

Commissioners of Leonardtown
Leonardtown Planning and Zoning Commission Meeting
September 17, 2007 ~ 2:30 p.m.

Attendees: Jean Moulds, Chairperson
Dan Burris, Member
Dave Frock, Member
Jack Candela, Member

Absent: Frank Fearn, Vice Chair

Also in attendance were: Laschelle Miller, Town Administrator; DeAnn Adler, Plans Reviewer; Teri Dimsey, Recording Secretary; Jackie Post, Fiscal Clerk; John Norris, Attorney; Tom Collier, Resident; Sarah Woodworth, ZHA; Bobby Russo, SeaScapes; Eileen Powers, Blumenthal, Delavan; Dr. Winnik, Resident; Jerome DuVal, Landing Way Resident; Karin An Behnens-Treyes, Landing Way; Beill Herring, Landing Way; Kelcy Seaborn, Landing Way; Michael Pierce; Loiederman; Ron Russo, RAR; Irene Parrish, Realtor; Christie Nelson, Landing Way. A complete list is available on file at the Leonardtown Town Office.

Chairperson Moulds called the meeting to order at 2:35 p.m.

The meeting minutes for the August 20, 2007 Planning and Zoning Commission meeting are presented for approval.

Chairperson Moulds entertained a motion to approve the August 20, 2007 meeting minutes.

Member Burris moved to approve the minutes as corrected, seconded by Member Candela, no further discussion; motion passed unanimously.

Town Administrator's Report – Laschelle Miller

Ordinance No. 131- Leonard's Grant Approval of Development Agreements-

Ordinance No. 131 was approved to authorize the Mayor to sign the Development Agreements for Leonard's Grant. The Agreements that the ordinance approves are the Sewer Impact Fee Agreement, Storm Water Maintenance Agreement and the Public Works Agreement.

Requests for Letters of Support for Liquor Board-

- **Cole's Point Tavern-** This establishment is in Virginia, but they are considered a Maryland business. The Council approved a neutral letter of support as it does not really lie within the Town's jurisdiction.
- **Marketplace Fine Wine and Spirits-** In March of 2007, Mr. Guenther received a letter of support from the Council for off-site sales only for a high end wine and cheese shop/liquor store. Mr. Guenther is now requesting a Tavern license, Class D Beer, Wine and Liquor License for on/off sales license so that he can do more tastings/classes and be able to charge for the tastings as he wants to use more expensive wines and liqueurs. The Council did approve it with the condition that a restriction be put on the license for wine tastings only by the Liquor Board if this is feasible under the law.
- **Ledo's Pizza-** Ledo's Pizza will soon be opening in Breton Marketplace. They are requesting a Class B, Beer and Wine license for on site sales. Council approved the letter of support.
- **St. Mary's County Comprehensive Water and Sewer Plan Letter of Support-** The County needs a Leonardtown letter of support for the plan as it gets finalized. The letter of support will also address the comments pertaining to Leonardtown received at the public hearing on Monday, August 27, 2007.
- **New MDE TMDL possible requirements update-** There has been a proposal for multi-state TMDL's (total maximum daily load) for PCB's in the lower Potomac Basin. We have joined forces with Metcom to weigh in on this movement because of the extreme financial burden it will place on the Leonardtown facilities if this is imposed. The total cost of the consultant is \$2,000 which will be divided between Metcom and Leonardtown. This is a very technical issue and of great importance to the Town and Metcom.
- **Resolution 2-07 –** Newtowne Village request for a resolution in support for remodeling and renovations originally budgeted for \$350,000. They are now planning on a two million dollar project and needed an updated resolution of support which the Council approved.

OLD BUSINESS

Case 64-04 Leonard's Grant Right of Way Dedication Plat – Leonard's Drive and Various Easements

Ms. Miller noted that we did a revised agenda this morning. This is a Right of Way Dedication Plat. We have done a Phase I Plat approval, this takes the road from Phase I out to Rt. 245 and eventually that road will be turned over to the Town and that sets up the transfer for the future. There is a requirement from State Highway that we actually have a plat documenting the easements near Rt. 245. This also takes care of drainage and grading easements. Typically we send a recommendation for a signature for the Chairman. The Case number needs to be added to the plat and it is showing Leonard's Drive on the plat. The plat's for Phase I show the same road named as Leonard's Grant Parkway. We will change it from Leonard's Drive to Leonard's

Grant Parkway to keep it consistent from Rt. 245 into the development. Mr. Pierce with Loiderman is here today to answer any questions.

Member Frock moved to approve Case #64-04, Leonard's Grant Right of Way Dedication Plat – Leonard's Drive and Various Easements; seconded by Member Candela, no further discussion, motion passed unanimously.

Chairperson Moulds continued with the next case under Old Business.

Case #122-05: Leonardtown Landing Plan Approval- Phase II

Applicant: Ron Russo, RAR Assoc. Dev. Corp
Location: End of Washington Street, Wharf Property
Zoning: Commercial Marine (C-M)

Project History:

- Concept Approval – Mayor and Town Council held a Public hearing on April 14, 2003. Concept approved as submitted based on a favorable recommendation from the Planning Commission on 2/25/03. Copies of both minutes are attached.
- Rezoning of Parcels 324 & 330 – Planning & Zoning held a Public Hearing on April 21, 2003, and then the Mayor and Town Council held a Public Hearing on May 12, 2003. Rezoning granted.
- Buffer Exemption Ordinance Developed – Adoption of Ordinance occurred at the June 9, 2003 Town Council meeting.
- Growth Allocation Application for Leonardtown Landing – An application was submitted to the County Planning and Zoning, which went through the TEC review process. The Town Council and the Planning & Zoning Commission endorsed a letter of support, and then the allocation application went before the County Commissioners and the Critical Area Commission and was approved.
- Phase 2 plans have been before the Commission a number of times for discussion. The last dates were October 17 and November 21, 2005, January 16, 2007. Minutes of those meetings are enclosed.

Approvals received for Phase II:

- Concept approval- April 14, 2003
- MDE- December 2006
- CAC- December 4, 2006
- Fire Dept- October 17, 2005
- Soil Conservation- November 17, 2005
- DPW- July 13, 2006

Original Concept Approval (April 14, 2003) included:

- Proposed Commercial Retail Area- 16,969 sq ft (Commercial West 6,383 sq ft & Commercial East 10,586 sq ft.)
- Cumulative Second Floor Office Area- 19,710 sq ft
- Cumulative Third Floor- Loft apts. - 15 units
- Refurbished House into Office Space- 2,446 sq ft

- Refurbished House for Retail Space- 1,438 sq ft
- Restaurant- 2,355 sq ft

Parking shortage was 84 spaces for the plan.

Current Proposed Concept Plan includes:

- Retail buildings- 13,131 sq ft (Commercial West-4,742 sq ft & Commercial East -8,390 sq ft) (Parking calculated on 94% which subtracts 2 utility rooms in the buildings)
- Existing Retail house- 1,438 sq ft
- Existing Office Space- 2,446 sq ft
- Restaurant- 3,611 sq ft
- Residential Units- 22 units

Parking shortage is 50 spaces for this plan.

Per the Leonardtown Zoning Ordinance:

155-109. Time limits for permits and approvals; extensions.

Any zoning permit, concept approval, preliminary approval or final approval shall become invalid if the authorized use, approval or construction for which the permit or approval was issued is not commenced within 12 months of the date of issuance for residential and two years for commercial. The Town Administrator or Town Planner may, upon good cause shown, extend a building permit without additional charge for an additional period not exceeding 12 months. Extensions for any plans approved by the Planning Commission can only be granted by the Planning Commission. In granting an extension, the Commission may not impose additional requirements

The concept plan was approved April 18, 2003 and has not matured into a final site plan approval within the timeframe prescribed by the Town Code and therefore has expired. At the Applicant's request, both the Planning and Zoning Board and the Town Council agreed to form a Task Force to try and reach some recommendation that would address the concerns of the neighbors, parking, traffic flow and size of the commercial buildings. It was anticipated that the task force could articulate the concerns with the applicant and arrive at a revised Concept Plan addressing those concerns that could be presented for approval. The plan being presented for consideration is the applicant's response to those meetings, though not necessarily addressing the concerns articulated by the Task Force in the manner anticipated by members of the Task Force.

The April 18, 2003 Concept Plan presented by the applicant depicted two commercial buildings, within which was to be a mix of three uses, retail, office and residential units built within the roof structure. The plan submitted by the applicant for consideration today deviates from the expired Concept Plan both in the proposed uses within the commercial buildings, eliminating the office use within the proposed Mixed Use Buildings (which may be inconsistent with the requirements of §155-36.D of the Town Code), also the height of the proposed buildings by accommodating the third floor beneath the roof structure, not within the roof structure. With respect to the height of the buildings, Mr. Russo had responded to the comment of Mrs. Moulds on February 25, 2005 that the loft apartments "will just be dormers and will not add to the total height of the two buildings. Finally, a parking deficiency remains even after changing the uses within the buildings to reduce the parking requirements.

ARTICLE VIII C-M Marine Commercial District
§ 155-36. Permitted uses.

No building or premises shall be erected, structurally altered, enlarged or maintained nor shall any land be used, except for the following purposes:

- A. Restaurants and outdoor eating facilities;
- B. Specialty shops, under 5,000 square feet, such as art, gift, antique, import, health and natural goods, including uses of a more general commercial nature which do not detract from the purpose of the waterfront or which are necessary to its economic viability;
- C. Office buildings;
- D. Mixed use buildings: residential/retail/office;
- E. Social, cultural facilities, public parks and open space;
- F. Museums or similar interpretive facilities;
- G. Public facilities.

In conclusion, the applicant has requested final site plan approval. Based on the fact that the Concept Plan approval has expired, the Planning Board can consider the new plan submitted as a new Concept Plan, or may require the applicant to submit this plan as a Concept Plan for consideration at a future meeting. Outstanding issues in the consideration of this submission as a Concept Plan include, but are not necessarily limited to, traffic flow, parking and the requirements of §158-36.D for Mixed use buildings within the Marine Commercial District.

Mr. Ron Russo came before the Board and explained that he would like to provide the Board with a little more history. This plan is the one that was approved by the Town Council back in 2003 but this plan began in 1994 and is not something that has just come into creation. It is not too different from what is before you now. The big element that is missing in this plan is the introduction of the public park. The townhouses have been built and the park is now under construction. The plan itself is what was approved by the Town Council and had a deficit of 84 parking spaces. I will speak primarily about two issues, parking and building height. At the very inception, three stories was the way it was introduced and the way it was conceived and approved. Had there been any discussion or hesitation about the third story, we would never have embarked on this. We have folks with 5 million dollars invested into this project now. Had we known that this would be a concern raised within the last two or three months we would have had second thoughts about it? Over the last few months I have tried to reach some sort of a consensus. I am being driven by parking spaces. The fee in lieu written in our Memorandum of Understanding says that the Town will work with RAR Associates to address parking. RAR will provide fee in lieu of whatever spaces that we cannot adequately provide on site. As a matter of fact, we made some considerable concessions during the process, we reduced the size of the two three story large buildings and then as of late, we introduced the concept of simply retail on the first floor and residential on the second and third floors resulting in a deficit of 50 parking spaces. I would like to make a further revision; we would like to maintain mixed use of retail on the first floor and residential on the second and third floor in one of the buildings and retail on the first floor and offices on the second and third floor of the other building. If we do that, we will end up with a deficit of 65 parking spaces, again still within the margin of 84 that was agreed to back in 2003. The reason I say that, it is very important and our consultants will point

this out, we need life down at the bottom of the hill all the time. If there are residential folks there then there will be 24 hour inhabitants of the facility or at least one of the buildings and this leads to better security but also to life on the street. In regards to the office spaces, as you can see out in the fringe, W. M. Davis the developer is introducing offices because that creates the market for some of the daytime use like the restaurants. The local restaurants in Leonardtown have a market right next to them in terms of the surrounding offices. Which is why we think it is important to have a residential use and a commercial office use and retail would be the common element on the first floor. In regard to the restaurant we have agreed to 3,611 sq. ft. To speak to these issues, I have with me today Ms. Eileen Powers with Blumenthal, Delavan & Williams, P.A. mainly in land use, zoning and property litigation.

Ms. Powers provided a brief outline of her background and experience. Mr. Russo asked me to look at some of the legal issues that have come up with this project recently and he provided you with a letter I wrote with an opinion on two of the issues. A third issue that was raised for the first time today by the Town is the issue of time and whether the concept plan approval has expired. My first response is that in fact the use ripened as it was supposed to in the time it was supposed to have ripened. If the law applies, then the use has to be initiated within a year for residential and two years for commercial. The use that was approved in April of 2003 was this entire concept which is a commercial marine project. It included residential and some commercial, existing buildings, and includes a restaurant on the waterfront. And in fact, within the one year period, the properties were resolved and the growth allocations issued, the buffer exemption was granted and the residential component/permits were issued, the approvals given and the commercial uses were in existence. The use of those structures began almost immediately after rezoning in 2003. So the code does not say that the entire project has to be used or completed within two years, and in fact it doesn't even say that the final site plan has to be completed within two years. It says the use has to be initiated and in fact the use was initiated. I saw the site for the first time this afternoon and it is fair to say that substantial completion is done, the boardwalk is being built, the Town building is almost finished, townhouses are occupied and the two commercial uses have been in continuous use since 2003.

Second, the law can be interpreted to determine the timeline is an issue, I do not think that law applies. It is interesting the way the code is set out, the one year/two year time requirement is set out in Article 18 and Article 18 is the section for all permits and general/concept site plan approval. But we are coming in under Article 8 which is the commercial marine district. The CM district refers you to Article 9 which is the CSC district and that has a separate set of concept plan requirements and final site plan requirements. Those two provisions do not have any time limit in them and in fact they allow this presentation of the final plan to be done in stages with approval from the Commission, which seems to be happening here. It makes sense that there would not be the same rigid time requirements in a high end commercial marine project because by nature they take more than one or two years. I don't think that the time limits that are referred to in the report in Article 18 apply to this project. Finally, if they do and if you are concerned that the time hasn't been met I would suggest that you have made an exception to the time requirement. As my review of the previous minutes show the first time this one year time limit has ever been raised was Friday. This Council has heard and seen this plan revised a number of times and to now say back in 2004 you were dead in the water even though we have been meeting and discussing this for the past 5 years, I think by this you have issued an exemption.

The next issue I was asked to look at was the parking and I think my letter is pretty self explanatory. The same day that the Town Council approved the concept plan in April 2003, it entered into a MOU with RAR Associates. That MOU clearly addressed parking. An excerpt from the MOU, paragraph 9 in this MOU they call it, not a concept plan but reuse plan. It reads: because the re-use plan includes public facilities within it boundaries which will impact parking on the site, the Commissioners of Leonardtown agree to work with RAR Associates Development Corporation in identifying additional parking opportunities for the reuse plan, including on-street parking on Washington Street. The Commissioners of Leonardtown agree that the final parking numbers will be addressed in a Phased approach as the developments actual uses become known. However, the Commissioners and RAR agree that parking required shall be satisfied by RAR Associates paying parking fees in lieu amounting to \$1,200 per space for the number of spaces required by the approved concept plan and not satisfied by the plan”.

The approved concept plan has the required parking set out and the deficit set out on it. The way I read the MOU, there was a contractual agreement between the Town Council and RAR in 2003 that the number of parking spaces would be satisfied by fees in lieu. As I look at the minutes and from my meeting with Mr. Russo, I understand that he has made yeoman’s efforts to try to reduce the parking on the site by reconfiguring certain buildings and changing the nature of the use of others. The fact is that he is here today before you asking for fewer parking spaces and less fees in lieu that I believe he is entitled to under the agreement. The Town then went on a year later to enter into a contract to purchase the waterfront parcel and that contract also has language affirming the fee in lieu agreement. I understand that parking has been an issue that has been discussed over the years here but I think the agreement was made at the inception of this project and that is when the idea was created there was going to be this public/private partnership. The Town was going to get the waterfront parcel and Mr. Russo was going to get certain concessions. One of the major concessions was an agreement to pay parking fees in lieu of parking requirement and that deal was made in 2003. The issue is has he done everything he can to provide the most on-site parking? The fact that he is coming in with less of a deficit than he had before shows that he has.

The third issue is the height issue. There is a statement in the report about somehow the third floor has changed between concept plan and final plan and if it has we do not know what that is. The elevations proposed today are the same as were proposed in 2004. The statement in the report is that there is a substantial change between these plans and the plans approved in 2003. I believe there are not any substantial changes. What is unique about this project is that it is really what planners and land use lawyers talk about. This is the ideal public/private enterprise where everyone comes out richer for the experience. The Town in this case has gotten a waterfront parcel, gotten a reason to draw people down to the waterfront area but in return the Town gave the developers some concessions and now is the time to approve the agreements that were made in the beginning. Mr. Russo cannot financially do two story buildings and have this project be feasible. Three stories were approved, three story mixed use was approved in 2003 and that same plan is before you today. To approve it, but with only two stories, becomes an unworkable project. Had the commission in 2003 said we would only approve two stories we would not be here today. What is different in this case is that it was not just the developer moving this plan through it was the developer in concert with the Town. The Town has already derived a substantial benefit from this agreement and I believe the Town is now obligated to continue to approve what it agreed to approve back in 2003.

Last, I would like to address approving the final site plan today. I don't think the one year time limit applies in this case because I think they complied back in 2003. There is no authority for you to consider this as a new concept plan. Mr. Russo has requested to make one amendment and I want to make clear what that is because from the report there is a concern because one of the permitted uses in the CM district is called mixed use and it is retail/office/residential. The suggestion is made in the report before you that maybe that means that these buildings have to have all three uses. I do not believe that is a reasonable interpretation of the Code. But if that is what you believe is a reasonable interpretation of the Code then Mr. Russo will make one of the buildings a mix of retail and resident and the other retail and office. Then we have retail/office/residential and have covered that mixed use definition. I would argue that it is a very narrow definition. I wanted to also mention that this is one of the most exciting projects I have seen. It is really a unique public/private enterprise. It is a beautiful piece of property and my view is that the mixes that are proposed are perfect for the site.

Mr. Russo then introduced Ms. Sarah Woodworth of ZHA in Annapolis who will speak to the functionality issues.

Ms. Woodworth explained that her firm, ZHA, works with towns and municipalities trying to ensure that the private developers do the right thing and create real value to the community in terms of the development mix and revitalizing spaces. I also have written a letter as it relates to both the in-lieu parking issue, as well as density. In creating places that are dynamic and vital to people that are memorable, how parking is treated is critical. We are learning in the world of development that too much parking can be detrimental for a couple of reasons. It tends to separate land uses so you are walking through a parking field to get to the next building. Two, it lowers density and gives the opportunity for shared use parking for work, shopping, and dining and only park once. The other thing about parking and its impact on development is if parking is not treated and understood as something that can support a multiplicity of uses it really actually degrades the whole benefit of mixed used environments and creates way too many parking spaces for a pedestrian oriented environment. Our bottom line here is under the scenario of residential above and retail below, there is a gap of 50 spaces that Mr. Russo needs to meet.

Our conclusion is the functionality of this project is not at all compromised by having the in-lieu of parking space payment. It is not going to be a failure of the project if there is not ample parking and this is why. The parking ratios you currently have in your existing regulations, I compared it to the Urban Land Institute, which is the primary National and International Association of Developers, as well as, the National Parking Association. They got together and put together a report because parking has become such an issue. It is called the Dimensions of Parking and is a very recent report. We looked at what they suggested were appropriate parking ratios by land use and we listed those. These are ranges and you can see that your parking regulations are at the high end or over the top of their thresholds. We also looked at North Beach, which is a Town comparable to Leonardtown, and looked at their parking ratios. As you can see, North Beach has provisions for shared use parking. We looked at those different parking regulations and compared them to Leonardtown and on page 4 of my letter you can see that if you apply the Urban Land Institute and took the mid-point. Leonardtown is requiring 157 spaces on site and the National Parking Association only requires 106 spaces on site. I think RAR has proposed 107 spaces on site. If you took the North Beach code and applied their

shared use parking provisions they would only require 83 parking spaces on site. Why am I so sure this project will work with 107 on-site and 50 as an in lieu parking payment?

One, because I think the parking ratios are too high and they don't fully capitalize on the benefits of mixed use, which is the shared use parking concept. The second point is there is no shared use provision. The reason so many of us in the world of downtown revitalization keep stressing mixed use is because it is a very economical way of doing development. The third point is we like the idea of the in lieu parking payment as a concept. What it does is understands parking as a system and not just about a site as an independent parcel. If you take Annapolis, for example, they have provided structured parking facilities about two blocks from the main street and people walk along the main street to get around. Parking has been used as an instrument for revitalization. This waterfront is a community and local benefit and a dynamo environment for families. The last point is density. A two story building, residential above and retail below on that waterfront is not enough density to create people and activities. People want to be where people are.

Mrs. Russo, owner of the new Seascapes, introduced herself. We recently opened and are anticipating other retail development. We could not survive without other businesses being there and attracting people down to the wharf.

Member Candela noted that he would like to address Ms. Woodworth on the shared parking. That is not news to us, right here at the new hotel; shared parking has been considered and is not a new concept. I would ask if you had walked up the hill today from down there as opposed to driving up the hill. Shared parking has to be convenient to the user and I do not see anyone parking on top of the hill. They may walk down and up once but will not do so a second time. The shared used concept will not work as far as that site is concerned because of how steep that hill is.

Ms. Woodworth stated that what has been very frustrating in the world of creating good places is that the vehicle ends up taking the priority versus the person. People want to be in environments and if it is a dynamo environment, they will walk up a hill. The key is how you create the environment. What we constantly do in the development world is we have emphasized parking so much that we have created what you see in strip centers, buildings behind fields and fields of parking. I have climbed that hill and I don't believe you would need all the 50 spaces because of shared use parking. Placing parking along Washington Street would be closer to the waterfront. This project could become a really interesting destination for people and would enliven Leonardtown. You would be surprised as to what a driver will do to participate in such a great project.

Chairperson Moulds remarked that this is not a public hearing but I will open the floor for discussion if anyone would like to comment.

Dr. Winnik commented that he is a resident of Leonardtown and lives on Washington Street. The comparison of Leonardtown to Annapolis is a stretch of the imagination. Mr. Russo's plan will go from 33% deficit, to nearly 44% in deficit I find that not satisfactory. It is not surprising that developers are going to say you don't need as much, which is not news to me. As far as parking along Washington Street that will just not work. I could get a petition of every resident

on Washington Street against parking. I will read a prepared statement: "Before any commercial buildings are built on the wharf area you have a golden opportunity to make sure that any and all parking for shoppers for those Businesses Park in spaces designed for those commercial buildings and not mix the single family homes along Washington Street. These spaces should be for family and friends for those residents. Therefore we request that the Town Council pass an ordinance that designates there be no on street parking for commercial business shoppers on Washington Street from Lawrence Avenue to Godwin Way. This will go before the Town Council at the next meeting." If we need to we can get a petition. I think all of you recognize that parking on Washington Street is not an option and is not fair to the residents. We have supported the commercial development at the wharf for years it lay vacant and I am proud of what Mr. Russo did with the two buildings below me. But, to say that they will use Washington Street for parking, just will not fly. What Mr. Candela said about walking up and down the hill is good exercise but I cannot see people shopping and carrying packages up the hill, during the winter time or during the summer time.

Mr. John Norris, the Town's legal representative is here today and a lot of this document was written based on conferring with Mr. Norris and he provided direction for the staff's recommendation.

Mr. Norris remarked that he would like to make a couple of points. We looked through the Town's code, the application and back to the history of the application back in April 2003 to really come up with the staff report. We heard discussion regarding mixed use as one of the commercial marine district uses. In the Town Code it is actually mixed use buildings, Section 155-06, Mixed Use buildings, residential/commercial/retail. That is a matter of zoning interpretation whether all three uses have to be present in one building for that building to qualify as a mixed use building to be in that district. If it is determined that all three uses have to exist in that building for that to be a mixed use building then the Town Code also provides that only those uses that are allowed in the district can exist in the district unless they are non-conforming. If all three have to be there and only two are in one and two in the other and separate buildings then you have reasonable basis to determine that it is not a permissible use of either building. Looking at Article 18 in the Town Code, in addition to having time limits in which someone has to implement the approvals they have been granted it also has provisions such as building code and I do not think Mr. Russo is going to argue that Article 18 doesn't apply and that he wouldn't have to meet the building codes of Article 18. I think that trying to use the fact that the time restrictions are in a different Article than the Commercial Marine District is a bit of a stretch. Listening to Mr. Russo today, he said that the elevations were not available in 2003 but the concept was approved for Phase II. If you look in the Town Code, when the Town Code, under Commercial Marine refers back to the PUD requirements for how the process is approved. The requirements for PUD approval require that elevations be submitted with the concept plan. It may appear that Mr. Russo did not have all of the requirements for the concept plan when it was originally submitted in 2003 based on his comments today. This may warrant some more inquiry by the Planning Commission or staff. With respect to the height and referring to the minutes before you, I believe Chairperson Moulds asked the question in 2003 and the question was answered by Mr. Russo that the third floor would be loft apartments or built-in dormers. With respect to the parking, Ms. Powers letter also identifies the fact that the applicant has the burden of demonstrating that they can't satisfy the requirements before they can utilize the fee in lieu. My final comment is that there are a number of requirements for final site plan approval

including some legal documents that I have not seen, they may have been part of the application but you may want to look specifically as to whether the requirements for final site plan approval Article 155-24 have been met such as drawings at 100 scale, swm design and sewer design along with a number of other items.

Chairperson Moulds addressed the statement in regard to the third floor being loft rather than an actual third story. We were given the impression that these would be third floor loft apartments, would be tucked into the roof line and would not be a third story. On the building on the townhouse side that is much taller than anticipated in reference to the townhouses and the view from their balconies. This building seems to be a very massive building and one of the things we stressed at the time is that we would be presenting a good waterfront view as you approach Leonardtown by water. The building on that side seems that it may obstruct the view of the townhouses as you approach from the water.

Chairperson Moulds pointed to the drawing and noted that it does not look like a lot of space between the edge of the balcony and the beginning of the building. I feel like they will feel hemmed in.

Mr. Russo stated that it appears to have about 90' and 110' feet of clearance. In response to the lofts, anything is possible. What I am trying to obtain is the granting of a third floor design within the 45' code limitation. I probably did say something about a loft we feel our obligation is apartment but it has been some time since we have focused on the actual design of the building. We feel our obligation is within the 45' limitation and if it means dormers in the roof, we can do that, but there will be a third floor, I have to get that third floor up there. The height of the townhouses, which is about 39', but they are up on an elevation that brings them to anywhere from 23' to 34' for the first floor. The first and second floor may have an obscured view but that is not new. Some have better views than others and we tried to arrange the townhouse so everybody had some perspective of the waterfront.

Chairperson Moulds remarked that we want to have a desirable waterfront and that means a desirable townhouse that people would want to purchase. You are going to want to see from the second balcony. I don't think anyone had an indication, we were always told this would be down below. I had no idea it would be so high to go above the second balcony. I believe the third story will take an awful lot away from the waterfront from the perspective of the people who live in the townhouse and from the water approach.

Mr. Russo clarified that a two story building may work at this location but a three story building may work for the other site.

Chairperson Moulds replied that they will definitely need to discuss that, it is a possibility.

Member Frock commented that on the scope of the buildings and dormers versus the third story, in the taskforce this came up, and this was only two months ago. We talked about this and my overall concern with the project didn't revolve around parking. I am not comfortable yet about how the people who live in the townhouses feel. I concur with Chairperson Moulds and am sensitive to them living there and resale. I do support this project and feel it will do a lot but am concerned about the scope and height of the buildings.

Mr. Russo commented that there is some leeway and flexibility in regards to the height. I will play with the elevations and I said the same thing in the so called task force meeting, which is not a difficult thing to do. I never suggested that we would be reducing from three stories to two stories.

Member Frock noted to Mr. Russo that he said in the meeting he would take a look at it and get the architects involved and bring something back.

Mr. Russo responded that was true. I felt it was better that we present the entire concept again and have you flush it out and get feedback. I can play with these elevations with our architect and if that is the issue I would be glad to come back and present something to you directly. I have had numerous meetings and we come back to the two same issues. Mr. Candela has been very consistent about the parking issue but it does not consume me as developer. Rather than to wager the risk of you rejecting us today, I would suggest that you consider giving me the opportunity to deal with just the elevations on these two buildings and come back to present something to you more acceptable, but I cannot do much about the parking.

Chairperson Moulds remarked that one of the plans showed parking on it.

Mr. Russo replied that the plan shown today is the original one that was adopted and we have been making modifications since.

Member Burris expressed concern regarding the last meeting with Mr. Larry Ludwig where he stated that there were some 24 outstanding issues and some traffic flow issues.

Ms. Miller stated that those 24 outstanding issues have been resolved and she noted some of the changes made to alleviate the traffic flow such as changing to parallel parking.

Member Candela inquired if the tractor trailers serving the restaurant will they be able to make the sharp turns and come back to Washington St.

Mr. Russo responded that the engineers did traffic studies on the various types of tractor trailers and they are all able to get through without any difficulties with one exception which is the largest of the tractor trailers which would clip the curb. We did have directional plans drawn electronically and they were presented to the Planning and Zoning Commission.

Mr. Norris remarked that there is a provision in the PUD section that is incorporated by reference in the Commercial Marine section that states “no deviation from the concept development plan so approved (in this case Planned Use Development and here they are talking about Commercial Marine) shall be permitted without the approval, as herein provided by the Mayor and Council for the Planning and Zoning Commission as the case may be”. Of course, the concept plan was originally approved by the Planning Commission and forwarded to the Mayor and Council for final approval. I wanted to make you aware of that additional provision that is incorporated into the Commercial Marine District. We have been talking about the number of deviations from the concept plan and what was approved in 2003.

Member Burris asked if Mr. Norris was saying it should go back to the Town Council.

Member Candela commented that it is an interpretation of the code about whether time has elapsed as to the original concept approval. We talked about one year and two years and in fact it has been four years. I am wondering whether or not in as much we have talked about some major variations to the plan is whether or not it is time to start over with a new concept plan.

Ms. Powell asked to address that comment. This is not a paper project anymore, the Town has derived substantial benefit from this project so to say to a property owner now you have to start over, we are going to run ahead with the part we got out of this deal but we are going to make you start over. I think that is very unfair and I do not think the courts will uphold that. I also do not think there have been substantial changes to the plan.

The members proceeded to have a general discussion on how to proceed.

Member Candela remarked to Mr. Russo that he made a comment a few moments ago that he would be willing to address the height issue in regard to the building nearest to the townhouses but that parking would not be something you could address.

Mr. Russo replied that he would readdress the design of the buildings, assuming there would be at least three stories on one building and not sure what he could do on the other. He will try to respond to Chairperson Mould's concern expressed about the view from the townhouses. In regard to the parking, if this goes down as a result of what we do here then we would address the parking. I do not see how I can reduce the footprint of the building but we may be able to do something in terms of reduction within this building that would result in reduction of parking.

A resident of Leonardtown Landing spoke up and expressed concern about why they are only addressing the height of the building that is closest as that area down there is not all that big.

Member Frock asked if there is a measurement of what height will accommodate the view and what height would be acceptable.

Mr. Russo responded that he will play around with the two versions and present them to the members.

Chairperson Moulds indicated that she would like to know what the height would be to the bottom of the balcony from the construction site and how much that would allow you to have a two story building.

Member Candela stated the Members are discussing whether they would act on your request today for final approval or postpone this decision for a later date until some of the issues have been addressed by you. We would be prepared to do either one. I would think it would be to your advantage if we were to postpone this meeting to a later date and give you a chance to address the issues that came up today before we act on the request.

Mr. Russo responded that sounds reasonable.

Member Candela moved to postpone or table this decision until an agreed upon date to give Mr. Russo the opportunity to address the issues which we will outline; Member Burris seconded.

Discussion:

Member Burris stated that he would like to have more time to look at this and submit my concerns to staff and they can report it to Mr. Russo next week as there are so many changes.

Member Candela noted that his concern has always been parking.

Member Frock agreed his concern is also parking along with the building height and sight line for the residents and getting to an acceptable height.

Chairperson Moulds remarked that her concern is the appearance of the waterfront as you see it approaching from the water that you not come up and see massive buildings and you actually have the feeling of space with the parking in the front and space around the townhouses.

Member Candela noted that one of the issues mentioned earlier is the safety issue regarding traffic flow and something I was made aware of today is that, it is not a perfect world, we all make mistakes and apparently we made a mistake when it came to approving the traffic flow into the townhouses and the Board of Education cannot get a school bus in there as it cannot turn around, a mistake was made back then and we do want to see this project as a credit to the town and we do not need anymore mistakes. Our intention here is to make sure it is aesthetically nice and safe.

Mr. Russo replied that he is aware of the school bus issue. The Boards comments have been constructive and this response results in a better project for both me and the town. We will do what we can to get this project completed.

Chairperson Moulds entertained a vote on the motion, no further discussion, motion passed unanimously.

Monthly In-House Permits – No Questions

Town Council Minutes – No Questions

Member Candela moved to adjourn the meeting at 4:00 p.m., seconded by Member Burris, no further discussion, motion passed unanimously.

Respectfully Submitted:

Teri Dimsey, Recording Secretary

Approved:

Jean Moulds, Chairperson

Absent
Frank Fearn, Vice Chair

Dan Burris, Commission Member

Jack Candela, Commission Member

Dave Frock, Commission Member