

# Planning Commission Hearing

## Minutes

September 13, 2010

PC MEMBERS	PC MEMBERS ABSENT	STAFF PRESENT
Alderman Russell	Meta Nash	Joe Adkins, Deputy Director for Planning
Josh Bokee	Billy Shreve	Gabrielle Dunn, Division Manager of Current Planning
Gary Brooks		Jeff Love, City Planner
Steve Stoyke		Pam Reppert-City Planner
		Nick Colonna-Division Manager of Comprehensive Planning
		Devon Hahn, City Traffic Engineer
		Scott Waxter, Assistant City Attorney
		Carreanne Eyler, Administrative Assistant

**•I. Announcements:**

**II. Approval of Minutes:**

Approval of the August 9, 2010 Planning Commission Minutes as amended:

**MOTION: Commissioner Brooks.**

**SECOND: Alderman Russell.**

**VOTE: 4-0.**

Approval of the August 16, 2010 Workshop Minutes as amended:

**Insufficient persons present at the workshop to have a quorum to vote on minutes - tabled until the October 11, 2010 hearing.**

Approval of the September 10, 2010 Planning Commission Minutes as amended:

**MOTION: Commissioner Brooks.**

**SECOND: Alderman Russell.**

**VOTE: 3-0. (Commissioner Stoyke abstained)**

### **III. Public Hearing-Swearing In:**

*"Do you solemnly swear or affirm that the responses given and statements made in this hearing before the Planning Commission will be the whole truth and nothing but the truth." If so, answer "I do".*

-

### **•IV. Public Hearing-Consent Items:**

-

(All matters included under the Consent Agenda are considered to be routine by the Planning Commission. They will be enacted by one motion in the form listed below, without separate discussion of each item, unless any person present - Planning Commissioner, Planning Staff or citizen -- requests an item or items to be removed from the Consent Agenda. Any item removed from the Consent Agenda will be considered separately at the end of the Consent Agenda. If you would like any of the items below considered separately, please say so when the Planning Commission Chairman announces the Consent Agenda.)

-

-

•V. **Miscellaneous:**

-

A. **PC10-180FSI, Final Site Plan, Commons of Avalon**

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Alderman Russell moved to approve the request for a continuance to the October 11, 2010 hearing.

**SECOND:** Commissioner Brooks.

**VOTE:** 4-0.

-

B. **PC10-299CPT, Comprehensive Plan Text Amendment, Chapter 8 Heritage Resource Element**

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mr. Colonna entered the entire staff report into the record. He stated that this item regarding the 2010 Comprehensive Plan is to provide additional text and policy regarding the "Heart of the Historic Civil War Heritage Area" designation. This item was originally in the Heritage Element of the 2010 Comprehensive Plan draft but was unintentionally omitted in the final Mayor & Board of Alderman 2010 Comprehensive Plan Draft.

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommends incorporating the suggested changes to the document to the Mayor & Board of Alderman.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

There was no questioning of staff from the Planning Commission.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

The City was the applicant, so no presentation was given.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of the petitioner/applicant from the Planning Commission.

-

**PUBLIC COMMENT:**

-

There was no public comment.

**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from Planning Staff.

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Commissioner Brooks made a recommendation to move to the Mayor & Board the HRE Policy as read into the record.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**C. Discussion of the East Frederick Rising Small Area Plan**

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mr. Colonna entered the entire staff report into the record. He stated that the purpose of the presentation is to update the Planning Commission on the status of the East Frederick Small Area Vision Document. The East Frederick planning area is comprised of approximately 2,200 acres consisting of farms, vacant lots, strip development, and industrial uses. This area is bounded by 14<sup>th</sup> Street on the north, Interstate 70 to the south, Frederick Airport on the east, and Carroll Street on the west.

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

There is no recommendation requested at this time. Staff is looking for feedback pertaining to East Frederick Rising and hopes to address concerns as the process moves forward.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

Commissioner Stoyke asked if the Historic Preservation Commission (HPC) was involved with this or does any of it apply.

Mr. Colonna stated that the HPC has not been directly involved with this vision document, however, in the document there are several sections that speak to the historic importance.

Commissioner Brooks thinks it is a great start. He congratulated all the people involved.

Commissioner Bokee identified 5 things that he wanted to give as feedback now and maybe for consideration for EFR which are as follows:

1. It would be helpful to receive feedback in the vision statement itself on how the area would be divided up into smaller plans.
2. How the east side relates to the neighboring areas like Riverside and job centers.
3. There are a lot of economic development concepts in there and how to look for stronger unifying concepts for economic development.
4. Tools as far as the land value tax and where they fit into the vision statement.
5. Outreach for the citizens living in the area.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Presentation was given during the introduction of the case.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of the petitioner/applicant from the Planning Commission.

**PUBLIC COMMENT:**

-

Krista McGowan, EFR President, stated that they believe this vision plan is a great start for envisioning and planning the future development of the east side of Frederick. She noted that there was a wonderful response from the community and that they look forward to getting further feedback from the community as well as the Planning Commission. She added that this is a draft version and not the final and looks forward to working with the Planning Commission and Mayor & Board over the upcoming

months to incorporate the comments and finalize this vision statement to move forward with the small area planning process.

Mr. Bruce Dean, McEvoy & Dean, stated that he thinks this process needs to move slowly. He added that he represented the Renn family during the Comprehensive Plan process and the Planning Commission recommended and the Mayor & Board ultimately did approve a change in the comp plan for them that was a mixture of industrial and employment as opposed to just straight employment. This area needs to be tied not to just downtown Frederick but also to Riverside and what is further north on Monocacy Blvd. Mr. Dean stated that he knows the Renn family would like to be a part of the small area planning process.

Mr. Bob McCutcheon, McCutcheon Apple Products, stated that this gives the opportunity to avoid having some things that we would rather not have. He thinks by having a vision and fine tuning it with the Planning Commission, Mayor & Board, and the community he feels they have a great chance to make it work.

**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

Commissioner Brooks likes the idea and wants to see good growth come to the City.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-



There were no restatements/revisions from Planning Staff.

-

**PLANNING COMMISSION ACTION:**

-

There is no recommendation requested at this time. Staff is looking for feedback pertaining to East Frederick Rising and address concerns as the process moves forward.

**D. Discussion of the pending amendments to the Institutional (IST) Floating Zone.**

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mrs. Dunn entered the entire staff report into the record. She stated that this item is being brought forward to solicit comments from the Planning Commission as well as the public on future amendments to the LMC which pertain to the Institutional (IST) floating zone.

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

This item is being brought forward for information only; therefore, no recommendation is being made at this time.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

Mrs. Dunn added that in discussing the floating zone there was talk of eliminating the institutional district all together or creating an institutional district zone and feels that would be a disservice because we do want these institutions to be imbedded in the community that they serve. We don't want to segregate the land uses so much that it would prevent that mixed use, pedestrian friendly environment that we want to achieve.

There was no questioning of staff from the Planning Commission.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

City was applicant, so no presentation was given.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of the petitioner/applicant from the Planning Commission.

**PUBLIC COMMENT:**

-

Krista McGowan, LMC Workgroup, stated that there is a problem with the institutional zone as it is codified and implemented. She feels that they need to retain that zone for the large institutional uses. Ms. McGowan states she is not sure that it is appropriate for other uses schools, churches those types of things. She added they have talked about expanding the zoning districts for which those types of uses are

allowed making them conditional uses and then tailoring the conditions for each particular use depending on the district in which it would be potentially placed.

Mr. Joe Adkins, Deputy Director for Planning, stated that the big issue with this is finding what goes into institutional zones and a lot of the details need to be worked out and there will be a lot of discussions where and ramifications from the decisions made by this group and the Mayor & Board ultimately. He added that they just wanted to make the Planning Commission aware of what is going on.

**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

-

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

Commissioner Bokee concurred with Mr. Adkins and suggested that attaching the IST to the use and not the property owner and would agree to labeling it institutional makes sense and the tricky part would then be if you would allow the other uses that don't qualify as institutional then how do you set up the matrix to allow them to be conditional uses.

Mrs. Dunn replied that she can foresee zoning maps amendments being part of the process which will open a whole new public process where it will really be necessary to reach out to those property owners but that the group is currently trying to conceptually figure out a tactic and narrow down the final details.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from Planning Staff.

-

**PLANNING COMMISSION ACTION:**

-

This was an informational item only so no vote was taken.

**•VI. New Business:**

-

**E. PC10-260ZTA, Zoning Text Amendment, Section 404, Table 404-1, Permitted Use in the DB District**

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mrs. Dunn entered the entire staff report into the record. She stated that the applicant is requesting a recommendation to the Mayor and Board of Alderman for proposed amendments to Section 404, Table 404-1 of the Land Management Code (LMC), entitled the "Use Matrix" in order to expand the listing of permitted uses within the Downtown Commercial/Residential (DB) zoning district to include "church."

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff supported a positive recommendation to the Mayor and Board of Aldermen for the amendments as proposed.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

Commissioner Bokee asked how many churches there are in the City that are currently nonconforming in the DB district.

Mrs. Dunn replied that there is only one that she is aware of.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Mr. Bruce Dean, McEvoy & Dean, stated that the downtown business district is the only district that this text amendment would apply to. He added that what the applicant is requesting is to expand by 1 additional commercial district where churches would be allowed by right because the IST floating zone does not work in that type of property and that the City go back to permitting churches by right in the downtown business zone. He concluded that they ask for the Planning Commissions support for in recommending this to the Mayor & Board.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

Commissioner Brooks questioned that if churches are going into leased locations how the changed zones will be handled. Mr. Dean stated that won't be required. It would be done by site plan process just like you do any change of use now. So if a property goes from a used car dealership to a church you would do it by site plan.

Mrs. Dunn stated that in terms of creating a new building, constructing a church then that would be a site plan approval depending on the location. They would have to

meet the approval of that shopping center. She added that if someone would come in for a tenant fit out permit to establish a church in an existing building we would look at the site to see if the site complies with the new use.

Commissioner Stoyke is concerned about the use of the word "church" and if it is appropriate?

Mrs. Dunn stated that consideration has been given to changing the nomenclature to place of congregation or something of that nature in order to broadly define it as opposed to "church" but as of right now it is not changing.

-

**PUBLIC COMMENT:**

-

There was no public comment.

**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from Planning Staff.

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Commissioner Brooks made a positive recommendation to the Mayor & Board of Alderman for the amendments as proposed for PC10-260ZTA.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**F. PC10-245FSU, Final Subdivision Plat, Ballenger Creek III & IV**

-

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

-

Ms. Reppert entered the entire staff report into the record. She stated that the Applicant proposes a final plat that represents a revision to the preliminary subdivision plat to change standard townhouse lots 82-91 and 147-192 to lot sizes that accommodate integrate garage townhouse units.

-

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommended approval of PC10-245FSU Final Correction Plat for the Ballenger Creek subdivision for Lots 147-152, 82-91, and HOA open space parcels D1, D2, and D3, with the following less than 60 day conditions to be met:

- 1. The vicinity map was changed from 2000' scale to 800' but the map drawing never changed. Please verify the map is at 800' scale.
- 2. Combine the Area Tabulation and Lot Area Tabulation Tables by summing that lot areas and sum the number of lots.
- 3. Add open area parcels D-1, D-2, and D-3 to the title block.
- 4. The line boundaries of the parcel D-2 should be darkened as part of this total plat area.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

There was no questioning of staff from the Planning Commission.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Mr. Mark Crissman, Daft, McCune, Walker, stated that he concurred with the staff report.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of Petitioner/Applicant from the Planning Commission.

-

**PUBLIC COMMENT:**

-

There was no public comment.

-



**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from the planning staff.

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Alderman Russell recommended conditional approval of PC10-245FSU, Ballenger Creek Subdivision Plat with the conditions to be met in less than 60 days, conditions 1-4 as read into the record by staff.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

-

**G. PC10-179PSU, Preliminary Subdivision Plat, Tuscarora Creek**

-

## **INTRODUCTION OF CASE BY THE PLANNING STAFF:**

-

Ms. Reppert entered the entire staff report into the record. She stated that the applicant is requesting approval of a revised preliminary subdivision plat in order to eliminate the alleyways previously depicted to serve the single family units on lots 210-237 and 301-353. Lots 240-258 and 451-467 are also being revised to either slightly increase or decrease the lot sizes.

The Applicant is also requesting approval for revisions to the design booklet in order to clarify the front setbacks for the single family units and to eliminate lot details that will not be used in the development.

Lastly, the Applicant is requesting a modification to Section 8.02 of the 1986 Zoning Ordinance for the required minimum lot frontages for Lots 213-215, 342, 462-465, and 233-234 in accordance with Section 16.10(5) for Planned Neighborhood Developments (PND).

-

## **INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommended approval of a modification to the minimum lot frontage requirements for Lots 213-215, 342, 462-465, and 233-234 as shown on the plan on the basis that reduction in the minimum lot frontage will not negatively impact the buildable area of the lots and that the lots will comply with the front building restriction line in compliance with the minimum lot widths.

Staff recommended approval of the revised design booklet.

Staff recommended approval of the revised Preliminary Subdivision Plat PC10-179PSU for Tuscarora Creek with conditions to be met:

In less than 60 days:

- 1. Provide HOA Maintenance Agreement recorded references for the landscape island at Wilcox Court.
- 2. Update the revision block for last change date on all sheets.
- 3. Identify (by highlighting) the relocated trees from the original plan.
- 4. Edit Note #29 to document the approved minimum lot frontages for Lots 213-215, 342, 462-465, and 233-234 and include these lots as exception to lot typical in the Design Booklet, if applicable.

Greater than 60 days and less than one year:

- 1. Provide draft HOA documents to include declaration to Lots 451-465 and 233-237 for maintenance and replacement of trees along rear property line as part of the subdivision requirements. Revised HOA documents to be recorded prior to recordation of lots.
- 2. Obtain County and City approval of new street names provided.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

There was no questioning of staff from the Planning Commission.

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

Mr. Chris Smariga, Harris, Smariga, & Associates, stated that when they came in with the original application there were a few things going on 1) there were three streets

that were alley homes but the alley's are being eliminated and a new housing product that is more consistent and appropriate with what is planned is replacing those units 2) staff did notice in the design booklet that were a lot of clean up items in terms of the front yard setbacks and that they are cleaning up those exhibits. 3) and the modification is also on the same lines the typical designs standards show rectangles for all the lots and what staff noticed in reviewing this was that some of the properties may not have the 60' frontage as defined along the right-of- way. He added that when you look at the definition of what the lot frontage is you need to meet that minimum width.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of the petitioner/applicant from the Planning Commission.

-

**PUBLIC COMMENT:**

-

There was no public comment.

-

**PETITIONER REBUTTAL:**

-

There was no petitioner rebuttal.

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from the planning staff.

-

**PLANNING COMMISSION ACTION FOR MODIFICATIONS:**

-

**MOTION:** Commissioner Brooks made a motion to recommend approval of modification as read into the by staff for PC10-179PSU.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**PLANNING COMMISSION ACTION FOR APPROVAL OF REVISED DESIGN BOOKLET:**

-

**MOTION:** Commissioner Brooks made a recommendation to approve the revised design booklet for Tuscarora Creek as read into the record by staff.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**PLANNING COMMISSION ACTION FOR PC10-179PSU:**

-

**MOTION:** Commissioner Brooks recommended approval of the revised Preliminary Subdivision Plat PC10-179PSU for Tuscarora Creek with the 4 conditions to be met in less than 60 days and the 2 conditions to be met in greater than 60 days but less than 1 year as read into the record by staff.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**H. PC10-280FSI, Final Site Plan, Clemson Corner**

-

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mr. Love entered the entire staff report into the record. He stated that the applicant is requesting approval for revisions to the previously approved final site plan and architectural elevations for the proposed Clemson Corner shopping center located north of Route 26 and west of Wormans Mill Road.

-

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommended unconditional approval of final site plan PC10-280FSI and to associated revisions to the architectural elevations.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

There was no questioning of Staff from the Planning Commission.

-

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Mr. Bruce Dean, McEvoy & Dean stated that he concurred with the staff report.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

Commissioner Brooks asked how the decision to revise the three story building in favor of a single story retail building was made. Mr. Jim Castillo, Faison, stated that there were either no deals out there from two years ago to the present or that companies couldn't close because of the lack of financing or lack in the demand for office space. He added that some financing has freed up, but that the occupancy rate is not good in Frederick right now.

-

**PUBLIC COMMENT:**

-

There was no public comment.

**PETITIONER REBUTTAL:**

-

There was no Petitioner rebuttal.

-

-

-

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for Staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

There were no restatements/revisions from the Planning Staff.

-

**PLANNING COMMISSION ACTION ARCHITECTURAL ELEVATIONS:**

-

**MOTION:** Commissioner Brooks moved for approval of the architectural elevations for PC10-280FSI that is supported by the staff report and discussion this evening.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**PLANNING COMMISSION ACTION PC10-280FSI:**

-

**MOTION:** Alderman Russell recommended unconditional approval of the final site plan PC10-280FSI.

**SECOND:** Commissioner Brooks.

**VOTE:** 4-0.



**I. PC09-352FSI, Final Site Plan, Walgreen's**

-

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mr. Love entered the entire staff report into the record. He stated that the applicant is requesting final site plan approval to construct a 14,820 square foot Walgreens pharmacy with a drive-through facility on the site of the former Antietam Village Shopping Center at 1595 Opossumtown Pike.

-

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommends conditional approval of Final Site Plan PC09-352FSI with the following conditions to be met:

Conditions to be met in less than 60 days:

- 1. Label the median on sheet 5 and indicate the future right-in/right-out movement on the Thomas Johnson Drive access by revising the traffic flow arrows.
- 2. Revise/provide the case # on all sheets to PC09-352FSI.
- 3. Revise truck path inset exhibit to eliminate backing movement on Opossumtown Pike.
- 4. Remove the proposed street tree planting on the corner of Thomas Johnson Drive and Taney Avenue.
- 5. Remove the proposed willow oak street tree planting on Taney Avenue.
- 6. Revise the existing street tree label on Taney Avenue. It is incorrectly labeled as "honeysuckle".
- 7. Revise note 13 to remove the word "Handicapped".

- 8. Provide the following note on the landscaping plan, "The Opossumtown Pike street tree easement will be recorded prior to Improvement Plan approval."
- 9. Remove the recordation reference portion of the street tree easement label on all sheets.
- 10. Revise note 6, the proposed impervious surface ratio is 66% based on the percentage of the land area which is green space, versus 70% as indicated.

Conditions to be met in greater than 60 days and within one year:

- 1. Address Engineering SWM comments dated August 27, 2010.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

Commissioner Brooks asked about the entry of trucks into the site once the TJ Drive improvements were made.

Mrs. Devon Hahn, City Traffic Engineer, replied that is up to the property owner.

Commissioner Brooks asked why this site does not have a separate access on Taney Avenue.

Mrs. Hahn stated that from an access management perspective the City would like to have all of these access points combined. It makes the overall roadway network safer for all of the motoring public. In this case there was already shared access and the current developer has worked to maintain that access with the adjoining property owner.

Mrs. Dunn added that there is entrance spacing criteria to prevent the close grouping of entrances on roadways. Originally, the Applicant had looked at moving that shared access onto the Walgreen's portion of the property, but it created separation issues with both the intersection with TJ and the other entrances on that portion of the roadway.

Commissioner Bokee asked why it is going to be a median with no left turn access into that property.

Mrs. Hahn stated that those discussions were started with the previous administration at the Streets and Sanitation Committee meetings where we had received a number of complaints and concerns because long cues occur on TJ Drive from the signal at Oppossumtown Pike and people trying to make the left out created a safety hazard.

Commissioner Bokee stated that those are future improvements, but not in the CIP as of yet.

Mrs. Hahn replied that is part of the Oppossumtown, TJ Drive intersection improvements in the CIP.

Commissioner Bokee asked Mrs. Hahn about timing on that improvement.

Mrs. Hahn said that the project is under design, it starts at TJ Drive and extends all the way down through US 15 and is combined with the Motter Avenue bridge project and should be completed by the end of the year. Currently, there is no funding for the construction but we have presented to the Mayor & Board and have requested at least funding for the right-of-way portion of the City's project. She added that the State is diligently trying to find funding as well because this project could have implications on the ultimate closure of US 15 and Hayward Road.

Alderman Russell stated that she has some concerns about opening up that movement again because it is habit and drivers have been trained not to turn in the entrance because there is no place to turn left and that opening it up to have access and then closing it after some future point when we have a median in may cause problems. She added that her preference would be to see a right in, right out which would keep the left turn from ever happening.

Mrs. Hahn said that staff has been supported of the right in, right out as evident by the median as proposed by the ultimate CIP project. However, as she understood it since this project is not intensifying the use of that site it can maintain all of its access points as they are.

Mrs. Dunn commented that they have looked at certain elements of the site as nonconforming features, being existing elements on the site and being a full movement access point this is one of the nonconformities. She added that the TIS proved to document that there are lesser trips than there were previously there and as such the nonconforming feature was not being changed or intensified by the proposal.

-

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Mr. Chris Smariga, Harris, Smariga, and Associates, stated that he concurs with Staff's recommendation. He added this will be a great addition to the intersection. He noted that this site has always been accessed by the three (3) existing entrances.. Mr. Smariga stated that the Applicant does have the ability with different locations in different urban environments to control the trucks that come in and out. The size trucks that will be allowed to access this site is a WB-40 truck which is a 33' foot trailer.

Mr. Scott Miller, Weinberg & Miller, stated that there was an existing shopping center here and according to the code that center could be rebuilt. He added that staff took a look at the traffic that could be generated by this use as opposed to the use that was

there and there is a significant reduction in the number of trips so that there is less of an impact to that traffic circulation system than what was there previously. He added there is one thing for certain that is by right and by the code is that the property owner has the ability to use that access as it currently exists. That was something that was referenced in the City Code and there was a letter in 2007 shortly after the facility burned down, where his office inquired in regards to what would be considered nonconforming and what could continue to happen with that site. Mr. Miller read a letter from the Zoning Administrator at that time and it stated that the entrances off of TJ Drive and Oppossumtown Pike both are noncompliant with regards to distances. However, the original site plan must obtain this approval from these entrances as constructed making them legally nonconforming. He added that the LMC specifically defines access points as being a nonconforming feature. He stated they believe the impacts on the site circulation will be less because traffic is less.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of Petitioner/Applicant from the Planning Commission.

-

**PUBLIC COMMENT:**

-

Mr. Rick Stup, special project consultant for NAC 3, stated that from day one they have supported this project. He added that all of the concerns they have had, have been addressed except for the access issue on TJ Drive. He briefly described the history of this site and the increase in traffic. He added that despite that the engineers and the regulations may say the situation is okay, he feels the Planning Commission has the right to prohibit the temporary movement into the site under health, safety and welfare for the neighborhood. He finished by noting the NAC's support for the project and said that the NAC wants something to go into this site.

**PETITIONER REBUTTAL:**

-

Mr. Miller stated that this site does not have the responsibility or should it be imposed the responsibility to solve the traffic of that particular area. By establishing this use and eliminating the more intense use which is legally permitted on this site, it is contributing to the mitigation of traffic. He said he disagreed with Mr. Stup in regard to what the Planning Commission has the authority to do. He believes in his opinion that because this is a nonconforming feature this Commission does not have the authority to require modification of the use of that entrance. Mr. Miller stated that they are willing to hear any suggestions the Commission has to keep that full movement access there and request your approval to have it.

-

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

Commissioner Bokee asked for legal input on the purview of the Commission on the issue with the left turn lane.

Mr. Scott Waxter, City Assistant Attorney, stated that Mr. Miller had a compelling argument and has presented some facts tonight. He added that he can not definitely that he is 100% right and you have no ability to create this right in, right out only. He added that he doesn't want to say that you do and that you have the authority to override what Mr. Miller says either. Mr. Waxter stated for him to give the Commission a straight answer he would need more time to review this and determine that.

Commissioner Brooks asked Mr. Miller if the applicant is refusing to do the pork chop on TJ Drive as Alderman Russell has suggested.

Mr. Miller replied no because the plan actually recognize the City's plan and when that median comes in we will then do whatever is necessary to make that work from a design stand point and it will become a right in, right out.

Commissioner Brooks asked staff if there can be a requirement that no trucks larger than 33' feet can access site.

Mrs. Dunn replied that they can add a note to the plan to reflect that is the size truck permitted.

Alderman Russell asked if the surrounding community and the NAC was more readily to welcome Walgreen's without a full access on TJ Drive, what is the objection with having a right in, right out.

-

Mr. Larry Brozek, Walgreen's, stated that it is convenience and if it isn't convenient the concern will be will the store fail. It is important to get the exposure out there and important that we are accessible and people can get to Walgreen's. He added that they do want to work with the City and any flexibility here we would greatly appreciate it.

Mr. Bokee stated that we need to be cautious on moving forward with this. If a 30 day continuance is an issue then we may want to go to that way unless we can make some sort of decision we can make. The restriction is there permantly. The Applicant is proffering a temporary restriction. He added that this could be a note that the staff and applicant can resolve in greater than 60 days with the authority that if they can not come to a resolution on a temporary restriction then a full restriction is put on.

Mr. Larry Brozek stated he would like to leave tonight with an approval even if it has to be on some kind of contingency arrangement rather than having a continuance.

Mrs. Dunn stated that staff has explained their preference from the traffic perspective and have based our recommendation on the nonconforming features. She also stated that Staff has exhausted any opportunities for a different compromise on the access issue and that a condition of approval based on some future agreement being made is something that has been discouraged in the past. Mrs. Dunn went on to state that if the Commission would like a more definitive legal finding responding to some of Mr. Miller's statements, than a continuance is suggested

-

### **RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

Planning Staff provided the Commission with language for two additional conditions based on the discussion of the Commission.

Conditions to be met in less than 60 days:

- 1. Label the median on sheet 5 and indicate the future right-in/right-out movement on the Thomas Johnson Drive access by revising the traffic flow arrows.
- 2. Revise/provide the case # on all sheets to PC09-352FSI.
- 3. Revise truck path inset exhibit to eliminate backing movement on Opossumtown Pike.
- 4. Remove the proposed street tree planting on the corner of Thomas Johnson Drive and Taney Avenue.
- 5. Remove the proposed willow oak street tree planting on Taney Avenue.
- 6. Revise the existing street tree label on Taney Avenue. It is incorrectly labeled as "honeysuckle".
- 7. Revise note 13 to remove the word "Handicapped".
- 8. Provide the following note on the landscaping plan, "The Opossumtown Pike street tree easement will be recorded prior to Improvement Plan approval."
- 9. Remove the recordation reference portion of the street tree easement label on all sheets.
- 10. Revise note 6, the proposed impervious surface ratio is 66% based on the percentage of the land area which is green space, versus 70% as indicated.
- 11. Provide a note that states that the site will be served by trucks no larger than WB-40 trucks.



Conditions to be met in greater than 60 days and within one year:

- 1. Address Engineering SWM comments dated August 27, 2010.
- 2. Revise the design of the Thomas Johnson Drive access to provide a right-in/right-out only movement to the satisfaction of Engineering Staff

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Commissioner Brooks made a motion for conditional approval of PC09-352FSI with the following 11 conditions as read into the record to be met in less than 60 days and the 2 conditions as read into the record in greater than 60 days and less than 1 year.

**SECOND:** Commissioner Stoyke.

**VOTE:** 2-2.

-

**DISCUSSION:**

-

Mr. Brooks explained that he feels they should allow the Applicant to move on and get this done and to make it safer for people to go in and out.

Mr. Larry Brozek, Walgreen's stated they would like to withdrawal their request to have full access at this time and will go with the right-in, right-out movement on TJ Drive.

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Commissioner Brooks made a motion for conditional approval of PC09-352FSI with the 11 conditions as read into the record to be met in less than 60 days and the 2 conditions as read into the record in greater than 60 days and less than 1 year based on the Applicant's withdrawal the request for full access on TJ Drive.

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**J. PC09-353FSCB, Combined Forest Stand Delineation & Preliminary Forest Conservation Plan, Walgreen's**

-

**INTRODUCTION OF CASE BY THE PLANNING STAFF:**

Mr. Love entered the entire staff report into the record. He stated that the applicant is requesting approval of a combined forest stand delineation/preliminary forest conservation plan associated with final site plan PC09-352FSI, for the construction of the proposed Walgreens drugstore on the former Antietam Village Shopping Center property.

The Applicant is requesting payment of fee-in-lieu in the amount of \$3,397.65.

**INITIAL PLANNING STAFF RECOMMENDATION:**

-

Staff recommended approval of PC10-287FSCB for a payment of fee-in-lieu of \$3,397.65 with the following conditions:

To be met in less than 60 days:

- 1. Provide the case # in the title block.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

-

There was no questioning of Staff from the Planning Commission.

-

**PRESENTATION OF THE CASE BY THE PETITIONER/APPLICANT OR HIS AGENT OR ATTORNEY:**

-

Mr. Chris Smariga, Harris, Smariga, and Associates, concurred with the staff report.

-

**PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:**

-

There was no questioning of Petitioner/Applicant from the Planning Commission.

-

**PUBLIC COMMENT:**

-

There was no public comment.

**PETITIONER REBUTTAL:**

-

There was no Petitioner rebuttal.

-

**PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:**

-

There was no discussion or questions for Staff from the Planning Commission.

-

**RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:**

-

There were no restatements/revisions from the Planning Staff.

-

**PLANNING COMMISSION ACTION:**

-

**MOTION:** Alderman Russell recommended approval of PC10-287FSCB for payment of fee in lieu \$3,397.65 with the condition to be met in less than 60 days as read into the record..

**SECOND:** Commissioner Stoyke.

**VOTE:** 4-0.

**Meeting adjourned at 9:01 P.M.**

Respectfully Submitted,

Carreanne Eyler

Administrative Assistant