

## November 1, 2012 Plan Commission

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, November 1, 2012, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Dan Swafford called the meeting to order at 6:00 p.m. Sandra Hash led the Pledge of Allegiance.

**Roll Call:** Members present were: Dan Swafford, President; Don Calvert, Phillip Rogers, Russ Ryle, Phillip Smith and Sandra Hash. Terry Baker was absent. Connie Griffin, Director of Planning, Darla Brown, Town Attorney, and Rick Coppock, Bynum Fanyo and Associates, Town Engineer, were also present.

## Approval of the Minutes – October 2, 2012

Connie Griffin, Planning Director, requested a few changes to the minutes. Dan Swafford entertained a motion for approval of the October 2, 2012 minutes as amended. Phillip Smith so moved. Russ Ryle seconded. Motion carried.

## Old Business

**Richland Senior Center Project, Plan Commission Docket Number: 10042012-1, 15 Unit Apartment Complex, 5971 N. Brown Addition Drive, Petitioner Dennis Fisher**

Connie Griffin, Director of Planning, presented a map that showed the project location. This is zoned Commercial 3 and is a correct land use for this classification. It is located at 5971 N. Brown's Drive. The project area is 0.9 acres. This is a 15 unit apartment complex and each unit has laundry facilities. One unit is ADA accessible and all other units are fully handicapped adaptable. On October 24, 2012, as a courtesy, the Plan Commission discussed there would be some project plan elements not approved. There has been the addition of §152.127 of the Ellettsville Town Code which states *"Each development plan will [must] include a detailed site plan to scale showing all of the locational aspects relevant to new development such as utility location, easement location, provision for access, and for projects over five acres provision for two access points with a focus on access for emergency [access for] vehicles . . ."* §152.222(A) addresses the proposed vehicle access to the apartment complex by means of public right-of-way. *"No maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or walkway."* Therefore, approval of the plan as submitted will need to be addressed through a Board of Zoning Appeals ("BZA") hearing. §152.224(A)(2) *"prohibits parking spaces located in the street setback."* The Richland Senior project plan shows parking spaces for the multi-family apartment complex located in the required street setback. Therefore, approval of the plan as submitted will need to be addressed through a BZA hearing.

The Richland Senior project proposes a total of 18 parking spaces with two reserved for people with disabilities. The Town requires two parking spaces for each dwelling unit, and Indiana Code 5-16-9-2 bases accessible parking on the total number of parking spaces of the apartment complex. Therefore, the required number of accessible parking spaces is one. The plan, as submitted, currently exceeds the state requirement by offering two accessible spaces. Since a total of 30 parking spaces, including one accessible parking space, are required by Town Code, a reduction of parking spaces will require a BZA hearing for approval of the plan as submitted. The Plan Commission also reviews proposed projects for compliance with the Ellettsville Comprehensive Plan. The Comprehensive Plan is a guiding tool for numerous planning elements, which covers infrastructure, utilities, zoning, transportation and traffic, safety, fire, police and more. The Ellettsville Thoroughfare Plan is contained within the Comprehensive Plan. The Ellettsville Thoroughfare Plan contains a road classification system map with typical pavement cross section requirements for local, minor and major collector streets in the Town. The Planning Commission references for local, minor and major collector streets in the Town. The Planning Commission references the cross section specifications when reviewing project plans, as well as input from the Ellettsville Street Department, the Planning Director's recommendations and the Thoroughfare Plan.

Currently, the senior complex proposes a 20' pavement width, as compared to the Thoroughfare Plan's 24' pavement width requirement for local streets. The proposed reduction of pavement width will require a BZA hearing for approval of the plan as submitted.

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**Dennis Fisher, Representative of Richland Senior Housing Project**, explained they've read the October 24, 2012, letter from the Department of Planning. They're waiting to see what the Plan Commission has to say about it.

**Russ Ryle** commented the last plan has the connecting road from Brown Lane to Matthews down to an 8½' wide driving area with a slight curb berm on each side. It is not even 20'. He noticed on the access for the turns on the north end of Brown Lane, are considerably wider than 24' provision made for the Town's large firefighting apparatus. Clearly, there is not an adequate turning radius to get off of the connecting lane that is 8½' on the south end of Brown Lane to Matthews. As pointed out at a Town Council meeting, they have to be able to handle the largest equipment in Monroe County. This issue is more critical than the 20' to 24'. Dan Swafford asked if he is saying where it narrows down to the 8.5'. Mr. Ryle replied that is correct. There's a "T" intersection for a 90° turn on to a road that is no more than 26' of pavement. Ambulances are 8' wide. Mr. Swafford asked Rick Coppock why it is 8.5'. Mr. Coppock replied the 8.5' is the width of the vehicle and the pavement is 10'. Mr. Swafford explained this is not going to be a city street and will only be an emergency access. Mike Cornman has advised 10' was adequate to make the turn off of Matthews.

**Connie Griffin, Director of Planning**, read the following excerpts from the October 8, 2012, Town Council minutes as follows: *"Scott Oldham has an issue with ingress and egress, particularly for the emergency vehicles. His concern is this, and any other project, needs to have a road constructed that is suitable to handle the largest piece of emergency equipment in the county at speed. In this case it would be Truck 79 and Bloomington's Truck 1. This is a senior citizen's complex and if there's a massive fire, evacuation will be very slow. It's going to be very complicated and a nightmare. Having been on several of these scenes over the years, a truck cannot be delayed in getting to a fire. It's a crucial piece of equipment. The road isn't very friendly for the two trucks that were mentioned. It is a proposed 10' roadway and the trucks are 7½' to 8' wide. This needs to be looked at a little better for the danger of "what ifs" and they're a big concern for Planning and the Town Council. In the long run they need to be more efficient with what they're doing if they're going to build and construct an apartment complex."* Deputy Fire Chief Mike Cornman stated *"The actual width of the ladder truck and all of their apparatuses are 8'. The truck can make the road if they have to do so. It's much like a fire access road in accordance with the fire code. They would need to make sure it's trimmed on the sides as well as 12' to 14' above for clearance. They couldn't run it on a regular basis but in anticipation of the runs they've had in the past it would be minimally adequate. A bigger and wider road would be better but they could make it work if they had to. Mr. Oldham asked if he meant minimally adequate as it sets today. Deputy Chief Cornman said that was correct . . . Mr. Oldham stated if it's left as a private road or private access that's not maintained they have no control over it."* Also, Dianna Bastin stated she *"agrees with Mr. Oldham's comments about a private lane. She reiterated she's not comfortable with the private lane."*

**Dan Swafford** stated clearly the Fire Department says they can make the turn so it's up to the Plan Commission to make a decision on whether or not it's to stay an emergency exit only or another ingress/egress which he knows the Petitioner is against.

**Russ Ryle** stated he had a conversation with Mike Cornman who indicated in order to bring Truck 79 out that drive they would have to put the nose out on Matthews, make a partial turn, then back up and take a second pass at it. By no means would they make it in one pass or at speed. There are a total of 87 apartments they might have to use as emergency access. From a safety standpoint, and being disabled, he's extremely uncomfortable with building the mouse trap.

**Phillip Rogers** stated they couldn't make a turn off the top of the road on to Matthews at speed; they would have to slow down because it's a steep grade. He thinks the truck could make the turn.

**Dennis Fisher** stated he, Fire Chief Jim Davis and someone else questioned turning on to Matthews and they answered it wouldn't be a problem to turn the truck on to Matthews. Mr. Swafford said he was the one that had asked the question and it is in the minutes.

**Don Calvert** thought he had gathered from last month's meeting the Petitioner might consider another set of apartments in the area. Mr. Fisher said those would be off of Constable Drive and west of the older units. He asked if Brown doesn't become a Town Street do they have permission to cross it. Mr. Fisher answered Brown Road is on the west end of Town running north to south. The road they're using off of Matthews is their drive and belongs to them. Mr. Calvert asked to eliminate the entire problem with Brown, could they not access the new area through the existing area where the road goes to the service building. Bernie Guerrettaz answered he doesn't think the geometrics would work going around the building and for the trucks to make the radius. One of the other points is when they start working on different properties they have a hard time differentiating those with the USDA. There is connectivity. It's not a 30' roadway but there is connectivity. Mr. Calvert asked if it couldn't be modified to come in, go around the building and come right back out again without going on to

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Brown. Mr. Guerrettaz answered he didn't think there was enough room to do all of that. They're also trying to make a pleasant living environment. He can't say right now they would be able to make those radiuses because they're 90° turns.

**Russ Ryle** commented when there's an issue of an emergency the question is where the emergency is located. If they've got a fire in a building, whether under construction or existing, it affectively blocks the road in front and round it. Keep thinking of the access to Matthews as an exit but in an emergency there are several scenarios where that'll be the only way in to get to a structure. There could be a fire involving a building under this project or an existing building and functionally it would block the east/west drive on the north end of Brown Lane. This has to be looked at two ways in an emergency access – you can go in as well as come out. Mr. Calvert asked if there was a fire would it not be blocked anyway to keep people from coming in. Mr. Ryle said the question is can they get their apparatus in there. They've got to be able to come up off of Matthews to get equipment to the scene. Mr. Calvert said he agrees but thought the Fire Chief and Assistant Fire Chief said it could be done. Mr. Ryle stated all he has ever heard is discussion about using it as an exit. He's never heard an entrance discussion because that's another entire issue. Coming off of Matthews is roughly 26' of pavement to hit a 10' drive.

**Bernie Guerrettaz, Bledsoe Riggert and Guerrettaz**, said his understanding is the Fire Chief said the roadway is accessible the way it is. They're improving it. When they approached the Plan Commission they had two points. The width of the pavement is not a problem on Brown. They looked at the letter the Town of Ellettsville issued saying they need a BZA meeting and they've asked for that. They're providing the connectivity and meeting the standards the emergency personnel have said they needed. At the last meeting, Dennis Fisher said construction traffic will respect the neighbors. They'll probably disintegrate the driveway significantly so that will have to be repaired anyway. They'll repair it to a 10' width. They do not want to do it to a 20' or 24' width and they don't want it as a thoroughfare and shortcut. He was just over there and traffic was stacked up. People will cut through there if they know the shortcut is there. They don't want it. Mr. Swafford asked if when they repair the street, it will be repaired to Town's standards as far as asphalt. Mr. Guerrettaz replied there are a couple of other standards they deal with. They will repair it with 2:1 stone. The connectivity they will provide is 1,000 times better than what they have today. The emergency services providers have told them it works, the way it is today. They'll make the pavement section width 24', face to curb, on Brown Drive. They were trying to use engineering judgment to assist neighbors with using the roll curb. Functionally, for Richland it doesn't make a difference. The parking in the setback on the unimproved strip of grass and private drive is, as a matter of fact, the right-of-way which goes right into the middle of the existing asphalt drive to Mr. Knickerbocker's house. The asphalt drive isn't totally within the right-of-way. These people have been working with senior housing for over 40 years in the Town of Ellettsville and they know what's required for parking. If they need more parking for an event they have enough area for overflow because they don't use all of the parking spaces they have now. They know their product, they know their people and they know what their parking requirements are. The parking spaces that are situated in the 20' setback, not in the right-of-way, are the bigger issue. They're providing the emergency connectivity with this plan.

**Dan Swafford** commented Mr. Guerrettaz brought up a couple of good points. On the issues that do not conform to the Town or state codes will have to go the BZA. He requested clarification of the procedures for the BZA meeting from the Town Attorney.

**Darla Brown, Town Attorney**, thinks the two choices are: If there are development plan issues they can deny the petition based on the fact that the plan as submitted does not meet the code. Then if the petitioner wants to go the BZA the petitioner can. Or, they can table the petition in order to give the petitioner time to go to the BZA to find out if they can get their variances. Then they can come back before the Plan Commission. Mr. Guerrettaz asked if he could offer one more choice. The Plan Commission could approve the petition based on the outcome of the BZA hearing. Mr. Swafford asked if he meant it would be with a conditional approval. Mr. Guerrettaz replied yes, they can give conditional approval with the BZA. If the BZA doesn't see a problem with the number of parking spaces or having the cars parked in the setback then it can be approved subject to those two items. Ms. Brown stated she has a problem with that because the statute says "*The Plan Commission must approve or disapprove a development plan.*" The statute also says "*The Plan Commission must review a plan to determine if it satisfies the development requirements.*" There is really no room in the statute or the case law she can find to suggest that they can grant conditional approval upon another board doing or not doing something. If they give conditional approval they're not really approving or disapproving. The other concern is once the Plan Commission declines to grant approval the petitioners have 30 days to initiate an appeal. That time starts to run from when the Plan Commission enters its decision. If an approval is conditioned on the BZA not doing or doing something then that leaves them in a state of flux as to when the appeal time runs. A practical issue is, is it fair to tell another board they're okay with

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all of this as long as they do x, y and z? It puts them in a position maybe they don't want to be in. She reiterated her concern is the statute says approve or disapprove.

**Don Calvert** asked what the specific issues are. Ms. Brown replied the first issue is the maneuvering of entering or leaving a parking space on a public right-of-way which is found in §152.22(A) of the Ellettsville Town Code. Section 152.224(A)(2) refers to parking spaces located in a street set back. The other issue is the number of parking spaces. Section 152.223(B) states *"Two parking spaces are required for each unity."* They have 15 units so they need 30 spaces. There was an issue with the sidewalk. They're supposed to be a width of five feet and the plan shows four feet. She thought she heard the petitioner say at the last meeting they agreed to set the sidewalks to five feet and she confirmed that's not an issue. Mr. Fisher advised that was correct. On the north side of the complex, the plan as submitted has a 20' pavement and according to §153.081 of the Town Code it's suppose to have a pavement width of 24'. She recalls at the last Plan Commission the Petitioner agreed with this and asked if this was correct. Mr. Guerrettaz replied that's not correct. They've never said they were putting in the east/west drive on the north side of the unit. They're not building it to 24', it will be 20'. It's a private drive and not a public right-of-way. Brown Drive which runs north to south will be 24'. Ms. Griffin commented there were earlier plans which showed it went from 20' to 24' and back to 20'. Mr. Swafford asked what the current plans show. Mr. Guerrettaz replied anything he's drawn shows 20'. Ms. Griffin noted it's on the plans from Miller Architecture. Mr. Swafford said the fact remains it is it a public street or private street and asked Mr. Coppock what the specifications for a private street are.

**Rick Coppock, Bynum Fanyo Utilities, Town Engineer**, replied all the other private streets in the complex are 20' and the part that's going to be extended is 20'. Mr. Swafford asked if the Town has any specifications for a private street going in or how wide it should be. Mr. Coppock answered no; it only talks about public streets. Sandra Hash asked what's going to remain 8'. Mr. Coppock replied nothing that he knows of. Mr. Ryle further added they're going to have 10' on the south end which isn't even up to the rest of their private drive standards. Mr. Coppock noted there are roads in Monroe County that are 18' in width. Ellettsville Town Code calls for local streets to be 24'. Ms. Brown noted in Mr. Coppock's report, it states the street width from the public street portion of the project as required by the pavement width is 24' from the front edge of the concrete curb to the front edge of the concrete curb. Mr. Coppock replied at the time the plans showed the pavement width from the back of curb to back of curb to be 24' which made the pavement width 20'. This was in the public street section. They've agreed to change it to use a standing curb so they'll have 24' of pavement within the public road section. Ms. Brown commented it takes away that issue. So the only remaining issue is an offer for reasonable compromise. The Ellettsville Town code states under §152.127, for projects over five acres provisions for two access points for emergency vehicles are required. On the section between Matthews and Brown Street, she hears the Petitioner saying they'll pave it to Town specifications and make it at least 10' wide. Mr. Fisher replied this is correct. They don't have an acre in the project. Ms. Brown noted the total acreage of the project is 5.88 acres including the proposed development. If it boils down to the issue of maneuvering or parking in a setback and the number of parking spaces then they're going to go to the BZA.

**Don Calvert** asked if the Fire Department sends out a lead vehicle ahead of the fire trucks and engines that can block the road, if necessary, to keep traffic from coming through so if they have to maneuver if they can. Ms. Hash stated she's never seen that. Mr. Ryle noted they don't have control over an emergency situation, but if something is minimally acceptable it is putting them on thin ice if they don't get 20' of pavement on the south end of Brown Drive. Mr. Calvert said the problem he has with that is they have trained, paid professionals who include the Fire Chief and his assistant who both say it can be done. Ms. Brown said what the Plan Commission has to determine is what the facts are and based on what is required for the emergency vehicles. Mr. Calvert said he agrees but one of the facts is they can get through there according to the paid professional experts.

**Rick Coppock** wanted to clarify maneuvering. It boils down to you can't back out into a public street. For those parking spaces facing the building people would back out into a portion of the public right-of-way. Mr. Ryle asked what the depth of the shortest space is. Mr. Coppock said it's a standard size space of 18 feet.

**Phillip Smith** asked what the difference is for those people backing out into the public right-of-way and him backing out of his driveway on to the street he lives on. Mr. Coppock replied it is in the multi-family unit section. It states you can't back out on to the public right-of-way. Mr. Swafford reminded everyone that this is what's going to the BZA. The Plan Commission won't be making this decision.

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**Phillip Rogers** asked how many people own a car in their complex. Dennis Fisher stated Carson Hayes verified their parking lots aren't full. Mr. Fisher added not everyone owns a car. It is less than one car per unit and the lots are split up among all the units.

**Darla Brown** thinks the points Mr. Fisher raised are to be discussed at the BZA. Mr. Swafford commented it would make more sense for the Plan Commission to table this issue until after the BZA meets. Perhaps they could have a special meeting to speed up the process.

**Bernie Guerrettaz** asked if they go to the BZA and return to the Plan Commission for approval can they put in their motion that they'll limit the discussion to the two items the BZA heard. They started at the Plan Commission one month ago wanting to know if they had to go to the BZA, what the process was and what they needed to do. He doesn't know why they had to come back for this meeting. They've accomplished some things at this meeting.

**Mr. Swafford** said they've worked it out to where they've decided how to approach it. They really had to figure this out. The meeting was adjourned for a recess. The meeting was reconvened.

**Russ Ryle** wants legal clarification on what their options are. It's his understanding the process is the Plan Commission makes a ruling and if they don't like the ruling they can appeal to the BZA. If the BZA gives them an adverse ruling they're not in agreement with then they go to a court. Ms. Brown replied or they could return to the Plan Commission and re-petition. Mr. Ryle asked under what condition does the BZA get involved with a project before the Plan Commission has given what the petitioner considers an adverse ruling. **Ms. Brown answered she doesn't see there were any problems with either the Plan Commission denying it and having it go to the BZA board before tabling either one.** Mr. Ryle commented it would be the expedient thing because with these people time is of the essence. Wouldn't the expedient thing be for the Plan Commission to deny it on these two points and if the BZA over rules them then they're good to go. If not, they've got a clear position to work from a court's standpoint. The point is if they table it and the BZA rules, they return in December and **they still are not happy** they're looking at January and February to run this the rest of the way through the process. Where tonight they can put them in a position to go to BZA this month and they're going to be in a quicker position to proceed on their project. Ms. Brown commented the Plan Commission could do either one. They don't want to grant approval conditioned upon the BZA decision. Mr. Swafford asked if someone makes a motion to approve it and it gets passed then do they even have to go to the BZA. Ms. Brown answered if it passes, it passes. They would have to find that the development plan meets the standards of the code.

**Don Calvert** asked if they can legally let the petitioner go to the BZA and its approved will they return to the Plan Commission and would it be acceptable. As it stands right now with the violations, it's not acceptable. If the BZA said these two problems right now are okay and they accept that then it should go on through. Ms. Brown said she thinks he's talking about a conditional approval. If the Plan Commission approved it based on the condition that the BZA granted the variance and the two issues that have been discussed concerns her. Mr. Calvert clarified the BZA could either approve or deny it and then it would return to the Plan Commission. Mr. Swafford asked if he was suggesting to table it, let them go the BZA and then return to the Plan Commission. Mr. Ryle said if they want to limit the issues to two issues before the BZA, the Plan Commission needs to deny it and they specifically state the two issues. Those issues then become the two that go the BZA. If the BZA tells them they can go ahead "as is" then it's over. If the BZA denies their petition then it goes to court. Mr. Guerrettaz commented a denial by the Plan Commission would cause it to start over.

**Darla Brown** doesn't know that they would have to start completely over and do two hearings. They would have to come back for one more meeting. Mr. Swafford said his thoughts are it would be a lot cleaner if it was tabled. Mr. Calvert confirmed what they're shifting to is a solution to get the two issues in front of the BZA. He thinks they need to focus on getting them to the BZA. The BZA will either approve or reject it and that should solve it.

Dan Swafford entertained a motion to move this **forward to Town Council (I think this should state BZA)**. Phillip Smith made a motion to table the Richland Senior Center Project, Docket Number 10042012-1 based upon the two violations they've discussed tonight which are the number of parking spaces under §152.223(B) of the Code and under §§152.222(A) and 152.224(A)(2), the maneuvering and backing out into a public right-of-way. Don Calvert seconded. Roll Call Vote: Dan Swafford – yes; Don Calvert – yes; Phillip Rogers – no; Russ Ryle - no; Phillip Smith - yes and Sandra Hash – yes. Motion carried 4-2.

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**Dan Swafford** explained the Petitioner needs to schedule a BZA meeting with Connie Griffin, Director of Planning. After the petitioner goes through this process he will entertain a special meeting to expedite their petition. The Petitioner will have to bear the costs of a special meeting. Sandra Hash advised the Plan Commission members make \$30 per meeting. Ms. Griffin explained it will be approximately 14 days for them to get a BZA hearing.

**Russ Ryle** asked Connie Griffin if the BZA has a full board. Ms. Griffin replied they are one member short. Mr. Swafford noted they have four people serving on the BZA board.

**Dan Swafford** announced if there is anyone wanting to serve on the BZA to contact him. They can submit letters to the Clerk-Treasurer's office in Town Hall.

**Dennis Fisher** asked if the BZA approves their request, do they return to the Plan Commission. Mr. Swafford replied they will have to return to the Plan Commission because it has been tabled.

### **Adjournment**

Dan Swafford entertained a motion to adjourn. Don Calvert seconded. Dan Swafford adjourned the meeting at 7:19 p.m.

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Dan Swafford, President

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Terry Baker, Vice President

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Sandra Hash, Secretary

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Don Calvert

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Phillip Rogers

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Phillip Smith

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Russ Ryle