortner asked if there were any comments from the public or from the commissioners.

Ms. Thompson asked how wide the sidewalks were going to be where you get out of your car. Some of the entrance ways seem to be wider and the sidewalks are narrow, with the amount of pedestrian use.

Mr. Glidden responded that some of the sidewalks are wider because they have double doors and the single doors are not as wide, but they are all ADA compliant.

Ms. Thompson said she just wanted to make sure that they were wide enough.

Mr. Rogers verified the narrowest sidewalks scale at 5'.

Mr. Fortner commented about the parking and the shared parking and some of the parking for the office building that you are going to provide at the front part of the site. Looking at the total parking spaces required is 382 but you are proposing 421, and questioned the additional 41 spaces more that what is needed plus you are implementing the shared parking requirement with the idea that people can park once and walk to a couple different places at once, this should reduce your need, so why so many additional spaces.

Mr. Glidden stated that it reduces the need for the individual building, but doesn't reduce the need to meet the overall requirements of the park. There are only a few spare in the overall park.

Mr. Fortner pointed out that the Final Plans show 382 spaces are required per the code, but they are proposing 421. If that is the code, then you only need 382.

Mr. Rogers informed Mr. Glidden the 421 proposed is on the front of the Final Site Plan that was submitted, the last note of number 7.

Mr. Glidden responded that it shows in the overall park 382 required and 390 provided.

Mr. Fortner responded that total parking proposed is 421 on his site plan.

Mr. Glidden replied he will have to double check that.

Mr. Fortner stated that since you are trying to create a campus like feel, it would be reasonable that you create more landscape open space, kind of a pedestrian area, make it more of a walker place rather than a large parking lot and seems like a lot of this could be

eliminated to provide for some of the shade trees that were requested earlier and landscape it up a bit and give it more of a campus feel which seems to be what your goal is. You need to look at the code requirement and how many spaces you need according to the code and provide that, and then open space or landscape the rest.

Mr. Glidden replied that he will check that.

Mr. Fortner said that if you went up higher near the main facility then you should be able to reduce something at the office area.

Mr. Glidden stated they will look at the number of spaces between the Preliminary and the Final Site Plan; the requirement of 421 provided I will confirm that is the case, it could be a typo. He didn't recall suddenly finding an extra 32 spaces.

Mr. Fortner asked if there were additional questions regarding the landscaping or any opinion in terms of what the perimeter is or are you satisfied with the comments.

Ms. Thompson asked about pedestrian walkways and it might be a little premature, but it looks like a supposed stairway off of the circle entrance.

Mr. Fortner asked if that is a wheel chair ramp.

Mr. Glidden stated it is a ramp and he will confirm that.

Ms. Thompson said that would be a good place for a pedestrian cross walk in the future when some of the other buildings come along.

Mr. Glidden stated that is the intent. All these buildings will be interconnected from around this circle so you can walk from building to building and each building and every building, and you will be able to work your way through the campus.

Ms. Thompson stated that there will be pedestrian crosswalks through the campus.

Mr. Fortner asked for a motion.

**MOTION** was made by Ms. Thompson and seconded by Ms. Hansen to accept the plan as is with the addition of URS comments regarding additional shade trees and to confirm deed restrictions have been recorded that would require a sidewalk along the frontage when a sidewalk is constructed along adjacent properties and to check on the parking spaces.

Mr. Rogers stated for the applicant to recheck the number of overall required parking spaces, recheck overall proposed parking spaces, and to have that equal more of the required spaces, to be kept within an excess of 10.

Mr. Glidden replied that he thinks that is where they really are and he will check the typo and find out who made it.

Mr. Rogers stated that the overall parking provided should be within ten (10) of the parking required.

Mr. Fortner responded that the rest should be landscaped, to be implemented with your comments, with shade trees.

**All In Favor. Motion Carried.** Commissioner Hansen abstained.

**File No. ZC2008-03 – Home Child Care Center. PROPERTY OWNER & APPLICANT: Deborah Ingram; LOCATION: 1475 Clayton Street, Perryville, MD; Tax Map 800, Parcel 460, Zoned R-1.**

Ms. Ingram stated she is requesting approval for a home day care, not child care. There is a difference per the State, between a child care and day care center.

Mr. Fortner asked Ms. Ingram to explain the difference of a day care.

Ms. Ingram stated that the difference is the size, the amount of people she will be serving. Day Care Center is in the home and is to be typically less than seven.

Mr. Fortner stated that day care is the smaller of the two.

Ms. Ingram replied yes. She is looking to open in September, already has the preliminary paperwork done with the state to be licensed, with everything in the works to have seven children which is consistent with the Zoning Code, the Fire Marshal has been out and she passed. She has a Masters Degree in Early Childhood, an at home mom, mother of a two year old daughter, and looking to do this because it will keep her busy and she would enjoy this.

Mr. Fortner asked if she is familiar with Zoning Ordinance Section 180 and have you read and reviewed it.

Ms. Ingram responded that she has.

Mr. Fortner asked if this falls in line with her home.

Ms. Ingram responded that it does.

Mr. Fortner asked Mr. Rogers if there were any comments on this.

Mr. Rogers replied that he didn't review the application.

Mr. Fortner asked Ms. Battaglia if it met her review.

Ms. Battaglia stated that Ms. Erickson started the process and that she completed the review, and recommended for the applicant to bring her proposal to the Planning Commission for their approval because it is in a neighborhood.

Ms. Hansen asked if there was an area for drop off and pick up spot.

Ms. Ingram replied it would be her driveway, and it is a four car driveway.

Ms. Thompson asked if that was going to be sufficient, that with the possibility of seven vehicles coming in to pick up and drop off and everybody has to take their child in, they don't just open the door and let them out.

Ms. Ingram replied that is correct.

Ms. Thompson stated that there's not much space.

Ms. Ingram stated she would vary the times that they would drop off. She can not accommodate having seven children at the exact same time dropping off with their parents, and answering questions and things like that, so there will be varied times that they can drop off.

Ms. Thompson replied that it's still going to be tight.

Ms. Ingram stated she is not looking to have the full seven, it is what they say she can have, but not what she will actually have.

Mr. Fortner questioned that they will be different ages too, you might have a two year old and you might have some that just come for after school care, and others are full day.

Ms. Ingram stated that what the State requires is that you go through the licensing and it requires that you have two children under two years of age as the maximum and up to five above the two year old mark.

Ms. Thompson asked if she has a play area and is it fenced.

Ms. Ingram stated her yard is fenced and has a brand new play set and she was licensed for the entire back yard that is fenced.

Ms. Hansen asked if she has a swimming pool.

Ms. Ingram replied no.

Mr. Oberholtzer asked what the hours of operation will be.

Ms. Ingram stated she will be open from 7 a.m. to 6 p.m. which is within the zoning code.

Mr. Fortner asked for public comments.

Mr. Lay asked where is 1475 Clayton Street.

Ms. Ingram replied it is three doors down from the Patterson Funeral home, a single family home.

Ms. Thompson stated that it's the home with the stone in front of it.

Ms. Ingram replied a stone retaining wall.

Mr. Fortner asked if there were further questions from the public or the commissioners.

Ms. Thompson stated to be sure you tell the parents not to park in the road any time. They really need to know that, that would not be a good thing.

Ms. Ingram responded that if they were to do that it would be against regulations for her home and she would not be taking their child from them that day. They would have to park in the driveway because it is not safe.

**Motion** was made by Matthew Oberholtzer and seconded by Michael Fortner to approve the application for Day Care Center as reviewed by Town Staff and meets the requirements for day care pending receipt of license from the State. Commissioner Hansen abstained. **All in Favor; Motion Carried.**

#### **Discussion Items:**

Mr. Fortner stated the first item on the agenda is discussion regarding the RM District.

Mr. Rogers began by stating that the Planning Commission held a public hearing on June 30<sup>th</sup> regarding proposed changes to permit multi-family apartments in the Residential Marine District and to revise the maximum height of all multi-family apartments in all zones to provide consistency with the height requirement in other sections of the Code. Discussion was tabled for consideration pending additional information being provided until the next meeting, in order to make a recommendation to the Mayor and Commissioners. A brief background, the current zoning ordinance does not permit multi family apartments in the Residential Marine property and we consider all of those units down there, Owens Landing, McMullen's Landing, and Perryville Yacht Club I, to be multi-family dwelling apartments. Preliminary Plan approval was withheld from Perryville Yacht Club II pending the Zoning Ordinance being changed. We have proposed changes to the Zoning Ordinance that would permit multi-family apartments under certain conditions in the RM zone and the question that arose at the public hearing and subsequent discussion was the required height of the building.

I believe the applicant is here with their representative to talk about what they would like regarding the proposed height but we are proposing that the building height for dwellings in the RM zone to be 40 feet. A question has arisen in that the definition of building height under the old Zoning Ordinance and under the new Zoning Ordinance is different and is causing some confusion as to whether or not our proposed text changes would actually be more restrictive than what was allowed to be built under the previous Zoning Ordinance. I will let the applicant make their case, and public representatives in the audience make their case.

We are not considering a specific development plan here, we're just considering text changes. The consideration was tabled pending additional information being provided on the height of the dwellings that are down there. With Dianna's help we have pulled the building elevations plans that were submitted as part of the building permit applications for the Perryville Yacht Club Phase I and McMullen's Landing. Owens Landing was too old and we couldn't obtain plans within the time that was given. The Perryville Yacht Club Phase I Preliminary Plan was approved under the previous Zoning Ordinance. That's how the elevations were carried through with the height of the building. The front elevation, with elevation referring to what the building looks like; that is, looking from Roundhouse, the height of the building per the old Zoning Ordinance is 39.5 feet, that is from the ground level of the building to the mid point of a gable or hip roof under the old Zoning Ordinance it says the height of the building shall be measured from the grade, it doesn't say the highest grade, it doesn't say the lowest grade, it doesn't say the average grade, it says the building height shall be measured from the grade to the mid way point of this type of roof. From the front grade, from the Roundhouse side, it measures 39.5 feet. The rear of the building is 48.5 feet, so the interpretation of the Zoning Ordinance at the time was not specific where the grade was taken from, therefore it was taken from the front. The front of the building is consistent with the old zoning ordinance which says the height shall be measured from the vertical distance from the grade to the mid way point of the roof.

Mr. Rogers continued with McMullen's Landing's front elevation, that is the elevation facing Old River Road opposite from the river, under the old Ordinance interpretation, the height of the building is 36.5 feet, and that goes to the midway point of the building. It doesn't go to the highest point, it went to the midway point of the roof. The rear elevation to the mid way point of the roof is 44.5 feet.

We have received some information from the representative of Perryville Yacht Club Phase II and they are proposing that the Section 4 where we designate a 40 foot height, be changed to 55 feet under the proposed zoning text. We understand that under the new Ordinance we are proposing 40 foot height for these types of dwelling in the RM Zone, but the building height definition, which we are not proposing to change, is different than under the old one. The building height definition in the new Ordinance, which is the existing, shall measure the building height from the average grade around the building to the highest point of the building. We believe that what the representatives of the Yacht Club are going to be saying is that the combination of staying at 40 feet in the newer language and with the existing language of the building height is actually more restrictive, and would not allow them to go as high as the existing McMullen's Landing but what I've seen is if we just went to 55 feet it would be too much the other way, that if the language was changed to 55 feet, with the way the language exists for building height in your existing Ordinance, it would allow buildings to go higher than what is out there. I think there is some confusion that some people feel it is overly restrictive and would not allow another McMullen's Landing to be built, but I think the proposed language is overly permissive and under that language a Perryville Yacht Club II or another building down there could actually go higher than these existing buildings that we're talking about.



Mr. Rogers continued that the language of the previous wording for the text amendment has not been changed from the Public Hearing and we're not sure what your pleasure is except to take your comments and go from there.

Mr. Fortner asked the applicant to present their case.

Mr. Joseph Snee, with the law firm of Gessner, Snee, Mahoney & Lutche of Bel Air, MD, stated that he was here with Mr. Wilson and Mr. Close, who are principles of the limited liability company that owns Perryville Yacht Club, back on June 30 for the public hearing and as Mr. Roger's accurately summarizes, at that time we made suggestions to the Planning Commission for consideration to amend the ordinance as drafted. They were summarized and also included in the correspondence that was hand delivered on Friday, that part of the requirement asked for is to go to 55 feet on the theory that what has been built at McMullen's Landing and also our first building is in fact in the 53 foot range based on actual surveys that I have provided in the package. You will note, and you should have them and were included in the package that was hand delivered on Friday, you will note that our surveys prepared by Wilson Deegan, these show for McMullen's Landing a side elevation from ground to peak of 53.9 feet and for the Perryville Yacht Club based on a rear elevation from ground to peak of 53.7 feet. Our goal here is not to play fast and loose with the overall height requirement but to make sure that we can construct our future buildings consistent with the roof lines of our neighboring property and the building that we've already built that is under construction. I might suggest to the Planning Commission that we may have to word-smith that to make sure that whatever height restriction that we come up with is consistent with what is built and takes into consideration the old definition and the new definition in terms of how you measure those height requirements. The last thing that a developer wants to do is come back and build a product that already exists as part and parcel of a project and is consistent with what is next to him and then come back and need a height variance because of this 40 foot requirement. And that is simply our goal here to figure out what that needs to be so that our future construction is simply consistent with what is already built.

Mr. Fortner asked Mr. Rogers to explain the building height measurement where you only go to the mid way point of the roof, because the applicant is going to the top.

Mr. Rogers stated that under the old Zoning Ordinance, under which these plans were considered, the original plans for Perryville Yacht Club I and McMullen's, the building height was not taken to the top of the structure, but taken to the mid way point of the roof. So they met the requirement in the fronts of those buildings because the elevation was taken on the high side to the mid way point of the building.

Mr. Fortner asked if this was so they could have some flexibility with decorativeness.

Mr. Rogers stated he wasn't sure of the intent of it. The old Ordinance is very specific as to where to measure for a flat roof, you measure to the top of the roof, for a mansard roof, it was measured to the top of the roof because that was more of a building facade, but a gable roof or hip roof it went to the midway point of the roof. He further stated under the proposed language, the combination of your existing height definition which goes from average grade to the highest point would allow buildings to go higher. Looking at Perryville

Yacht Club plans this is the front along Roundhouse, so they are right from the bottom of the garage to the top of the building is 55 feet and met the old Ordinance in the front. So if you were to say 55 feet, that plus the existing language would allow them to start here, the midway point, the average grade between the front and the rear, and go 55 feet which would allow them to go even higher. I don't think that was their intent but you can't just simply change from 40 feet to 55 feet.

Mr. Fortner stated that the old Ordinance didn't specify where the grade was so naturally you take the highest grade if you wanted to build high but now our new Ordinance says average grade, so if the grade was sloped you would have to take the average.

Mr. Rogers pointed out on the existing plans that the plans call out average grade because architects are used to doing it that way.

Mr. Fortner asked if they built it to the average grade or did they build to the highest grade.

Mr. Rogers replied that the plans were approved based on using the grade along Roundhouse, three stories, 40 feet per the old Zoning Ordinance.

Ms. Thompson asked when building the new proposed building, are you are going to have to fill in for the garage underneath of it, and where will the entrance be, on the side. Will it be similar to the building on Roundhouse Drive.

Mr. Wilson, of Wilson Deegan and Associates and also of the Yacht Club project, stated that is the difference and that is one of the main concerns we have with the building height. The proposed building down along the water will not be two elevations. The elevation that you are going to see because the entrances to these garages are from the front, we will not be placing fill in the front of the building, you'll be looking at it and the only elevation you will see is that elevation.

Ms. Thompson asked if that could be changed, to come in from the side.

Mr. Wilson said you're looking at bringing in a bunch of fill, and in the floodplain, he would have to look at whether that could be done, it would be rather difficult.

Ms. Hansen stated that the question she has is when he came in the month before last, he said 45 feet high, and this gentleman came in last month and said 55 feet. So is it 45 feet high or 55 feet high. The building that is down there now, the big ugly building.

Mr. Wilson stated it would be 55 feet.

Ms. Hansen stated that is not what you proposed. We would never have agreed to 55 feet. I couldn't see us doing that.

Mr. Fortner stated they would have come in from the highest grade.

Mr. Rogers stated that he looked back at some of the records and there wasn't a debated issue that we looked at the elevation plans and saw this at this level, and this at that level, it

all came out as being consistent with the Zoning Ordinance at the time. There wasn't a lot of debate regarding building height or the grades.

Ms. Hansen said that we sit and listen and you tell us what you going to do and then do something different and no one checks it.

Mr. Wilson stated when we got approval for Phase I it was consistent with what was approved. We didn't change anything in Phase I.

Ms. Thompson replied that Phase I is on Roundhouse Drive, but the elevation was taken from Roundhouse Drive, the high side.

Mr. Wilson replied the old code allowed that.

Ms. Hansen stated under the old code, but you should have been under the new code.

Mr. Wilson replied not in Phase I, but when we developed Phase II all through the development of Phase II there were no guidelines.

Ms Hansen stated she is down there every day.

Mr. Wilson replied that he is just talking about from a development or proposal standpoint, the planning we've gone through, that we've made, these actual height requirements, none of this was in place at the time.

Mr. Rogers stated that he hesitates to get into specific building plans because there aren't that many other parcels left in the RM Zone, but where would the roof line be relative to McMullen's Landing and the current building if you had your way with the proposed language.

Mr. Wilson replied equal.

Mr. Rogers asked equal to what.

Mr. Wilson stated that if you look at the building height down on the water at 53.7 feet, it would be equal to the current building under construction. The roof line would be equal to the roof line on McMullen's Landing, the dimensions are the same.

Mr. Fortner says that it would stay level.

Mr. Wilson said it would be equal essentially and for all intents and purposes the roof lines would be equal.

Mr. Rogers asked if you have to elevate up several feet from McMullen's Landing for Phase II.

Mr. Wilson replied no, that the front and the rear elevation of the next building would be exactly the same as the rear of the first building.

Mr. Fortner said last month there was some discussion about the garage and how it had to be elevated so high to get off of the flood plain and that didn't count towards the height requirement. That isn't taken into account here, that the very first level is the garage. I thought you were making the argument last time that the garage didn't count towards the 40 feet.

Mr. Wilson stated that he wasn't making the argument but just making a statement that he knew he couldn't meet the 40 foot requirement based on the existing buildings. I wasn't making the argument that the garage should or shouldn't be counted, that why I was suggesting changes.

Some discussion continued regarding Owens Landing building elevation.

Mr. Fortner stated that there are no garages in Owens Landing.

Mr. Wilson stated the roof line would be the same and it's a flatter roof than what is out there.

Mr. Rogers and Mr. Wilson looked at the construction plans of the existing buildings to compare height.

Mr. Rogers said so you are saying the front elevation (of Perryville Yacht Club Phase II) along Old River Road is going to be as high as this elevation (rear of Perryville Yacht Club I).

Mr. Wilson answered no and stated the roof line will be the same because the overall height of the rear of the buildings is the same. In other words the distance from here to here would be the same as Owens Landing and will be the same on Phase II. If you take the grade of the ground to the peak of the roof line on Roundhouse, and the same on theirs, there are no garages but they are still elevated, they will be the same.

Mr. Rogers said even though you are going to have a garage along Old River Road and three stories.

Mr. Wilson replied correct, the building is going to be right next door to the one at Owens Landing and the roof lines will essentially be equal.

Mr. Rogers addressed the Planning Commission and stated he doesn't think the language that they are proposing would keep it at that. If you are satisfied with that, then we can craft language to limit it to that, to allow for that and to limit it to that. If you're not happy with that, then let me know and that is something different. We can't propose language right now at this meeting that would limit them to that, but if you give me direction that is something that is a concept to you then we can take it from there, whether or not it should come back to you or go to the Mayor and Commissioners, that he is not sure of.

Mr. Wilson stated it is not his intention to go any higher roof line than the existing buildings.

Mr. Fortner stated that a change in the zoning is a change in the zoning so other future developers will be 55 feet as well if they would win their proposal. Even though they are saying that they aren't going to be going any higher.

Ms. Thompson said it should be reviewed case by case.

Mr. Fortner replied that we don't want to have to do it case by case, there needs to be a standard.

Mr. Rogers stated he is having a hard time envisioning this and asked if the Yacht Club II elevation would be more in line with current buildings.

Mr. Wilson said in Yacht Club II what they did at McMullen's Landing was they filled in, and we don't propose to do that, and I don't know how he did that. The building in Phase II will be elevated all the way around and you will drive underneath of them from the front, so with the site difference in height, you are correct in that ours are a little bit more elevated but our rooflines are also a couple of feet lower, which makes it able to keep the roof lines the same height all the way across to the building next door. When you look at these projects from the river, even on McMullan's Landing and on Owens Landing, they are elevated the four stories. Ours is going to be that way all the way around but the roof lines will consistently be the same height.

Mr. Fortner asked for comment from a member of the public, not associated with the development.

Mr. Amato stated he is an ex town commissioner myself from years back, but read in the Cecil Whig the other day that the Mayor said these guys are going to raise the roof to 45 feet, and stated it's going to be at 40 feet, if they don't like it they can go somewhere else. These people build them then ask for a variance which is wrong, and you can't work that way, this is the way it's going to be and if you don't like it, too bad. I think 55 feet is too high. It doesn't make sense to me.

Mr. Fortner asked if there were any further comments from the public, and then back to the developer.

Mr. Snee replied in summary our goal here is not to come back for a variance to go to a height that we would be forced to do in order to make sure our new building is consistent with what's already constructed. Our goal simply is to be able to finish up our project consistent with our neighbors and our first building, so that as Mr. Wilson says if you are out on the Susquehanna River looking at our building to be built it has the same roof line as McMullan's Landing. That is our goal. Now how you get that as a matter of a text amendment to the Zoning Code I would be happy to sit down and help with that but our goal is not to exceed what is already out there in physical space.

Mr. Fortner stated that even if you matched the Owens Landing or McMullan's Landing, from a river point of view you are essentially blocking out the building that's behind it and how does that make for an interesting waterfront development. If you can't see it, if you are blocking a wall, I don't understand how it fits to a positive vision for river front

development. If you build a building and then you want to block that building from the river so that the people who buy those condos are now looking at other condos rather than the river and then you are building a building no one will see because it's being blocked by another building. I don't know how that makes for interesting river front development when you have basically a wall with a row of condos being blocked by another row of condos.

Mr. Snee replied that he would have to respectively disagree, that is part and parcel of what a condominium regime is all about. You establish the condominium regime over the entire tract of land and there are some units that will have a better view than other units. The first building is obviously going to be screened by the second building. And that is part and parcel of any condominium project, if you go to the city of Havre de Grace that is happening as we speak, and if you go to any other city that happens, and that is reflected in price points. The ones on the river that are unobstructed will command a much better price than the ones that don't have a river view and that's just part and parcel of a normal development project.

Mr. Fortner responded that in Havre de Grace he doesn't agree with all the things they are doing with their condominium projects, in many cities that look attractive, that are walked, wooded, and have a nice view, integrated in the town, they have different kinds of heights, they layer the heights, and it's not just a wall.

Mr. Oberholtzer stated that if you look at Havre de Grace some of those condos are four (4) stories.

Mr. Fortner stated if you are in Perryville and look to the Havre De Grace side, you see lots of variation with different kinds of buildings and what we're having at the Perryville side is basically a wall and you don't see anything behind it, you just see this wall and it just kind of stops there and you don't know there is a town behind it. On the Havre de Grace side, they have more variation and so another building in front of a building that will completely block the building doesn't make for interesting development.

Matt made a motion to approve Ordinance 2008-2 as drafted by Town staff without further amendment.

Mr. Fortner verified that we are approving what was written down as building height recommended to be 40 feet from average grade.

**Motion** was made by Matthew Oberholtzer and seconded by Betty Thompson to approve the draft text amendment as written by Town Staff which states the building height at 40 feet and grade at the average. **All in Favor; Motion Carried.**

A copy of the draft proposal for Ordinance No.: 2008-2 is as follows for reference:

**ORDINANCE NO.: 2008-2****MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE**

An Ordinance amending portions of Chapter 84 of the Code of Perryville, entitled Comprehensive Zoning Ordinance and Maps of the Town of Perryville, to permit multi-family apartments in the Residential-Marine District (RM) with conditions and to revise the maximum height of all multi-family apartments in all zones to provide consistency with the height requirement in other sections of the Code.

**WHEREAS**, pursuant to Article 66B of the Annotated Code of Maryland, the Mayor and Commissioners of the Town of Perryville have the authority to enact a zoning ordinance and zoning maps to provide for land use regulation within the Town of Perryville; and,

**WHEREAS**, by Ordinance 2005-1 adopted January 20, 2005 the Mayor and Commissioners of the Town of Perryville adopted a new Zoning Ordinance and Zoning Maps to implement the approved Comprehensive Plan; and,

**WHEREAS**, the Mayor and Commissioners of the Town of Perryville wish to amend the above Ordinance to include a definition of condominium and to permit multi-family apartments in the Residential-Marine District (RM).

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED** by the Mayor and Commissioners of the Town of Perryville that the Town of Perryville Zoning Ordinance is hereby amended as follows:

1. Subsection 1.310 of Section 161 of Article X, Table of Permissible Uses, is hereby amended to permit multi-family apartments in the RM zone with conditions (PC).
2. That Subsection 3 of Section 205, entitled Residential Structures – Single- Family Attached and Multiple Units, is hereby amended as follows:
  - (a) The first sentence of Subsection 3 of Section 205 is hereby amended to read as follows: “Apartments and other multi-family development residential units shall be permitted in the R-3, RM and PUD districts, with conditions, and may be permitted as a special exception in the TC district provided:”.
  - (b) Subsection 3 d of Section 205 (Setbacks) is hereby amended to include new subsection 3 d (6) RM District as read as follows: “(6) RM District – The minimum lot and yard requirements are set forth in Section 238, Schedule of Zone Regulations.”
  - (c) Subsection 3f of Section 205 is hereby amended by deleting the existing language as follows: "Building height. The Building height shall not

exceed forty-five (45) feet.” and inserting in lieu thereof the following:  
 “Building height. The building height requirements are set forth in  
 Section 238, Schedule of Zone Regulations.”

That in all other respects Subsection 3 of Section 205 remains unchanged and in full force and effect.

3. Section 238 of Article XII, Schedule of Zone Regulations, is amended to include under the subheading RM Residential Marine, the subheading multi-family apartments, with the following minimum lot, yard and height requirements:

Total = 40,000, Per Family = 3,400, Width (feet) 125, Depth (feet) 100, Front (feet) 25, Side (feet) 20, Aggregate (feet) 40, Rear (feet) 40, Height (feet) 40, Stories

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**BE IT FURTHER ORDAINED AND RESOLVED** that in all other respects Chapter 84 of the Code of Perryville, entitled Comprehensive Zoning Ordinance and Maps of the Town of Perryville, remains unchanged and in full force and effect; and,

**BE IT FURTHER ORDAINED AND RESOLVED** that this Ordinance shall become effective upon the expiration of twenty (20) calendar days following approval by the Mayor and Commissioners.

\*\*\*\*\*

Mr. Fortner stated the next item on the agenda is R2 discussion.

Mr. Rogers stated we are still in the discussion phase here and there is no proposed text amendment. At the tail end of the last public hearing the discussion regarding R2 was tabled pending additional information and discussion.

*A summary of the recent R-2 Zoning text amendment discussion with the Planning Commission on 6/30/08 is as follows:*

*The issue of Townhouses being permitted in the R2 Zone started with the recent proposal of townhouses on the Easton Diocese property (Honaker Woods) at the end of Honaker Street. The issues are:*

- *townhouses are permitted with conditions in the R2 zone in the Table of Permissible Uses.*
- *Section 205.2. clearly mentions the R2 zone when describing those conditions;*
- *However, the Schedule of Zone Regulations, Section 238 (table that provides for setbacks, lot sizes, etc.,) does not have a category for townhouses in the R2 Zone.*



*When reviewing the Diocese Plan, the applicant was told to use the R3 requirements for setbacks, etc., and our review letter of 4/21/08 deferred to the Town Attorney on whether or not the Schedule of Zone Regulations would need to be amended to provide for Townhouse requirements in the R2 Zone.*

*Upon further review of the R2 Townhouse issue by URS, it may not be a straightforward issue. That is, instead of amending the Schedule of Zone Regulations to provide for Townhouses in the R2 Zone, it may be appropriate to eliminate the other references to townhouses in the R2 Zone, thus making townhouses not permitted. The reasons are:*

- 1. Townhouses were not previously permitted in the R2 zone in the previous zoning ordinance.*
- 2. All of the R2 zones are generally single family detached house neighborhoods.*

Mr. Rogers stated that it was thought that there was perhaps a mistake to allow for townhouses setbacks in the R2 and then we further started to realize that maybe it was intended that townhouses not be permitted in the R2 Zone and the other two sections were mistakes. We say that because we started to think about it with further review of Zoning Map 801 which has the bulk of the R2 Zone, that when we started to look at where the R2 zone exists, that it did not include townhouse developments from what we could tell. Secondly, townhouses were not permitted under the old Ordinance in the R2 Zone, and we gave that some weight. So, that's where we were. At the end of the first discussion we talked about if you were not to permit townhouses in the R2 zone, it would have a negative impact on anything else that the Town wanted to see happen, for example, The Woodlands mixed-use development which we assume to be a positive proposed development in the Town. If you were to outright eliminate townhouses in the R2 zone, it would negatively impact that project in that townhouses were being proposed in that mixed-use development.

Mr. Fortner replied that it is mixed use though, isn't there a PUD.

Mr. Rogers stated that if we were to explicitly delete townhouses being permitted in the R2 zone, it would have a negative impact. And, if you wanted to delete townhouses in the R2 zone and wanted to allow Woodlands to continue, we would need some sister amendments to go along with that. It is easily done, it is easily crafted.

Ms. Thompson stated that she thought MUD (Mixed Use Development) allowed townhouses.

Mr. Rogers replied that it does as a function of the use being permitted in the R2 Zone. It says uses permitted in MUD is any use permitted in the R2 zone. So if you delete in the R2, you delete in MUD. So having said that it is easy to allow for townhouses in the MUD without allowing in the R2. So another option that we discussed, and we don't have specific language on this yet is to allow townhouses in the R2 zone with less dense nature. The only lot sizes and set backs and density and requirements for townhouses in the ordinance are those for the R3. It allows eight (8) units in a block, it allows 18 foot or 20 foot wide lots, 15 foot front setback, and for some reason no rear setback. If you wanted to consider

townhouses in the R2 zone but of a less dense nature then we would go about and craft that language. In general, I see three options in front of you:

1. Do nothing, staff would continue to struggle to figure out whether townhouses were allowed or not.
2. Delete the references of townhouses in the R2 zone and in the other sections but allow for them in the MUD.
3. Allow for townhouses in the R2 zone, but with a more modest density of development, for example, allowing 24 foot wide units, that is something you could do to lessen the density.

Ms. Thompson asked how many units were they planning on in the plan.

Mr. Rogers stated again he doesn't want to get into a specific development.

Ms Thompson asked if duplex units are allowed in R2 zone.

Mr. Oberholtzer answered that he thought they were.

Mr. Rogers stated that two (2) family dwellings are permitted in the R2 zone. Further review continued of the Zoning Ordinance. That may mean two (2) dwellings on one parcel, total of fifty (50) feet. Think of it in your head that a semi-detached as a townhouse with one common wall, and a duplex with two (2) units on one lot, a semi detached is one (1) unit on each lot but have to be attached. So those are the three options. The twenty-four foot width, we'll have to see if that can work, you may hear that there are parking conditions that may prohibit that from being allowed.

Mr. Oberholtzer asked if we shouldn't be caught up in talking about a specific project that we are talking about text amendments.

Mr. Rogers stated he was not talking about Honaker Woods, he was talking about in general.

Mr. Fortner asked whether there would be a public hearing on this, probably.

Mr. Rogers stated that you would have to.

Mr. Oberholtzer asked if he is asking for a recommendation one way or the other and then there would be a public hearing.

Mr. Rogers stated he is asking for staff guidance.

Mr. Oberholtzer said so you just want to know whether option a, b, or c.

Mr. Rogers replied yes.

Ms. Hansen said we should take a vote for town staff.

Mr. Oberholtzer said that it would be a practical option to keep townhouses out of the R2 zone but allow for them in the Mixed Use Development.

Mr. Fortner asked how we can give a recommendation if we haven't had a public hearing.

Mr. Rogers stated that it's not a recommendation to the Mayor and Commissioners, it is to the Staff.

Mr. Fortner replied that we are asking for Staff to draft an amendment to review for recommendation.

Mr. Rogers replied that is correct, that whatever you decide if you do something it will come up at a public hearing.

Mr. Fortner asked if it would be possible to draft two text amendments and then have a discussion during the public hearing and have the developer give input as to we're going to do one or the other, or would we rather have single family houses.

Mr. Rogers suggested a workshop to discuss both options; it would be too confusing to explain two text amendments at a public hearing. If you want to see what they both look like and get a better feel for how they shake out in the Ordinance, then yes, we could draft two for formal consideration, but I wouldn't do that at a public hearing.

Mr. Oberholtzer stated that to be consistent would be keeping townhouses out of the R2 zone and allow it in the MUD on a case by case basis. That seems to be the way the zoning areas are set up at the moment and it doesn't seem to be any reason to change them drastically and giving up large plots of land to another townhouse development.

Mr. Fortner asked if you're asking for a motion on the options.

Mr. Rogers replied that it's probably not a formal motion, it is guidance to Staff.

Mr. Fortner recognized a member of the public.

Mr. Amato replied that I think you should allow public comment; you were entertaining a motion before.

Mr. Fortner asked for his comments.

Robert Amato stated he was here at the last meeting, and one other option would be to develop setback requirements for the R2. Right now, Mixed Use Development allows whatever is in R2 and what you are doing is saying well if we don't allow townhouses in R2 then we can't allow them in the Mixed Use Development, isn't that correct.

Mr. Oberholtzer replied that is not correct.

Mr. Amato replied what would be correct, because right now you are saying that it would affect the Coudon Blvd project because....

Mr. Oberholtzer interrupted that we would eliminate townhouses in the R2 but allow them in the MUD.

Mr. Amato asked doesn't that eliminate townhouses.

Mr. Fortner stated that it is in different zoning.

Mr. Oberholtzer stated that MUD is different zoning.

Mr. Amato replied that Mixed Use Development is a combination of commercial and residential.

Mr. Fortner replied that is correct.

Mr. Amato asked again why not just develop setback requirements for R2.

Mr. Fortner asked Mr. Rogers to answer.

Mr. Rogers replied that he thinks he is correct, that is a fourth option.

Mr. Fortner asked regarding set back requirements.

Mr. Rogers stated setbacks consistent with the R3 type of townhouse development.

Mr. Amato stated to put another chart in the zoning regulations. If R2 was not included, if townhomes were not included in the R2 in the previous Zoning Ordinance and then they appeared in the current Ordinance, seems to me that with all the reviews that go on with the Zoning Ordinance it would be a blatant error if it were an error. It looks to me like an oversight for setting, it looks to me that what happened was.....

Mr. Fortner interrupted that the setbacks mean, isn't that sort of if we could add requirements like in option three, we could reduce to four (4) units in a block and change setback requirements for townhouses.

Mr. Rogers continued that he presented an option to allow for townhouses in the R2, but to make it less dense.

Mr. Fortner stated so there could be a way to make it less dense.

Mr. Rogers replied that what Mr. Amato is saying is to allow for typical townhouse development as would be permitted in the R3. So under the options permitted in the R2, I only gave you a modest intensity townhouse development. You could allow for townhouses in the R2 just like the R3 if you want.

Ms. Thompson stated but you could also change the setbacks to make the lots a little larger.

Mr. Rogers replied yes, just think of it as an option to allow for it and how intense do you want it to be, do you want it to look like the typical R3 townhouse development, or do you want it to be a little less intense, or do you want to go with the other options.

Mr. Amato stated that would be his suggestion that you simply develop, you already have a chart in there of requirements, lot requirements, simply create those requirements or graph or whatever you want to call it, a schedule, pertaining specifically to the R2 and model it after the R3 and make whatever changes you think would be more appropriate for R2.

Mr. Fortner recognized another member of the public.

Mr. Malesh stated that he is a member of St. Mark's Church and informed the members, for the record, that he is chairman on the Board of Appeals too, but he is also a member of St. Marks Church. He is here to represent the church. However, he showed existing townhouse locations on the maps: they used to be R2 and then R3; there are a lot of townhouses here right across the street and he's not in favor of all these townhouses, and wants the best for the Town, but he does want to say that we do have a piece of property here that is owned by the Church, a 150 year old church, pre civil war church, literally a historic landmark in this Town, we have 100 parishioners and we are economically stretched. So be kind to us as you go through this. Whether this is the right plan for it or not, I don't know, but we do have access here and this gentlemen put \$60,000 into developing it after he read through the Zoning laws and it may end up in court saying that you changed it after he read the zoning laws and he planned this, so there is possible litigation. Consider it and be wise with it. We've heard from a lot of developers, first off, he said he would run sidewalks all the way down Honaker Street, he said he would deal with water problems on Honaker Street, try to maybe run it under the road a little bit to make it drier because the original development of these homes here did not drain correctly because they didn't put a sediment pond in, but he said he would deal with that, and put in a large berm between the townhouses and the other homes. Other developments don't necessarily have to do that, even if they are duplexes or whatever is fair, so these people have been fair and honest in dealing with the church. Whether you want that kind of density, be considerate that this land is a viable piece of property for us and we are in a position to sell at this point.

Ms. Thompson asked how large is the St. Mark's property.

Mr. Malesh responded almost 7.5 acres.

Ms. Thompson said that it starts up by Route 40.

Mr. Malesh stated that what you are also dealing with is industrial on this side which is the railroad and this is industrial here, and this developer is working with us, and he is very willing to try to accommodate the residents there. Now if we put 18 foot townhouses, but we don't want to do that because they are the cheapest you can get. But he's willing to go to 20 feet and the sales price would be in the \$200-250,000 range and the houses along this street here could probably sell maybe in the \$200-250 range. It's not going to lower their property value, now, if we could get 24 foot townhouses it would be wonderful, but they would be in the \$325,000 range and that's going to be a tough sell right now. I know it's taken a long time to sell the ones on Frenchtown Road.

Ms. Thompson stated that they are going pretty quick.

Mr. Malesh responded they are very pretty too, but it's a different location from Frenchtown Crossing than back here.

Ms. Thompson stated with the trains going by.

Mr. Amato replied that all they can see is trains.

Mr. Malesh asked to be wise in your decision and all he is saying is that this has to remain viable for the church.

Mr. Oberholtzer stated that since we are talking about this current project, one of my concerns with it is that in these cul-de-sac, dead end townhouse developments, ten to fifteen years down the line you generally see a decline in the property.

Mr. Malesh stated that these are bigger and more expensive. They tried other access routes, we actually tried to go in on Cole Street because it's a straight shot, we tried from Richmond, we tried from everywhere else, but there is a lot out here originally in your zoning board notes that this lot will always be kept open for the Church to have access to develop the land so that's why we ended up coming down Honeker Street.

Mr. Oberholtzer stated that his concern is that in ten, fifteen years down the line we'll be dealing with another slum down there.

Mr. Malesh replied that these are bigger and more expensive. The existing townhouses are as cheap as you can get it and I'll admit they are not pretty, I thought that always.

Mr. Oberholtzer said he's seen other townhouse developments in dead end spaces, like in Aberdeen, and Edgewood, and even in Rising Sun and Elkton and you go there and they were beautiful when they built them, but you get a couple years on them and they start to decline.

Mr. Malesh agreed and said they had received another offer, the church received a substantial offer to put low income housing in and we didn't even consider it, we wouldn't want to do that to the Town and we didn't want them to go through any of the zoning changes for it, we're not going to consider your offer and we turned him down, we didn't tell him why and we didn't talk about the money because it wasn't a good thing for the Town.

Mr. Oberholtzer asked how would duplexes affect the viability of that project.

Mr. Malesh replied that he's not sure. Duplexes can be very small, they can literally be smaller than an 18 foot townhouse, now maybe we could offer this guy to put 22 foot townhouses with a sale price of maybe \$275,000 so maybe that would work for this property.

Robert Smith, rector at St. Marks Episcopal Church, stated that he just wanted to resonate what Mr. Amato and Mr. Malesh just said that any decision made about that will have an impact on St. Marks Church, because we are very deeply strapped financially and we are trying to sell the land so again an appeal has been made, we ask for your resolve.

Mr. Malesh stated that this is on a King's land grant, this land was granted from the King. As a descendent from the Christ Church in Philadelphia, the Church of England, and Thomas Jefferson and Sam Adams attended that Church so we really are a historical piece of the Town a little bit here. We should have some signs. It's pre civil war and was built seven years after the Declaration of Independence.

Mr. Oberholtzer asked Mr. Rogers if there was a chance that if we were to eliminate townhouses from the R2, that they could possibility get some sort of variance for this project similar to what Frenchtown Crossing did. Because my main concern is that I don't want to open all this land to future developers.

Mr. Malesh stated that he can understand not wanting to allow more townhouses.

Mr. Oberholtzer stated that he can certainly respect the Church's position and everybody wants to see the Church make money, but to sacrifice the future of the Town in having possibly all these townhouses.

Mr. Malesh replied that's why we're talking about this.

Mr. Rogers replied that you can't get a variance for uses. If you don't allow townhouses in the R2, you can't come in and say you want a variance to allow townhouses in the R2.

Mr. Malesh asked if there could be a way, that in January next year, come in after this project has come in and is underway, but you could still set limits for the size, how wide, and stuff like that.

Mr. Rogers said that there are other ways to permit uses in zones, one is what we've been talking about by right, you could allow townhouses by special exception which is approved by the Board Of Appeals, and typically you don't see residential developments permitted by special exception because it's more of a common use, like a funeral home, where a funeral home in a certain zone in a certain location may not be negative, but funeral homes all over the place is not a good idea. So, you don't typically see residential use as being permitted by special exception. You could go the Floating Zone route like we did for the MUD (Mixed Use Development) and the PUD (Planned Use Development) but you typically don't see those types of floating zones used for certain types of developments.

Ms. Thompson stated that they are for larger pieces of property.

Mr. Rogers agreed that they are larger pieces of property that you want to mix dwelling types in the zoning district. Yes, there are other ways of doing it, but not very clean as to just allow townhouses. You can't do it by variance.

Mr. Amato asked if there are any townhouses in the Town now that are in R2.

Mr. Rogers stated that Frenchtown Crossing was permitted as a special exception planned unit development under the old zoning ordinance.

Mr. Amato asked why can't we do that.

Mr. Rogers replied that is what he was just saying, if he were to write a new PUD zoning ordinance, it would require a mix of dwelling types, but that was under the old Zoning Ordinance you could draft this to do that and that would be....I'm not sure if we have a PUD provision under this new ordinance.

Mr. Fortner asked if PUD subdivision review would require mixed use.

Mr. Rogers stated that yes you can use MUD or use PUD also, they are just different.

Mr. Fortner replied that they are for different types of housing, but they only have one type of housing right there. So if a developer wanted to come in with a couple single family homes, a row of townhomes, they could qualify as a PUD.

Mr. Oberholtzer stated or even like duplexes or four-unit townhomes, or something along those lines.

Mr. Rogers reviewed the Zoning Ordinance and stated that it looks like PUD allows for single family and detached multi family dwellings, attached or detached townhouses, on tracts of suitable size, but the PUD requirement is a floating zone, it's not a special exception. This is the same process that if they were to come in for a PUD for that property, you would have the same process that MUD went through: a general development plan to you (Planning & Zoning), a general development plan to the Mayor and Commissioners, a preliminary site plan to you at a public hearing, a preliminary site plan to the Mayor & Commissioners for rezoning; so it appears that there are provisions for the townhouses in the R2 under that code, under that provision.

Mr. Fortner recognized another member of the public for comment.

Mr. Mark Corbino stated that Mr. Oberholtzer commented on dead end townhomes, and it was going to be required of us to stub a road over to Neff's property that way when Mr. Neff decided to develop it, it would then go over to Ostego and at that point it would not be a dead end community. I just wanted to bring up that comment. I know the planning commission has a lot to think about, and back in April to today so I wanted to bring that up. We are going to tie in to the sidewalks, BRAC is coming, it's here now and they're moving down and there is going to be a need for housing, and walk down to the Marc train station, that's why we're looking for sidewalks around Honeker, up there so they can get back there. So we're not here to, whatever you guys want, that it's going to help the Church, they want to find the best use of the property and they want to understand where everyone is, just to bring this to your attention, we would stub the road there, that way Mr. Neff would not, because Chris had mentioned the grade system, and he didn't want a dead end, there's nothing to be done with Cole Street, that was an overlay problem, there appears to be a right



of way on the map but there really is not and of course you really can't come in off Richmond, there's no available way right there.

Ms. Thompson stated it's land locked.

Mr. Corbino replied that other than coming in from Honeker, that is the only viable option to get into that property would be to approach the homes, the land off Richmond at that end, will not talk to us about it, and with Mr. Neff, that's where we grew up, that is the only access to that and currently, as that gentleman said, all that water from the previous development drains onto that lot, all those areas, coming down Honeker, coming down Keesey, and it all drains back there and that's what some one at the last meeting complained about his property, and we had in our Storm Water Management to handle all that water to take it back down to the bottom, by the railroad tracks, in that dead space to handle that water problem.

Mr. Fortner asked for other comments from the public or comments from the commissioners in terms of the options to give staff direction.

Ms. Thompson stated that one option is to leave everything the way it is for townhomes in the R2.

Mr. Rogers again stated that if we do nothing then townhouses are listed as permitted in two sections and not in another, so it is confusing and staff is going to constantly be struggling with the issue.

Mr. Fortner said that isn't even an option, we're going to need to clarify it, so if we want to eliminate from R2, one possibility is to eliminate townhouses from R2 and allow them to use PUD to have townhouses in there and they would have to go through a little more public process, which is a little longer, and the other way would be to change the density of the townhouses or create different density for townhouses in R2, have smaller groups, four units instead of eight for example, and have a larger lot size with more setbacks and essentially it creates less density.

Mr. Rogers stated that he's not speaking on behalf of anybody, but I think the third option would be to allow setbacks and lot sizes similar to the R3, if you wanted to go that way. You will see it, just tell us that you would want us to permit townhouses if you wanted to go that way and we will craft setbacks and lot sizes that we think are appropriate, if you think they are too much then you can change it.

Ms. Thompson stated that she would go along with that, but that they not be the same lot sizes as in R3, but they need to be larger than that and not to permit eighteen (18) foot wide townhouses.

Mr. Fortner replied so the intent is to have a less dense use.

Mr. Malesh stated that is what they are proposed to be.

Ms. Thompson stated they would need to be four units to a block, you know I don't know how far you can go with this.

Mr. Fortner recognized another member of the public for comment.

Rector Smith stated that the only thing he can liken this to is the doctors are operating on me and I'd like to know what the doctors are doing, so if I may respectfully request that if you would be in close contact with me, with the Church, where this is going and is there some way that could be arranged. I would respectfully request that you give some consideration.

Mr. Malesh agreed and to whatever process you can give us to notify us.

Mr. Fortner said that we will have to have a public hearing because right now there are inconsistencies and we have to resolve it and then you will know, we will schedule a public hearing, first we will have changes drafted and then we will have a public hearing as soon as we can schedule one.

Rector Smith asked how will notifications be done.

Mr. Oberholtzer stated that it would be advertised in the local paper.

Ms. Battaglia stated that Perryville has a website that now we can post the agenda on our website, and will be updated each month with the agenda of everything that is going to be discussed.

Mr. Corbino stated if you keep R2 zone that we were talking about but restrict it in two parts of the zoning, and the only place that it doesn't appear is in the setbacks, if you were to create those setbacks does it require a public hearing, it's already in the zoning but you would just create the setbacks and vote on it and be done, would it still have to go to public hearing at that point.

Mr. Rogers replied that yes it would.

Mr. Corbino asked even though it's already in that zoning, just creating the setbacks.

Mr. Rogers again stated yes, because you are changing that table.

Mr. Corbino asked but you aren't changing anything, you're adding to the table.

Mr. Rogers said yes it would because you're creating the table for it.

Mr. Fortner asked the Commissioners to make a motion on the recommendations to Staff to draft on, and this isn't the last time for discussion, there will be time for public comment. What I am gathering is that it sounds like we want to allow a less dense development there so what I'm hearing is people are favoring allowing the townhouses as long as it's less dense.

Mr. Oberholtzer stated that you're not hearing that from me. I don't think townhouses belong in the R2 zone. I sympathize with the Church's situation but I think we need to put the interest of the Town first.

Mr. Fortner asked Commissioner Hansen if he had a view on this yet.

Commissioner Hansen replied that he is still uncertain.

Mr. Rogers asked, if just for our needs, to have a vote.

Mr. Fortner stated that we will narrow it down to option two or three; option 2 would be to eliminate townhouses in the R2 zone but allow development using PUD; option 3 is more flexible to allow townhouses but less dense, so have to create a proposal for less dense townhouses, maybe four (4) units and larger setback and rear yard setbacks as well. If you favor Option 2 raise your hand—Matt Oberholtzer, Michael Fortner, Evelyn Hansen; if you favor Option 3, Betty Thompson. This isn't the final decision either, just what we're going to have staff do and then we'll have a debate on it.

Mr. Rogers stated that with it so close, he will propose language for both options and they will be discussed at the next meeting, to be added to the agenda as a work session item.

**Motion** was made by Evelyn Hansen and seconded by Matt Oberholtzer to adjourn the meeting at 8:45pm. **All in Favor; Motion Carried.**

Respectfully Submitted,

Dianna Battaglia  
Planning & Zoning Coordinator