

Commissioners of Leonardtown
Leonardtown Planning and Zoning Commission Meeting
Monday, April 17, 2006 ~ 3:30 p.m.

Attendees: Jean Moulds, chairperson
Jack Candela, Member
Tom Collier, Member
Frank Fearn, Member
Gary Simpson, Member

Also in attendance were: Laschelle Miller, Town Administrator; Colleen Bonnel, Planning Director; Jackie Post, Fiscal Clerk, Teri Dimsey, Recording Secretary; Mike Mummaugh, Paragon Properties; Wayne Davis, W.M. Davis, Inc.; Sam Phillips, PF Summers; Andy Bice and Rodney Gertz, Quality Built Homes; Bill Higgs, LSR, Inc; Lyn and Jim Haug. A complete sign-in sheet is available at the Town Hall.

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

The meeting minutes for the March, 2006 Planning and Zoning Commission meeting are presented for approval.

Chairperson Moulds entertained a motion to approve the March 20, 2006 meeting minutes, Member Collier moved to approve the minutes, seconded by Member Fearn; motion passed unanimously.

Town Administrators Report – Laschelle Miller

A Public Hearing was held during the Town Council meeting on April 10 for the adoption of the **FY07 Budget and the Real Property Tax Rate**. Ordinance #124 was presented and adopted.

Adopted **Resolution 1-06, Multi-Jurisdictional Hazard Mitigation Plan**. Different agencies from the County have worked together on this plan, required by the Federal Government to receive FEMA money for the future for any type of natural hazard. The plan had to be adopted by the County as well as the Town and is required to be updated every year.

Adopted **Resolution 2-06, Concept Vision for Leonardtown Waterfront Plan**. This is to be used as a guideline and was developed as a result of the Planning Workshop, which was very

informative; we also worked on the PUD Waterfront Ordinance, which will be coming forward to you at the same time.

Update on **Drs. Crossing Way**. The project has gone out to bid and bid opening is April 27, 2006. We hope to award the contract at the May Town Council meeting.

Leonardtown Wharf is moving forward again. An agreement has been reached and settlement is tentatively scheduled for next week. Plats were signed today and forwarded to the Health Department.

The Town office will be moving its new location in the Proffitt Building and will be closed on Friday and open for business on Monday.

Old Business

Case #64-04: Leonard's Grant, Preliminary Plan Approval Request

Applicant: Quality Built Homes, Inc. and Loiederman Soltesz Associates, Inc.

Zoning: Planned Unit Development (PUD-M)

Mr. Andy Bice, Land Manager for Quality Built Homes presented an agenda to the Planning and Zoning Commission to update them from the original concept plan and where they are today in the preliminary stage. Mr. Bice updated the Planning and Zoning Commission on the following:

- Update on Phase I Preliminary Plan
- Utilities: Pump Station, SWM Design, Water and Sewer, SMECO, Street Lighting.
- Maryland Department of the Environment: Application, Impacts, Army Corp of Engineers, Department of Natural Resources, Maryland Historical Trust and Final Forest Conservation Plan.
- St. Mary's County Department of Public Works and Soils Conservation.
- Off-Site Project Update: State Highway Administration, Leonard's Drive (Access Road), Utilities (6" Force main, Waterline)
- House Architecturals.

Mr. Gertz of Quality Built Homes referred to the renderings and discussed the house styles. They still have some fine turning on some of the home styles along with the pedestrian surfaces. They hope to start the heavy infrastructure in 2008 and then begin to start putting houses up.

Chairperson Moulds asked Ms. Bonnel for her comments:

The parcel of Leonard's Grant is comprised of 263 acres, which include flat land, steep slopes, woods, open fields, floodplain, wetlands and endangered species. It is located at the northern tip of the incorporate limits of Leonardtown. Total acreage proposed to be disturbed is 134 acres and the developer proposes 118 acres (excluding stormwater management areas) as open space.

The approved concept plan proposed 324 single family detached residential units with proposed lot sizes that will range from 7,150 square feet to 21, 600 square feet. The density of the proposed development will be less than 1.5 units per acres.

Community facilities include a center park, 2 recreation/park areas, 2 tennis courts, a swimming pool and a 3,000 sq. ft. minimum community hall/building.

Total build out depends on the housing demand, but it is currently anticipated for a 10-year build out schedule, with 30-35 homes per year, that was subject to the EDU allocations and the upgrade of the Town Wastewater Treatment.

In June 2004 the developer performed a Traffic Impact Analysis and then provided a copy to SHA.

Prior Planning and Zoning discussion items:

Housing designs which were elaborated on just now include traditional style to Leonardtown and need TND design concepts, house style, shutters, roof pitch, dormers, porches, corner lot designs, fencing and landscaping. There will be porches on the front load garage styles, which the developer added to the housing designs. SWM ponds, which were briefly discussed, will primarily be in the first Phase, will be underground, and this preliminary review is just for Phase I. Phase II and Phase III will have to address SWM ponds that needs to be natural shallow design and require no fencing and heavy landscaping. Parking needs, a prior discussion item regarding the fields labeled football, baseball, soccer fields and those are for Phase II. Today is just primarily for Phase I.

The site does involve floodplains, wetlands, steep slopes, and stream channels, which DNR and MDE approvals and permits are required. Enclosed in your packet is a letter dated January 26, 2006 to MDE Non-tidal Wetlands and Waterways Division of WMA and a March 13, 2006 letter to Wildlife and Heritage Division of DNR.

Adequate public facilities for water and sewer studies are being performed. The developer is continuously working with the Town Wastewater Treatment Plant on water and sewer plans, as well as, Stearns and Wheler who are the Town water and sewer engineers. State Highway approval and permits are required which the developer has continuously been working with State Highway for access permits and under review at this point. As stated earlier, the Maryland Historical Trust letter was included in your packet dated February 23, 2006 awaiting results of the Phase I Archeological investigations. Department of Public Works, enclosed is a re-submittal of Phase I; preliminary comments dated March 27, 2006.

Action Needed: Approval, Approval with conditions or modifications or denial.

Member Fearn asked about the connectivity with the Clark property. Did they take into consideration the increase of traffic flow at the intersection of Rt. 245 and Leonard's Drive?

Ms Miller replied that she believes when SHA did their traffic studies they included the other surrounding projects.

Mr. Gertz stated that the original traffic study was done for 800 units and there may be an intersection at Rt. 245 or Rt. 235. They are working with the SHA right now on the entrance grid and in doing so will find out what they want us to do to redo a study based on the actual counts now and that will probably take into consideration both projects now and Clark's Rest had not begun so I am sure they are looking at what is going to have to be done.

Mr. Bice remarked that there was a study done after the 800 units for 314 units and the interesting part of the report is that both reports reflect the same areas that were impacted and recommended the same improvements. The State looks at a certain amount of improvements up to a certain threshold of units and a traffic light analysis will have to be done after the 200 units.

Ms. Miller stated that they do take into consideration all the projects that are happening and will go back and do an additional traffic study.

Member Fearn noted that there are two ways into the development with connectivity to the Clark Farm.

Member Candela asked what phase of the development will the community facilities be built and will the developer be building the swimming pool and turning it over to the HOA?

Mr. Gertz replied that in Phase I, the Village Green will be included and Phase II will include the sports field and the recreation center. We are committed to getting the recreation and pool area in early and we will manage it, or a management company, until it is turned over to the HOA. He pointed out that the recreation center is in an octagonal shape and a cupola was added for a little flare. We also added additional parking as requested.

Member Collier asked what does preliminary plan approval mean?

Ms. Bonnel replied that they have not gone into details on the plans, all the water and sewer, the clean outs, the fire hydrants and the detail sheets will be forthcoming. This will be included in the next submittal. They started on SWM and have gotten just the list of DPW comments working on all those details for Phase I. This is still preliminary, the developer wanted to bring the Commission up-to-date specifically for Phase I, final will be coming back for detailed Phase I.

Member Collier noted that we are coming up with several subdivisions and each one appears to advocate a Home Owners Association (HOA) and we have a subdivision that already has one. What is the relationship going to be between the Town and these HOAs where does the responsibility start and stop. The intent for the Town with subdivisions is to have them become a part of the Town, it is to highlight the center part of Town and I do have a concern with HOA's, that they will start forming mini-towns within each one of the subdivisions and that is clearly not what the Town has in mind.

Ms. Miller remarked that it is a little different with Tudor Hall. When we met with Quality Built and Marrick, we talked about HOA's for these developments. They will have Homeowners documents with the final site plan and they will know what is included in their jurisdiction. It will be all spelled out before final site plans are approved but we have worked under the assumption that the developments will have a HOA's and will take over maintenance of the recreational facilities because it is more just for these communities versus Tudor Hall where we are looking at public waterfront facilities, more public ownership, it is a little different.

Member Collier asked if the 118 acres of open space is SWM? Is that included in the community facilities as well? What is going to happen to all the open areas when you are finished development? Who takes ownership of all that the SWM and the open space?

Mr. Bice replied the HOA.

Ms. Bonnel noted that it would have the land restrictions recorded on it for the floodplain and wetland areas and that these are no disturbance and forest conversation areas. Those easements will be recorded. SWM is completely separate and has its own maintenance requirements that the HOA is required to adhere to.

Mr. Bice commented that HOA's are your best policing policy for the neighbors. We will work directly with the Town to make sure the HOA is in the Town's best interest.

Member Collier asked who would take over the roads?

Ms. Miller replied that the Town would take the roads and the water and sewer lines.

Member Candela asked if the Town has veto authority over HOA?

Ms. Miller commented that we have been recently talking with our attorney on how we move forward on issues such as this and are looking at the guidelines for HOAs and how other Towns handle it.

Member Collier noted that his concern is that the homeowner now has to pay another tax and sees this as a detriment and also that some HOAs become petty. He is concerned about the connectivity to the Town becoming its own entity. They may not want to associate with the Town but still want privileges of the Town. We haven't talked about this and think it is time.

Mr. Gertz stated that they will make it very clear through documentation and covenants and will be committed to working with Dugan and McKissisk on these issues and also determine if there is an overriding power for the Town.

Member Collier commented that he believes the Town should be handing the SWM system as part of the road system and also the forest and open areas.

Ms. Bonnel commented that we could look at DNR programs.

Mr. Gertz remarked that they could start looking at these issues now.

Ms. Miller stated that with SWM we have maintenance agreements that are signed and as more and more projects move forward we know that we will have to have inspectors going out and making sure that maintenance is being done. They all sign an agreement but we will have oversight. The ownership of SWM is very very expensive and the Council does not recommend and is adamant about not taking it over because of the expense. We will have inspections and will make sure they are living up to the maintenance agreements.

Member Collier remarked that it our responsibility to make sure the Chesapeake Bay and tributaries are maintained and that SWM is the start of all that. I think we have a public obligation to make sure the SWM is maintained.

Ms. Miller stated that we are working with our attorney on updating our agreements to make sure we do have authority and we will have to add personnel to maintain this program.

Member Candela remarked that if a SWM has failed the Town needs to have the right to step in and correct the situation and pass the cost of that back to the HOA in the form of a tax. The safety of SWM is a top concern of mine and we have to make sure the ponds are safe and meet the required specifications. If the people who have the direct responsibility for them do not repair them, then the Town has got to go in there and repair and then tax the HOA.

Mr. Wayne Davis stated that when you do SWM ponds you are required to sign an agreement with the County/Town and if you do not do the required maintenance, this allows the Town to come in and take charge.

Member Collier asked if the County and Town were doing that?

Ms. Bonnel replied yes, it is required in the as-built drawings.

Ms. Miller remarked that we have previously worked with a developer and had to do an emergency repair and we are pursuing going after reimbursement.

Member Collier asked if four wheelers go in and tear up the wetlands and forest area, and the HOA may not care, what would the Town do about it? Does the Town have the ability to go in there and do something about it?

Mr. Gertz replied that they would work with the Town to create a document to cover all these issues.

Chairperson Moulds noted that as this topic was brought up during a Planning and Zoning Commission meeting, we would like to request the Town Council to look into it and have a workshop.

Ms. Miller noted that we could have a workshop and have representatives from each of the developments at the table as well.

Mr. Gertz provided the members with renderings of the models and discussed the various architectural designs.

Chairperson Moulds asked for a motion. Member Candela moved that Case # 64-04 Leonard's Grant, Preliminary Plan Approval Phase I as submitted be approved, Member Simpson seconded, motion passed unanimously.

Chairperson Moulds asked if there were any additional comments.

Ms. Bonnel replied that we have made notes regarding HOA, the Forested area covenants, entrance signage, all are a part of the detail submittal package that is required.

Case #91-03, Fenwick Street Apartments, Final Site Plan and Building Architectural Design Approval Request.

Wayne Davis of W.M. Davis provided an update of the project. His project includes 3 buildings with 32 units. Over the last couple of years, this project has centered around the road improvement work on Fenwick Street. When it was first started, the State Highway had not worked out the design and have finally come back and said they wanted us to do the improvements and it has taken time to get through this process.

Ms. Bonnel provided comments:

The proposed property is located at Lot 1, 3.259 acres, Map 40, Parcel 16, located on Fenwick Street. The property was originally part of an ICG subdivision of the former Barbarich Tract. This parcel was originally part of a larger tract of land formerly owned by IGC. The proposed is for three multi-family buildings with a total of 32 units. Special exceptions were granted on April 27, 2004 to allow the applicant to construct the 32 garden apartments at a maximum density of 10 dwelling units per acre. The applicant was also granted a front setback variance from 25 feet to be reduced to 5 feet.

Prior P&Z comments:

- Screening of parking lots and HAVC units facing Fenwick Street.
- Issues with adjacent property owners: The applicant has stated that he has meet with the adjacent property owners to resolve any concerns with this project.
- A requirement to add to walkway for pedestrians to access Fenwick Street.
- Building should be modified to reflect more building details and materials to tie into historic downtown.
- Department of Public Works needs to comment on the proposed roadway and partial parking lot area encroaching on the slopes. The DPW comments have been addressed.
- SHA and Streetscapes plans need to be addressed and as Wayne stated he has been working with State Highway and is required to do so with those improvements.
- Utilized town lighting were prior P&Z concerns, no offsite lighting spillage.

- Prior concerns regarding FCA needed to be addressed and I had a conversation with DNR and just a minor wording modification and the FCA is ready to be signed off.
- Bonds will need to be posted
- Fire Marshal comments are pending.

Member Collier stated he believes there is a lot of run-off and erosion there on the side of the road, are they making you repair or put in sidewalk?

Mr. Davis replied that we are redoing. We have close to \$250,000 dollars worth of work we will be doing.

Ms. Miller noted that much of that would be addressed in the streetscape project. It has been off the table for a while and would have already been done within the streetscape if it had not been tabled.

Member Collier noted that much of the Town's sediment runoff dumps into Breton Bay and anything that can be done to stop that would be good.

Member Fearn asked about the timeline.

Mr. Davis responded he plans to begin sometime mid-Summer.

Member Fearn asked if this was included in the expansion plan for the sewer?

Ms. Miller replied that at concept approval received the EDU's, so this is already planned.

Mr. Candela remarked that in the presentation it was mentioned that the building should be modified to reflect more building detail and material to tie into historic downtown, no significant building changes noted, which was a comment from last time.

Mr. Davis presented to the Commission Members samples of the materials to be used for shingles, brick, siding and trim details for the 3-story building. There will be 1 and 2 bedroom units and are geared towards attracting higher end young professionals.

Member Fearn asked if the dumpster pad issues with the adjacent tenant was resolved?

Mr. Davis replied yes.

Chairperson Moulds asked for a motion. Member Fearn moved to approve Case #91-2003 Fenwick Street Apartments, Final Site Plan and Building Architectural Design, Member Candela seconded, motion passed unanimously.

Case #132-05, Request for a Planned Infill and Redevelopment District (PIRD) Master Development Plan Final Approval and a 5 Lot Subdivision Request.

Mr. Higgs with LSR noted that they have addressed the comments previously set forth by the Planning Commission last time and have completed a landscaping plan, provided trees and shrubs along side the houses. We have also provided additional fencing to the existing fence. The bamboo previously mentioned is on the neighbor's property and will be left. We relocated the fire hydrant to make a one-way access through and make sure the access to the fire hydrant was not blocked. There is no parking on one side, as well as, the entrance and one access but a No Parking sign will be posted in front of the fire hydrant. We have provided SWM on each of the individual lots for the new duplexes, as well as, SWM to take care of the existing impervious surfaces.

The record plat will be 4-5 lots. Lots 1, 2, 4 and 5 will be the duplex units and Lot 3 will be the apartment building and will be separated out. Lots 4 and 5 have their own parking spaces and Lot 3 will have the driveway.

Ms. Bonnel provided comments:

Location is Lawrence Avenue and Pope Street known as the Wachter Apartments. The Apartment building is existing and three houses, Tax Map 133, Block 3, parcel 252, Zoning is Residential Multi-Family (R-MF), existing non-conforming use, approved March 2006 PIRD classification. Lot size is .38 acres, number of lots existing, 1 parcel lot and proposed 5 parcel lots.

Proposal from applicant is to renovate the 1 block existing apartment building located in the middle of this lot, demolish the 3 existing residential detached houses on this lot and construct 2 duplex units. Subdivide the duplexes and sell as 4 individual units. The revised master development plan was included in your packet, dumpster site is shown, paved area is noted and fencing shown. Additional items needed are detailed native plant species listing and container size. Not on plan, Red Paint and stencil "No Parking" on curb along side of relocated fire hydrant, comments per the Fire Department. DPW comments pending on SWM review needed. And just received today a copy of revisions needed per the Town's WWTP regarding water and sewer, detailed information revisions needed.

Ms. Miller noted that she did meet with John Groger on SWM review and reviewed the PIRD, as it is our first PIRD project and explained what the premise of the PIRD is and how it came about. We did preliminarily discuss the SWM that is proposed and they seemed to feel that it is a good solution. There were a couple of comments coming back to be addressed.

Member Candela asked for clarification of the detailed native plants and container list.

Ms. Bonnel replied that during the prior planning and zoning under discussion with the PIRD they talked about landscaping and they have added some of the detailed information. The Commission previously commented they would like to see the use of native species, native to Southern Maryland. Also, it is the number and placement of the trees and species. Container size is 3 gallons etc.

Chairperson Moulds asked if they had any detailed plans on the plants they are using and Ms. Bonnel replied that they could submit that with their revised plans with DPW comments addressed.

Chairperson Moulds asked for a motion. Member Collier moved on Case # 132-05, Request for Planned Infill and Redevelopment District (PIRD) Master Development Plan Final Approval and a 5 Lot Subdivision Request be approved subject to the additional items being completed, the detailed native plant species listing size and planting schedule, that the red paint and stencil for no parking on the curb be provided and DPW comments be incorporated into the SWM system and the WWTP revisions be incorporated, Member Fearn's seconded, motion passed unanimously.

New Business

Case # 127-05 – 41982 Loker Court, Academy Hills – After-the-Fact – Request for Rear Yard Setback Variance.

Ms. Bonnel noted that included in your packets is a property plat showing the existing conditions, a letter from PF Summers signed by PF Summers, as well as, the new property owners. The builder, PF Summers, built the new home which included a rear deck. The Town approved a building permit for the house and the approved site plan did not include a deck. When as-built drawings were submitted to the Town, the non-permitted deck was identified and the builder was given the options stated in the enclosed letter from PF Summer Inc.

Per the Leonardtown Zoning Ordinance, the minimum rear year setback requirements are 25'. The deck was built without a permit and was built with only 16' to the rear property line leaving a 9' variance request.

Included in your documents is Section 155-105, Variance provision. The Planning and Zoning Commission shall study the specific property involved, as well as, the neighborhood, public health, safety, security, morals or general welfare, and the variance shall comply, as nearly as possible in every respect with the spirit, intent and purpose of the Zoning Ordinance.

The Planning Commission shall forward its recommendations to the Board of Appeals who will hold the required public hearing on May 9, 2006.

The Planning and Zoning Commission, as well as, the Board of Appeals will review the request. The purpose of the provision is to authorize granting of a variance only for reasons for demonstrable or exceptable hardship that is distinguished by variations sought by the applicants for the purpose or reasons of convenience, profit or caprice.

Member Collier asked the cost of the fine?

Ms. Bonnel replied there was no fine. Refer to the letter from PF Summers with the conditions listed.

Member Collier asked what is in the back of the lot which indicates an open space in Phase I?

Ms. Bonnel replied there are limited open areas in this Planned Unit Development. Lot sizes vary in Academy Hills and when the entire development was reviewed and approved, there were areas that were approved as open space for natural regeneration and house separation.

Member Collier asked if there were any homes located behind it?

Mr. Sam Phillips with PF Summers introduced himself and responded that he could provide more details and referred to the property plat. Basically, there are home sites to the right and left of the homeowners property but they do back up to any homes. In fact, from the neighbor's back yards, you cannot see the back of their house. The LOD is right about where the property line is and then it is all trees from there.

Member Collier asked how much of this community is built-out and when will you be finished?

Mr. Phillips replied they have about four or five permits left to pull and are just finishing up on six lots, and estimate finishing up by the end of the year.

Member Candela asked if the adjacent area is going to be all permanent open space or will you be developing it?

Mr. Phillips noted that that is Victoria Mattingly's farm and believes it falls under rural agricultural in the County.

Ms. Bonnel commented that is why the Town, at the concept plan, required open spaces to give a buffer for chemicals being applied to the farmland. The plan also requires buffers because of drainage areas, and wetlands on a number of the lots. The open space was there because of the PUD area at the concept phase and there was significant forested area before the development occurred and this provided buffers to the adjacent property owners.

Member Candela stated that if in the future, Victoria Mattingly wanted to develop she would be dealing with the County and not with the Town and theoretically, but remotely, the farm land could be developed right up to the property line.

Mr. Phillips replied no, the homeowner's property line is before the open space and is lined with all trees and separated with a creek which has a buffer requirement so there would be two buffers between them if the farm were ever developed.

Member Fearn stated it is a 25' setback and requesting to be 16' from the property line to the deck. The deck is in the rear of the house and when you look at the Planning and Zoning language it is not impacting a neighboring property when you look at the language I do not think the deck is intruding there. I do think that we have already granted a setback adjustment in that development for the builder after the fact previously.

Member Collier stated that this sets a precedent of the builder not following the rules. This is the second case now that the builder has come forward after the fact. I do not have an issue with the deck I do have an issue with the builder following the rules. The rules are there for a purpose and coming in after the fact is not the way to do business.

Mr. Phillips stated that he agrees and this was not our intent and it is more internal to PF Summers and that we need to make corrections to our builder/sales communications.

Member Candela remarked that he has the same concerns that Member Collier has and the deck itself is an issue; I do have a problem with issuing a variance or recommending that we grant a variance after the fact it does set a bad precedent.

Member Fearn commented that if we fail to grant a variance does the deck come down?

Ms. Bonnel replied yes and referred to the letter signed by PF Summers and the property owners.

Member Collier stated that we cannot continue to have this after the fact and the homeowner is caught in the middle. What we need is a strong, very strong warning, to the builder, do not come back, I do not think we will be lenient a third time.

Mr. Phillips agreed and understood completely.

Member Simpson moved to send a favorable recommendation to the Board of Appeals for Case #127-05, 41982 Loker Court, Academy Hills for an after the fact request for a rear yard setback variance due to the hardship it would incur for the homeowner, Member Fearn seconded, motion passed unanimously.

Monthly permits – no questions.

Town Council Minutes – no questions.

Member Collier moved to adjourn the meeting at 4:55 p.m., seconded by Member Candela, motion passed unanimously.

Respectfully Submitted:

Teri Dimsey, Recording Secretary

Approved:

Jean Moulds, Chairperson

Frank Fearn, Vice Chair

Jack Candela, Commission Member

Tom Collier, Commission Member

Gary Simpson, Commission Member