

**MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE
RESOLUTION 2019-01**

IN THE MATTER OF THE APPLICATION OF
SAMBENHEATHER, LLC, AND J.G. PETRUCCI
COMPANY, INC., FOR A PLANNED INFILL
REDEVELOPMENT DISTRICT FOR PROPERTY AT
24-68 HEATHER LANE

Case No. PR2018-01

A RESOLUTION concerning

24-68 HEATHER LANE PLANNED INFILL REDEVELOPMENT DISTRICT

FOR the purpose of denying the application of Sambenheather, LLC, and J.G. Petrucci Company, Inc., to reclassify the property at 24-68 Heather Lane in the Town of Perryville as a Planned Infill Redevelopment District and to approve its associated General Development Plan.

EXPLANATORY STATEMENT

The Applicants Sambenheather, LLC, and J.G. Petrucci Company, Inc. (hereinafter collectively “Petitioner”) filed an application to reclassify the property at 24-68 Heather Lane in the Town of Perryville as a Planned Infill Redevelopment District (“PIRD”), together with an associated General Development Plan. The Town Planning Commission considered the application at its meetings on August 20 and September 17, following which the Commission approved the following Motion:

Motion by Mr. Taylor and seconded by Mr. Barrett to recommend approval to the Mayor and Commissioners to designate the property as a Planned Infill Redevelopment District (PIRD), the proposed General Development Plan and list of uses specific to the site and any other conditions that were discussed tonight including clarification of regulations for the floating zone and Zoning Ordinance by the Planning Director. All in favor, Motion carried.

The Mayor and Commissioners conducted a duly advertised public hearing on the application on October 16, 2018, at which time testimony and other evidence was offered by and on behalf of the Petitioner, the Town and the general public. The Mayor and Commissioners conducted a subsequent duly advertised special meeting on December 11, 2018, to receive further evidence from the applicant and the Town and further comment from the general public regarding the application.

After consideration of the entire record made at the public hearing and special meeting, including all testimony, documents and exhibits offered and accepted therein by way of oral, written or referenced material, and in light of matters of public record of which notice may have been or is taken, and after having duly judged the credibility of witnesses appearing before it, the Mayor and

Commissioners make the following findings of fact and conclusions of law applicable to and in disposition of Petitioner's application for reclassifying the property at 24-68 Heather Lane as a PIRD a PIRD and for approval of its associated General Development Plan.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The EXPLANATORY STATEMENT is a material part of this decision and not merely prefatory, and is incorporated by reference into these Findings of Fact and Conclusions of Law.

2. Sabenheather, LLC, is the owner ("owner") of the 31.4126 acre parcel of commercial real property located at 24-68 Heather Lane in the Town of Perryville ("the property" or "the site"). The property is designated as Parcels 307, 402 and 403 on Tax Map 0029. The property is zoned C-2 Highway Commercial.

3. The property is the location of the former "The Shops at Perryville," a multi-unit commercial retail use, along with its ancillary parking.

4. The property is situated at the end of Heather Lane that accesses off the south side of Route 222 near Exit 93 of Interstate Route 95. Heather Lane is a private road that serves as access to commercial uses to the north of the property that include a Royal Farms store and gas station, a Days Inn Hotel, a Pilot Travel Plaza, a Denny's restaurant, an Exxon gas station, and a vacant restaurant site.

5. Because of its proximity to Route 222 and I-95, the Pilot Travel Plaza for many years has been a fueling station and rest stop for truckers and tractor-trailers travelling the I-95 corridor.

6. Penny Lane is the home to numerous single family detached residences, some of which abut the south side of the property.

7. In addition to residences on Penny Lane, other single family detached residences are situated on Hillside Lane to the south of the property, and on Perryville Road (MD Route 222) to the east of the property. Some of the residences along Perryville road back up to the east side of the property.

8. Undeveloped wooded, wetlands and flood plain property owned by Sabenheather, LLC, and a MD SHA maintenance building and truck weigh station lie to the west of the property.

9. In conjunction with and as part of Applicant's PIRD application Applicant submitted a proposed General Development Plan for the site. The General Development Plan proposes and depicts a 357,000 square foot industrial commercial warehouse distribution facility. The October 16 Staff Report described the proposed facility as follows:

The proposed General Development Plan locates the 350 feet by 1,020 feet warehouse facility in the same area of the site as the former outlet structure, although the footprint extends further on the west side. Building construction will be comprised of Precast or Tilt up concrete panels which allows for column less exterior walls and greater heights and includes office areas at both ends of the

facility. There are 51 loading dock doors on the north side of the facility facing towards I-95. The site proposes to use the existing access from Heather Lane and extend water and sewer services from the existing laterals, or near to those directly from the public main. A total of 200 parking spaces are shown on the proposed General Development Plan and landscaping will be provided per Town Code requirements. Also shown on the Plan is a retaining wall approximately 20 feet high and 600 feet long, required due to the topography of the site. The proposed stormwater management facilities and pond expansion with existing stream and wetlands areas will need to be reviewed and approved by Cecil County per regulations. The existing entrance pylon sign will be refurbished or replaced and all signage will be in accordance with Town Code.

10. Section 116-20 of the Town Zoning Ordinance describes a PIRD as follows:

The Planned Infill and Redevelopment District or “PIRD” is a floating zone that may be applied to land through a zoning map amendment adopted by the Mayor and Commissioners in accordance with the provisions of this section for projects that involve compatible new uses created through redevelopment, adaptive re-use, demolition, reconstruction and infill.

11. According to Section 116-23 of the Town of Perryville Zoning Ordinance the Mayor and Commissioners may approve a PIRD only if the Mayor and Commissioners makes the findings set forth in that Section. There is no presumption that a proposed PIRD or General Development Plan meets the standards, or that granting any application will be consistent with the Comprehensive Plan. Compliance with all standards and requirements permits, but does not require, the Mayor and Commissioners to establish a PIRD or approve a proposed General Development Plan. (Town Zoning Ordinance, Section 116-26.3).

12. Two of the criteria under Section 116-23 that the Mayor and Commissioners must find have been satisfied before a PIRD may be approved are that:

- A. It is consistent with the Perryville Comprehensive Plan.
- B. It will promote the general welfare of the public.

13. Similarly, because a PIRD is a “floating zone,” Section 317 of the Zoning Ordinance applies. Section 317 provides that “[i]n floating zones the test for approval or denial shall be compatibility with the neighborhood and consistency with the comprehensive plan.”

14. The Mayor and Commissioners find that the proposed PIRD and General Development Plan are not compatible with the surrounding neighborhood and are not consistent with the Town’s 2010 Comprehensive Plan.

Lack of Compatibility With the Neighborhood

The neighborhood consists of commercial uses to the west and single family residential uses to

the south and east. Residences to the south along Penny Lane and to the east on Perryville Road abut the Property near where the proposed warehouse facility will be located.

The proposed 357,000 square foot industrial warehouse facility will contain 51 loading docks and 200 parking spaces. Trucks and vehicles will enter and exit the warehouse distribution center along Heather Lane from and to Rte. 222. The warehouse distribution center can be operated on a 24-7 basis but the actual volume and dispersion of truck traffic will depend upon the ultimate users of the facility from time to time. This means that trucks will potentially enter and leave the warehouse distribution center via Heather Lane and Rt. 222 at all hours of the day and night.

Traffic and noise studies were conducted. While these studies suggest that noise from trucks at the facility will be at "acceptable" levels at the site, and a traffic study suggests that the Rte. 222 and Heather Lane intersection will operate at a "C" level of service, these studies do not account for the real-life traffic and noise disturbances experienced by nearby residents that are likely to be exacerbated by additional tractor-trailer traffic in the vicinity of residential neighborhoods.

Nearby residents, including residents living on Penny Lane and Perryville Road (Rt. 222), testified to factors that suggest a lack of compatibility of the proposed warehouse distribution center with nearby residential uses. Residents testified to the following:

A. Of the 14 existing and two additional warehouse distribution centers proposed in the Perryville-North East corridor, the proposed warehouse distribution center at the site is the only one not located in an industrial park or an entirely rural area and is the only one that backs up to a residential neighborhood.

B. Residents of the nearby Gales Manor community, in which Penny Lane is located, and along Perryville Road currently hear cars and trucks on Perryville Road, traffic along I-95, particularly as it leaves the toll booth 1,400 feet away, trucks backing up with a back-up beeper at the nearby D-O-T shed approximately 500 feet away and conversations in the nearby 1truck plaza. The proposed warehouse would be approximately 600 feet away.

C. Existing traffic along Rt. 222 is already congested in the vicinity of Heather Lane, particularly since the Royal Farms store opened up at Heather Lane and Rt. 222. This makes it difficult for nearby residents to exit their properties. Because of changed traffic patterns cars and trucks exiting Royal Farms make u-turns on private property that abuts Rt. 222 to go westbound on Rt. 222.

D. There already is substantial car and tractor-trailer traffic in the vicinity as early as 4:30 a.m.

E. The exterior of one resident's home accumulates black dust particles from trucks travelling in the vicinity along Rte. 222.

It is reasonable to infer that existing conditions will worsen by an increase by trucks coming to and from a 51 bay warehouse distribution center on the Property.

Lack of Consistency With the Comprehensive Plan

The Mayor and Commissioners independently reviewed the Town's Comprehensive Plan and conclude that the proposed PIRD and General Development Plan are not consistent with the Comprehensive Plan.

The Goal of the Land Use Section of the Plan, p. 20-21, is to "[a]ssure balanced growth between residential, commercial, industrial and public use areas that meet the needs and improve the quality of life of the residents of Perryville." With respect to Industrial uses, the Land Use section of the Plan, p. 27, recognizes that "[o]ften industrial development is incompatible in residential areas..." The Plan recommends that industrial uses locate in areas such as "south of the MD Rt. 7 corridor or north of I-95 and along the Perryville Road/MD 275 corridor," not the locations of the proposed PIRD. The Property currently is zoned C-2, Highway Commercial, and located near the I-95 interchange. At p. 26, addressing commercial development, the Plan recognizes the importance that development at the interchange "be designed to increase the positive visibility of Perryville as a town to the highway and enhance the town gateway at the interchange."

The Mayor and Commissioners find that:

A. The proposed warehouse distribution center will not meet the needs and improve the quality of life of nearby residents. While the proposed use may provide an economic benefit to the public at large by providing employment opportunities and an enhanced property tax base for the Town, the use of the property as an industrial use does provide a service or other direct benefit to nearby residents. Rather, as discussed above, the 24-7 truck traffic related to the use may interfere with the use and enjoyment of neighboring properties.

B. As noted in the Plan, industrial uses often are incompatible with residential uses. This is supported by the fact that every other warehouse distribution center in the Perryville-North East corridor is located in an industrial park or entirely rural area.

C. The proposed PIRD is not located in one of the areas recommended by the Plan for industrial development.

D. The development of the Property as a 357,000 square foot warehouse distribution center visible from I-95 does not enhance the positive visibility of Perryville as a town and enhance the Town gateway at the I-95 interchange. Commercial utilization of property at the I-95 gateway to the Town would present a more positive image of the Town than a warehouse distribution center.

Will Not Promote of the General Welfare of the Public

Although development of the Property as a warehouse distribution facility as proposed for the PIRD will provide jobs and increase the Town's assessable tax base, overall the proposed development will not promote the general welfare of the public. This is reflected in its lack of compatibility with surrounding residential properties and lack of consistency with the Town's Comprehensive Plan.

15. In addition to the findings required under Section 116-23 to approve an application for a PIRD and an associated General Development Plan, the Mayor and Commissioners must make additional findings in reaching a decision on any zoning amendment. These findings include the following matters: “population change, adequacy of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendations of the Planning Commission, relation to the Comprehensive Plan, fiscal impact upon Town government, and the suitability of the property in question to the uses permitted under the existing and proposed zoning classifications”. With respect to these criteria, the Mayor and Commissioners find as follows:

A. Population Change: Population change in the Town is not relevant to redevelopment of the site as a warehouse facility. Use as a warehouse facility is less dependent upon population than the site’s prior use as a commercial retail facility.

B. Adequacy of Public Facilities: There are adequate public facilities to support the proposed use.

C. Present and future transportation patterns: No changes are planned for current transportation patterns as the proposed warehouse distribution use can be accommodated by existing I-95 and Md. Route 222 transportation networks.

D. Compatibility with existing and proposed development for the area. The proposed warehouse distribution use would be compatible with the retail uses that are adjacent to Heather Lane, but, for the reasons described above, would not be compatible with nearby residential development.

E. The recommendations of the Planning Commission: The Town Planning Commission, without the benefit of a public hearing, recommended approval of the designation of the property as a PIRD, approval of the General Development Plan, and approval of a list of uses specific to the site.

F. Relation to the Comprehensive Plan: For the reasons described above, the proposed PIRD and General Development Plan are not consistent with the Town’s Comprehensive Plan.

G. Fiscal impact upon Town government: Redevelopment of the site will enhance tax revenues for the Town and the County.


H. The suitability of the property in question to the uses permitted under the existing and proposed zoning classifications: While the property is suitable for uses under the existing C-2 zoning classification, it is not suitable for the warehouse distribution facility proposed in the General Development Plan because of the impact of such a use on surrounding residential neighborhoods.

Whereupon,

SECTION I. BE IT RESOLVED AND ORDERED BY THE MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE this 5th day of February, 2019, that, based upon the foregoing Findings of Fact and Conclusions of Law, the application for a reclassification of the property at 24-68 Heather Lane in the Town of Perryville as a Planned Infill

Redevelopment District and approval of the Associated General Development Plan is hereby DENIED.

MAYOR AND COMMISSIONERS OF THE
TOWN OF PERRYVILLE



Robert R. Ashby, Jr.
Robert R. Ashby, Jr. Mayor

ATTEST:

Jackie Sample
Jackie Sample, Town Clerk