City of Taylorsville
Planning Commission Meeting
Minutes
Tuesday – May 24, 2011 – 6:00 P.M.
2600 West Taylorsville Blvd – Council Chambers

Attendance:

Planning Commission
Dale Kehl - Chair
Garl Fink
Steve Faurschou
Kristie Overson
Ernest Burgess
Dan Fazzini, Jr. (Alternate)
Excused: Anna Barbieri, Ted Jensen

Community Development Staff
Michael Meldrum – Principal Planner
Excused: Mark McGrath, Dan Udall, Jean Gallegos

PUBLIC: None

WELCOME: **Commissioner Kehl** opened the meeting at 6:00 p.m.

TEXT AMENDMENT

1. 2Z11 **City of Taylorsville** - Text Amendment to the Zoning Ordinance to Address Carports and Awnings. (Michael Meldrum/Principal Planner)

1.1 **Mr. Meldrum** presented this item. This item was previously presented to the Commission item at the April 26 and May 10, 2011 meetings. Only attached structures that are open on three sides are considered in this report. Structures with more than one wall are not contemplated, nor evaluated with this text amendment.

- The Planning Commission provided direction to staff at the May 10, 2011 meeting to bring back two to three options in ordinance format for consideration. Staff has prepared proposed language for two options.

- As mentioned in the previous report, there are numerous attached structures in the City that have been built without permits and are in violation of building and zoning ordinances as established in their respective codes. The City of Taylorsville needs to determine if an ordinance amendment is appropriate, and if so, to what degree would existing ordinances need to be modified.

- Staff has consulted with the Chief Building Official (CBO) for the City and has been informed by him that attached structures would require a building permit regardless of the size. Additionally, Staff has been informed by the CBO that there is nothing in the International Building Code (IRC) that would prohibit reducing the side and rear yards to a minimum of five feet each.

- As the Planning Commission is already aware, an ordinance was relatively recently adopted that allows a home to have a minimum side yard setback of five feet on one side with the total width of the combined side yards totaling not less than 16 feet (See Section 13.10.050-A) for homes in the R-1-6, R-1-7 and R-1-8 zoning districts. Homes located in the R-1-5 zoning district are allowed to have a minimum of five foot side yards on each side. Homes on lots located in the R-a-10, R-1-15 and R-1-21 zoning districts require a minimum of 10 feet side yards on each side. On lots in the R-1-43 zoning district, the minimum side yard requirement is 15 feet for each side. Modification to this ordinance may be necessary depending on what the Planning Commission's recommendation to the City Council is regarding setbacks for attached structures.

- If the Planning Commission determines that an ordinance amendment is merited, Staff recommends that it may also be prudent to ascertain a maximum percentage of lot coverage for all single-family residential zones. Section 13.10.060 of the Zoning Ordinance contains language that is only applicable for accessory structures located in the rear yard of a single-family home. The maximum allowable coverage is established at 25%. Staff does not recommend any change to the percentage at this time.

- **Mr. Meldrum** said that he had met earlier in the day with Commissioner Overson with regard to the percentage of allowed space in the rear yard of a single family home. The original intent was to expand the maximum percent to 35% from 25% as it is currently. He added that the more he evaluated that the more problematic it became in trying to be able to enforce that. Therefore, he is now not recommending that any change in the percentage figure be made.

- **Mr. Meldrum** explained Option #1 as being a simple reduction in the existing setback for attached structures, open on three sides in all of the single family zoning districts. That would take it again to a 5 foot setback both on

the side and rear property lines. There is no change proposed nor is one recommended for front yard setbacks. Option #2 is one that contemplates having a sliding scale on the setbacks with the R-1-5 zone having a 5 foot setback and R-1-6 a 6 foot, R-1-7 a 7 foot, etc. Then the change starts happening at the R-1-15, R-1-21 and R-1-43 zones and those do not change with the Option #2 proposal and would stay at the 10 foot setback and 15 foot side and rear yard setbacks as shown in the table shown with Option #2.

OPTION 1: This option contemplates a simple reduction of the existing setbacks for all single-family residential zoning districts to a minimum of five feet to both sides of the property line and rear property line. No change is proposed, nor recommended, for the front yard setback.

OPTION 2: This option contemplates modifying the existing rear yard setback distance to a sliding scale beginning with the smallest single-family residential lot size allowed under Taylorsville Zoning Ordinances, which is 5,000 square feet.

Zoning District	R-1-5	R-1-6	R-1-7	R-1-8	R-1-10	R-1-15	R-1-21	R-1-43
Lot Size (sq. ft.)	5,000	6,000	7,000	8,000	10,000	15,000	21,000	43,000
Minimum Setbacks	5 ft. side 5 ft. rear	6 ft. side 6 ft. rear	7 ft. side 7 ft. rear	8 ft. side 8 ft. rear	10 ft. side 10 ft. side	10 ft. side 15 ft. rear	10 ft. side 15 ft. rear	15 ft. side 15 ft. rear

Findings of Fact:

1. Locating a main structure within five feet of a property line is not contemplated with this text amendment.
2. Attached structures may not be located any closer than five feet to the property line due to fire transference issues unless a fire wall is used as explained in the International Residential Code (IRC).
3. Structures that are not fully enclosed (i.e., carports, patio covers, and awnings) cannot be fire rated.
4. According to the IRC, "exposure is the potential for heat to be transmitted from one building to another during a fire in the exposing building. Radiation is the primary means of heat transfer.

Staff Recommendation: It is Staff's recommendation that the Planning Commission forwards a positive recommendation to the City Council for Option 1, which is the simpler version with a 5' setback for all zoning districts rather than the sliding scale in Option 2.

1.2 **DISCUSSION**:

- **Commissioner Overson** wanted to be clear in her mind that although this does not deal with accessory structures but right now the ordinance says that there cannot be more than 25% of the rear yard covered with an accessory structure. **Mr. Meldrum** said that was correct. **Commissioner Overson** continued on to say that the new ordinance being discussed this evening doesn't have anything to do with that – what is being said is that this new ordinance change will not have anything with regard to a maximum percentage. **Mr. Meldrum** said that he was not proposing to increase that percentage and it would stay with the 25% regardless of the lot size and then also with the 5' setbacks. If the 25% is achieved before the 5' setbacks it will determine how much they can go. **Commissioner Overson** said that the 25% includes an awning, sheds, accessory structures and canopies, which **Mr. Meldrum** advised was correct.
- **Commissioner Faurschou** asked if that would include pergolas and **Mr. Meldrum** said the question there would be if it is attached to the home or next to it. If separate, it would be considered a structure. **Commissioner Fazzini** said that pergolas do not have roofs and has its own rules. In a previous discussion, someone had asked the question regarding setbacks for a pergola and because it does not have a roof, it would not contain the fire, which was one of the major intents for the setbacks to not transfer heat from one building to the next. **Mr. Meldrum** commented that it was true that it did not have a roof on it; however, by building code it is still considered a structure because it is more than 36" in height.
- **Commissioner Fazzini** asked what the setback requirement was for a detached structure and **Mr. Meldrum** replied that it is 5' without a fire wall or 3' with a fire wall. **Commissioner Fazzini** then wanted to know how far away it could be from the main building. **Mr. Meldrum** said that would be 6'.

- **Commissioner Overson** then wanted to make sure that the Commission understands that these carports and awnings are attached to the main structure, meaning the house. **Mr. Meldrum** said that was referenced in paragraph 13.10.050 – Yards, wherein it refers to the main buildings and attachment. **Commissioner Overson** felt it was important that the Commission knows that the discussion is about canopies, awnings and carports attached to the main building. **Mr. Meldrum** agreed that is the intent.

- **Commissioner Faurschou** made comments off the microphone but **Mr. Meldrum** agreed with him that this applied to the rear yard only and encompassed the setback of the home to the back property line. **Commissioner Fazzini** wondered how this would impact a corner lot and **Mr. Meldrum** replied that it would be a street side yard on the side facing the street. The other side yard would be an interior side yard and it would work exactly like every other back yard. It would be from the back of the home. **Commissioner Fazzini** asked about on homes that back up on a cul-de-sac to 5400 South, where the property line is adjacent to two separate roads front and back. He said that almost all homes along the south side 5400 South are that way. Because the setback for the front yard is basically15', does that mean that the front yard is defined as the front of the home or something frontaging a road. **Mr. Meldrum** said it

was not something frontaging a road. The ordinance says is that it is the direction that faces the house and the front door is the front of the home or from where the home is addressed. \

- **Commissioner Fink** asked for clarification between the two options staff is recommending. **Mr. Meldrum** replied that Option 1 is strictly that all residential zones will have the 5' setbacks. In Option 2, it is a sliding scale, so the smallest lots would have the 5' and then with each additional thousand feet of lot space you add another foot of setback.

- **Commissioner Fazzini** then wanted to know if there was a minimum square footage for a structure, i.e., a potting shed, small greenhouse or tool shed which are less than 5' high. **Mr. Meldrum** said that the building code defines it as anything over 36" in height, that projects above or below grade. **Commissioner Kehl** commented that on the sliding scale, especially on the smaller lots, they could basically have the same size back yard if they have more frontage. **Mr. Meldrum** said that was correct and Taylorsville as a rule compared to other cities when looking at minimum lot widths. Lot widths in Taylorsville are usually narrower than other cities. For example, in West Jordan for an R-1-10 zone, instead of a minimum of being 65', it would be 100'. Another example is in Sandy, in the R-1-5 zone, it has a minimum of 65' and in Taylorsville it is 50'. In the case of a cul-de-sac, the City allows as little as 35'. **Commissioner Fazzini** asked if Mr. Meldrum felt that was because the majority of the homes in Taylorsville were built during the 1960's, to which **Mr. Meldrum** agreed – that it totally depends on when the house was constructed. The newer the house, generally the wider and deeper lot design applies. **Mr. Meldrum** continued on to say that many of the very first lots developed in the valley were divided into 25' widths and an owner would literally buy as many of the 25' widths as they needed to form the size lot they wanted.

- **Commissioner Kehl** asked if the frontages in the new ordinance coincide with the older version. **Mr. Meldrum** advised that they were very close. The goal was to avoid creating a lot of non-conformity by suddenly increasing the lot width with the new ordinance. **Commissioner Kehl** asked if anyone had an alternative option in addition to those suggested by Staff and no one did.

- **Commissioner Overson** said she had a few more questions, one being an observation when the 5' width was suggested it meant to her that every back yard would only have 5' of sunlight because they can now have a canopy or patio that goes all the way back to within 5' of the back property line. However, she found out that it was not going to be that way because of the 25% total coverage still applying. She continued on to say that on the chart, the language was the same but she was a little confused where it says, "minimum rear yard is 15' for enclosed structures and 5' for structures open on at least three sides, asking about when it says 15' for enclosed structures . . . **Mr. Meldrum** interjected that would be like a standard bedroom wall can't be any closer to the property line than 15'. The only time there would be a 5' setback is if that structure has three sides to it that are open. **Commissioner Overson** said that when he said 15' for enclosed structures, he actually meant the house, to which he said it was correct. That if she goes to the next page it discusses buildings other than residential and main buildings. She said that clarified her question, which means that it is really 15' from the main building.

- **Commissioner Burgess** asked what would happen if the yard is 15' from the house and they want to put on a 5' patio. **Mr. Meldrum** said that it would have to be open on three sides in order to go below the 15' minimum. **Commissioner Burgess** commented that they can't just put that up and then in a few years enclose the patio. **Mr. Meldrum** said that is a good point because that is what is already happening around the City. The work is being done without building permits because residents don't know that a building permit is required for a patio or carport. **Commissioner Burgess** wanted to know if there were anyway to restrict that. **Mr. Meldrum** said that would be extremely difficult to monitor because most enforcement issues are being reported by citizen complaint through the code enforcement program.

- **Commissioner Fazzini** commented that if the minimum height is 3' that covers a lot of things including kids play houses or play swing sets which include small accessible elements on the top, which must be mounted to the ground in some manner. A building permit is not required for that because it is less than 120 square feet. **Mr. Meldrum** advised that the same language has been included in the new ordinance.

- **Commissioner Burgess** said it seemed like nothing could be purposely hidden from view because of the readily available aerial view photographs. **Mr. Meldrum** said that depends on how recent the aerial photographs are. **Commissioner Fazzini** felt that they were of little use in this type of incident unless the photographs were taken on an extremely low pass overhead.

- **Commissioner Overson** felt that this document is a good effort and sets the standard from whenever it is adopted forward. Unfortunately the damage has mostly already been done and there is nothing the Commission can do at this point. **Mr. Meldrum** added that homes built after the early 1990's generally don't seem to have these same issues as the older structures do. **Commissioner Fazzini** suggested that the sheds probably created most of the problems early on. **Mr. Meldrum** said that the ordinances regarding sheds have changed multiple times, i.e., how many square feet are allowed, setback going from zero to five to seven feet. (6:27:31) There is such a wide gamut with that something that must be determined is when they were built and what the codes were at that time.

- **Commissioner Fazzini** asked for the setbacks be defined as to where they start and wanted to know if it originated at the property line. **Mr. Meldrum** said the property line and the right-of-way line are always one and the same. **Commissioner Fazzini** said there are multiple homes in his neighborhood that have a sidewalk on two sides of the lot. They are either on the corner or are back to back where the fence is right next to the sidewalk and then there is

approximately 6 inches between the fence and a shed. In that case he wanted to know where the property line was, on the inside edge of the sidewalk or on the street side. **Mr. Meldrum** said that it is one foot behind the sidewalk, if measured, the technical right-of-way width, and 50' on a standard residential street goes 10' from top back of curb on each side.

- **Commissioner Fazzini** advised that then the sidewalk is City property but the residents are responsible by code to take care of anything immediately adjacent thereto. He continued on to say that it is possible that a person's shed could be (6.28.50) on City property if it is that close to the fence and the fence be right next to the sidewalk.

- **Commissioner Fink** said he understood that what is done this evening would be in effect from this day forward and not impact what is already in place and **Mr. Meldrum** said that was correct.

- **Commissioner Kehl** said that the problem he is having is that the government tries more and more to try to regulate everything. That he didn't care if the person's patio is located 5' from another yard if it is tastefully done and done with respect to that neighbor. **Mr. Meldrum** agreed that it is a objective matter. **Commissioner Fazzini** said that it didn't affect all patios but actually just the ones that are covered. He went on to say that the proposed change in ordinance is less intrusive than what is currently in place. **Mr. Meldrum** said that was correct and right now it is 15' – period. **Commissioner Kehl** asked what might make sense for having a sliding scale as in Option #2 and suggested that it would probably be more of a good thing for the people who have the larger lots than those with the very small ones. **Commissioner Overson** agreed that the larger the lot, the lower the impact.

- **Commissioner Kehl** said that if that was all the discussion, he would ask for a motion.

1.4 **MOTION: Commissioner Fink - I move for approval of File 2Z11 based on Staff recommendations and to send a positive recommendation to the City Council for Option #1.**
SECOND: Commissioner Faurschou
Commissioner Kehl restated the motion to forward a positive recommendation to the City Council for File #2Z11, text change for carports and awnings setback requirements.
DISCUSSION: Commissioner Burgess said that his concern is getting approval for a patio and then later on having people filling in the walls and making it a garage with no repercussions. Mr. Meldrum said that the only thing he could see helping in that is education. He suggested providing the information on a regular basis, using as an example publishing an article once a year in the local Journal newspaper or making informational handouts. Commissioner Kehl summarized the issue by saying that basically that in any zone there can be structures that fit within the parameters of the 25% as long as it doesn't go any closer than 5 feet to the property line. Commissioner Overson suggested that when this is presented to the City Council, it might help if there were some examples or maybe an aerial map with samples of patios over-laid thereon would help.

VOTE				
Commissioner	**Vote**	**Commissioner**	**Vote**	**Motion to send a positive recommendation to the City Council was approved 6 to 0.**
Faurschou	**AYE**	**Burgess**	**AYE**	
Fink	**AYE**	**Fazzini**	**AYE**	
Overson	**AYE**	**Fink**	**AYE**	

WORK SESSION

2. Discussion regarding court case titled Euclid versus Ambler Realty. (Michael Meldrum/Principal Planner)

2.1 **Mr. Meldrum** presented this item. The court case in point was filed by The Ambler Realty Company which challenged the enforcement of a zoning ordinance by the City of Euclid, Ohio on the grounds that the enforcement of the zoning ordinance would constitute an unconstitutional taking by devaluing their land. He went on to give the definition of "***Taking***" as:

- Regulation is not related to a legitimate state interest.
- Regulation does not substantially advance the legitimate state interest.
- Regulation places a substantial burden on a single landowner, where the burden could be better borne by the community as a whole.
- Regulation requires a permanent physical occupation.
- Regulation deprives landowner of all, or substantially all of the beneficial use of the property.
- Regulation takes away essential elements of "private property"
- On November 13, 1922, the City of Euclid enacted a zoning ordinance, which divided the land in the village into six classes of use, three classes of height restriction, and four classes of specific zoning.
- Ambler Realty believed that the zoning ordinance violated the United States Constitution and that it denied them of the maximum potential value of the property.
- A U.S. District Court agreed with the Ambler Realty Company and declared the zoning ordinance null and void.
- The case was appealed to the U.S. Supreme Court.
- The Court upheld and was in favor of the Euclid zoning ordinance.
- The Supreme Court decision held that the ordinance was not a denial of *due process* of law.

2.2 **Mr. Meldrum** defined "***Due Process***" as:

- Language of regulation must be clear and must advance a legitimate governmental purpose.
- There must be fair access to the governmental process and unbiased decision-making – i.e., open meetings, adequate notice.

2.3 **Mr. Meldrum** said that the Supreme Court stated that the zoning ordinance followed what is called the principles for land use regulation, which are:

- Due Process of Law.
- Equal Protection. (All persons should be treated equally and fairly).
- Just Compensation. (Fair payment should be given for private land taken for public purposes).
- Freedom of Religion and Speech. (No government interference with the establishment or free exercise of religion or of free speech.

2.4 **Mr. Meldrum** continued on to say: Following the Supreme Court's decision, the Euclid case helped to validate the exercise of zoning powers by local governments. Zoning regulation is an exercise of police power that has been granted to local governments. He defined "***Police Power***" as power that is delegated to local governments from the state. If regulations are reasonable, zoning does not require the payment of compensation to private property owners. **Mr. Meldrum** said that concluded his presentation. Commissioners asked several general questions about the presentation which **Mr. Meldrum** answered satisfactorily.

3. Discussion regarding the authority of the Board of Adjustment. (Michael Meldrum/Principal Planner)

3.1 **Mr. Meldrum** gave each Commissioner a copy of a table which showed the transition from the *Applicant, Zoning Administrator*, and then to the *Board of Adjustment*. It outlined the actions to be taken for hearings before the Board of Adjustment on Appeals, Special Exceptions and Variances. It outlined the five principal criteria which must be present in order for the Board to approve any application. Those are: (1) Has a hardship been created? (2) Are there special circumstances that apply to the property that do not apply to other properties in the same district? (3) Has the property owner been denied a substantial property right possessed by other property in the same district? (4) Does the variance affect the general plan? (5) Is the spirit of the zoning ordinance observed? Commissioners asked several general questions about the function of the Board of Adjustment and **Mr. Meldrum** answered each.

4. Report to the Planning Commission on electronic message center sign previously located at the Carpet Guy's business on Redwood Road. (Michael Meldrum/Principal Planner)

4.1 **Mr. Meldrum** presented this item. He advised that he has talked to both of the City's Code Enforcement Officers and asked them to look back through their case history and tell him how many complaints they had received regarding Mr. Penrose's sign at the Carpet Guy business office on Redwood Road and he was told there was one anonymous complaint. As a result, one of the Code Enforcement Officers went out to observe the sign and in his opinion it was not in violation of ordinance, therefore, the matter was not pursued further. There were no other registered complaints with the Code Enforcement Division regarding the sign, however, that he did point that out to Commissioner Jensen specifically in an E-Mail **Mr. Meldrum** found out in going back through Minutes that when Mr. Penrose was before the Commission with regard to the trees that he did not plant as had been required, the issue of the sign was raised again with Mr. Penrose. That Staff subsequently observed that Mr. Penrose subsequently put in the trees but did not change the sign.

- **Commissioner Overson** asked if there is a complaint of the sign being too bright at 11 o'clock would the Code Enforcement Officer go out at 11 o'clock at night to check it. **Mr. Meldrum** said that the Code Enforcement Officer did drive by to and from different events that he was already going to be attending and did observe the sign at night.

- **Commissioner Fazzini** offered that basically it was a complaint but was unsubstantiated. **Mr. Meldrum** said that was correct. **Commissioner Fazzini** asked when they go out on a code enforcement issue, especially for commercial property, do they determine if there has been a conditional use granted on the property before they go out and apply that as well. **Mr. Meldrum** replied that they "***should*** " but he did not think that always happened. **Commissioner Fazzini** said he asked that because that would have been the issue in this particular complaint. **Mr. Meldrum** said that was true and there were very specific conditions placed on that sign by the Planning Commission when the sign was approved. He did not think the code enforcement people had pulled that file before responding to that complaint.

- **Commissioner Overson** commented that the Commission has thoroughly discussed this sign but it goes back to the issue where, yes, everybody knows it is a nuisance or they think it is a nuisance but that is as far as it goes. **Mr. Meldrum** agreed that was part of the problem in that individuals who were charged with doing something about it were not told about it. **Commissioner Overson** said that if no one actually makes a formal complaint, then code enforcement would never know.

- **Commissioner Fazzini** said that 95% of the general public have no idea what the process for resolution of these matters is.

- **Commissioner Kehl** commented that there is one level that the Commission can have an impact on, for example the oxygen tank recently discussed. The applicant had said that he would include trees on the site and to date that has not been done. Secondly, someone had made the motion to screen the property to the east with trees. He continued on to say that personally he is not a big fan of bonding but in a situation like that – the applicant would either plant the trees or put up a difference in a bond for the amount of the trees not planted. He added that the landscape Mr. Penrose had put in on the Redwood Road location certainly was less than what was expected along Redwood Road for the beautification project. The Commission could have followed up on that through the City Administration. He did feel that the applicant should not receive his final approval to put those tanks in until he has either put in the trees in or posted a bond. **Mr. Meldrum** said that he would give that information to the Community Development Director to follow-up on.

- **Commissioner Overson** asked if they could have included in the motion made for that particular application that the tank doesn't go in until the landscaping is in. **Mr. Meldrum** said that was correct.

- **Commissioner Burgess** felt that the Commission should do a follow-up on some of these issues to make sure everything is correct and if not, why not? **Mr. Meldrum** said that the Community Development staff recognizes this problem and is putting steps in place to deal with it.

- **Commissioner Fazzini** felt that all this should be in place before the final occupancy permit is issued or it just won't happen. **Commissioner Kehl** commented that there is no reason why the City Council could not appoint individuals within their respective districts to do this follow-up. While sitting on this Commission al members must weigh property rights and individual rights with the value of the overall citizenry and it is very difficult. In a situation that is as touchy as the oxygen tank application, he felt that the Commission could very well have said, because of the situation here, the fact that the trees have not been planted for whatever reason but before the project is allowed to continue the trees must be planted or at the very least post a bond.

- **Commissioner Burgess** suggested that field trips with Staff and the Commissioners might be done more often which includes some of this type of follow up on previously approved projects. **Commissioner Kehl** expressed that he felt that was a very good idea and asked Staff to make it happen.

CITY COUNCIL MEETING DISCUSSION: **Commissioner Overson** reported on the events that took place during the last City Council. Their discussion was mainly on the budget and will continue to be until the end of June when it must be approved in final. There is an Open House for the new Plymouth Senior Housing on 4800 South and Redwood Road Thursday at 1:00 p.m. She commented that this is a very nicely done project and the Commission should be proud that they had so much influence over it.

OTHER BUSINESS: None

ADJOURNMENT: By motion of **Commissioner Overson** and second by **Commissioner Fink,** the meeting adjourned at 7:38 p.m.

Respectfully submitted by:

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Jean Gallegos, Admin Asst/Recorder for the
Planning Commission

Approved in meeting held on June 14, 2011