

# Planning Commission Hearing Minutes

**November 8, 2010**

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

**I. Announcements:**

Commissioner Nash congratulated Billy Shreve on his win in the election for BOCC.

**II. Approval of Minutes:**

Approval of the **October 11, 2010** Planning Commission Minutes as amended:

**MOTION:** Alderman Russell.

**SECOND:** Commissioner Bokee.

**VOTE:** 5-0.

Approval of the **October 18, 2010** Workshop Minutes as amended:

**MOTION:** Alderman Russell.

**SECOND:** Commissioner Stoyke.

**VOTE:** 3-2 (Commissioner Bokee & Shreve abstained)

Approval of the **November 5, 2010** Preplanning Commission Minutes as amended:

**MOTION:** Commissioner Stoyke.

**SECOND:** Alderman Russell.

**VOTE:** 4-0. (Commissioner Bokee 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.)

**A. PC10-340FSU-Final Subdivision Plat-Airport Industrial Park, Lots 1-A, 1-B, 1-C**

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee moved to approve PC10-340FSU.  
**SECOND:** Alderman Russell.  
**VOTE:** 5-0.

**V. Miscellaneous:**

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

Request for continuance for up to 180 days or to the May 9, 2011 hearing.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee moved to continue application PC10-180FSI up to 180 days or to the May 9, 2011 hearing.  
**SECOND:** Commissioner Stoyke.  
**VOTE:** 5-0.

**C. PC10-383-Comprehensive Plan Consistency-MD School for the Deaf**

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

Mr. Love entered the entire staff report into the record. He stated that review of consistency with the City's 2010 Comprehensive Plan, for plans to construct a new bus loop and a sixty-six (66) space parking lot on the Maryland School for the Deaf's (MSD) main campus and for the demolition of the Kent-McCanner Building.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommended that the Planning Commission find the proposed development is consistent with the 2010 City of Frederick Comprehensive Plan in its location, character, and extent based on adherence to the following policies and implementation strategies:

*Land Use Policy 1: Encourage development to be compatible with the character of the existing or planned development in the vicinity.*

*Implementation Strategy 4: Support development patterns that facilitate the integration of residential and non-residential land uses and that are conducive to transit, pedestrians, and bicycles.*

*Transportation Element Policy 11: Ensure that all new transportation improvements do not adversely impact the City's neighborhoods.*

**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:**

Ms. Suzanne Schwertman, MD School for the Deaf concurred with the staff report.

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

Commissioner Bokee questioned if a lighting study was conducted for the parking area.

Ms. Schwertman stated that the lighting will be within the City of Frederick's code for all outdoor lighting. There is a lighting engineer that is part of the planning staff and the lighting also matches the existing that is on the campus. She added that the lighting is downward lighting and has a top to it.

Commissioner Bokee stated that he noticed there are trees planted on the inner side of the parking lot. He asked if there would be any landscaping on the fencing that goes along the alley from that parking lot.

Ms. Schwertman replied there is some landscaping around the storm water pond that is planned which is closer to the new cafeteria. The problem exists is that if too much landscaping is planted they will lose parking.

**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 restatement/revisions from Planning staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee motioned to find the proposed development for MD School for the Deaf for the bus loop and parking lot is consistent with the 2010 City of Frederick Comprehensive Plan in its location, character and extent based on adherence to the Land Use Policy 1, Implementation Strategy 4 and the Transportation Element Policy 11.

**SECOND:** Commissioner Stoyke.

**VOTE:** 5-0.

**VI. Old Business:**

**D. PC10-231FSI-Final Site Plan-Get Go Convenience Store.**

**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 final site plan for improvements to the existing gas station facility at 1391 W 7<sup>th</sup> Street in the Frederick Shopping Center. The Applicant is also requesting modifications to the following sections of the Land Management Code (LMC):

1. Section 601(f), Access Drive Separation, Table 601-2 Separation Standards; and
2. Section 605(f), Street Tree Landscaping Requirements.

Lastly, the Applicant is requesting approval of the architectural elevations as part of a shopping center development.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of the modification of Section 601, "Access Management," Table 601-2 Separation Standards, for four (4) modifications to the entrance separation distances as noted above between the main shopping center entrance, the service drive entrance, east site entrance and the adjacent McDonald's entrance, based on the dedication of right of way, the east entrance modified as "right-in" only, and the financial contribution towards the pedestrian crossing at the entrance to the shopping center.

Staff recommends approval of the modification of Section 605(f) to eliminate the requirement to plant street trees along West 7<sup>th</sup> Street, due to the City's future plans to expand the right-of-way and the provision of two additional trees on the site as compensating features.

Staff recommends approval of the architectural elevations proposed based on the compliance with the shopping center design criteria outlined in Section 863 of the LMC.

Staff recommends approval of the Final Site Plan PC10-231FSI with the following conditions to be met:

In less than 60 days:

1. On bottom of page 3, correct the Maple tree dbh measurement to 27" in the note.

More than 60 days and less than one year:

1. Complete General Note #6 & #7 for the approved forest plan PC10-350FSCB.
2. Show signage for control of traffic exiting onto W. 7<sup>th</sup> Street from the service drive between the hours of 3-7 p.m. with "No Left Turns" or provide documentation from the Frederick Shopping Center LLC rejecting the signage.
3. Revise the signage elevations to be consistent with the maximum amount of signage permitted under the LMC and provide an elevation of the pricing signage to be proposed.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Alderman Russell questioned the 7 year item with the 15,000 for the pedestrian and that being returned is that standard language?

Ms. Reppert stated that was from the previous plan that they negotiated for and it's not a given rule of thumb that we put limitations on any of the improvements.

Mrs. Devon Hahn, City Traffic Engineer stated that it has been an ongoing discussion for a pedestrian signal there and had requests from the residences. She added that she don't foresee any problems getting these improvements in place in the 7 year time frame.

Commissioner Bokee questioned the additional 15 feet of right of way in front of the post office, what does that come up to?

Mrs. Hahn said that she would have to defer that to the applicants engineer it has been a long time since they have looked that.

Alderman Russell questioned the entry way into the shopping center and any changes to improve those 2 left turn lanes coming out, in staffs opinion would that have helped the traffic cycle through better.

Mrs. Hahn replied that the issue with doing that is that she don't know if it really would facilitate and would probably not change any signal timing at the intersection because of the height and trying to serve 7<sup>th</sup> Street which is why we requested the putting the 10 & 15 foot additional property so improvements can be made. She added that if they were to lengthen the left turn lane on site because it is back to back with another left turn lane that would shorten their left turn lanes so it might produce more operation difficulties once in the shopping center.

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

Mr. Scott Miller, Weinberg & Miller stated that is a 2 step process first being the existing fuel station facility and to convert the existing service phase and utilize that square footage for convenient store use associated with the fueling stations. He added that Giant Eagle along with other grocery store retailers prefer to have an onsite fueling station they use it for their incentivizing both food sales and fuel sales. Mr. Miller stated that by the modification request they are dealt with a challenge with this site as it relates to the existing access. That is because of the limited frontage that is there. He said what has been done with the help of staff is to layout a site circulation with specific direction and we have modified one of the access points on 7<sup>th</sup> street as well as modified one of the access points interior to our site and directional control which will be a better circulation pattern than what is currently out there. Mr. Miller stated fortunately the property owner; Frederick Shopping Center and Giant Eagle have an excellent working relationship as a part of this lease process. A lot of issues came up that the property owner and Giant Eagle were able to resolve and as a result of that the property owner has agreed to this dedication of 10 feet in front of this service station. And the second step is this site plan and to convert those base to the convenient store and he feels that overall the owner and Giant Eagle have done a great deal to get to a site that is a much improved site over what is existing out there as the fuel station.

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

Commissioner Nash asked if the plan is to retain the canopy as is even after the brick building is built.

Mr. Todd Waldo, Senior Development Manager, Giant Eagle stated that is correct. We are using the existing fuel canopy that exists today. We are re-facing it, using the existing columns, foundations and things of that nature. He added that the blue fascia is our corporate color, our branding. Mr. Waldo added they are limited with some practical issues reusing the existing foundation and not being able to place any additional weight within those foundations. Masonry would added more weight that would preclude us in pursuing that option. He stated that this would be similar to their other fuel stations in the area.

Commissioner Nash asked how the applicant would address staffs concerns about having too much signage.

Mr. Waldo explained that they were going to remove some signage and limit it to comply with code.

Commissioner Nash asked if it would be removed from the canopy or from the free standing signs.

Mr. Waldo answered that there is no free standing sign that is permitted for this location we are proposing a fuel pricing sign. It would be a small monument sign.

Commissioner Nash stated that on the plan there are 2 squares to show the base of the sign.

Mr. Waldo stated that is the location of the former sign and they would want to relocate that it is closer to W. 7<sup>th</sup> Street within the setback guidelines of the code because it will be a smaller sign.

Commissioner Nash stated there was concern about the landscaping in front of the parking area between the 2 entrances they are very low plantings and the wall that is in front of the post office. She said the previous plan that was approved continued that wall and made it more of a cohesive project and emphasized the interest of the shopping center.

Mr. Waldo reported that some of the differences between the Get Go application and the post office are that the post office does not have any curb cuts to W. 7<sup>th</sup> so it is continuous wall. He said they are maintaining that curb cut that is off of W. 7<sup>th</sup> right now. So if there was a wall proposed it would be broken up and would not have the same architectural feel that the post office wall has. In addition, they have provided some landscaping hedge along our property boundary fronting W. 7<sup>th</sup>. He added that another concern that they have is that since they are not allowed any type of free standing sign that any additional features would obstruct the view of the fuel pricing sign.

Commissioner Nash is concerned about the landscaping and size.

Mr. Waldo stated that the monument sign will be small. If there is a need to increase the size of that hedge that is something we can pursue but keep in minds that we don't want to obstruct view of that fuel sign.

Commissioner Bokee asked how far off the ground is the fuel price sign.

Mr. Waldo commented that they are still in design for that but the typical for the monument sign would be less than 8 feet so the base of the sign is relatively short and the sign itself is probably a 4 or 5 foot tall cabinet that's installed on a brick base.

Commissioner Bokee stated that he understands the applicants concerns to not obstruct the view of the sign but to have a hedge at least matches up to the base of the sign.

Mrs. Dunn stated that she would urge the commission that if they want that to be a condition of approval and it would be something we would want to look at, at the site plan approval process as a condition. She added they can look at it with the applicant and the city arborist.

Commissioner Nash wanted to have the rain guard explained. Is it going to be turf?

Mr. Waldo said the rain guard is no longer proposing because they are not able to use that from a storm water quality control aspect.

Commissioner Nash stated that the applicant has an opportunity to really astatically improve this and the shopping centers that have been built as nicely as this you really see substantial landscaping.

Mr. Waldo commented that code requires just less than 1,800 square feet of landscaping and we have provided almost 7,500 square feet of landscaping. And their concern is over planting can cause problems maintenance wise.

Alderman Russell stated that Commissioner Nash raised a good point that there is an opportunity here to continue to make things more astically pleasing and attractive and quantity verses quality isn't necessarily and appreciates that there are 3 or 4 more times that what is required.

Mr. Waldo stated that they have tried to put a greater level of interest in plantings along the main entry drive. The concern with the wall is blocking the visibility, it doesn't have quite the same effect given that it is broken up with curb cuts and it is a taller wall. He feels the landscaping drastically improves the site.

Mr. Miller stated that the competing interests are visibility. These kinds of uses require a certain amount of visibility in order to be viable. He added the issues with planting a hedge up front; he does not believe there is any issue with creating a hedge that will be consistent height wise with the base of the sign.

Mr. Waldo stated that another issue other than just the height of the fuel pricing sign is the set back from the road that is 10 feet more than what it would be right now with the dedication of right of ways should also be taken into consideration.

Commissioner Nash stated the 2 planting beds that run parallel to the drive aisles are black eyed Susans which are great for 3 months out of the summer when they bloom but what happens the other 9 months.

Mr. Waldo replied that there could be ornamental plantings throughout the year.

**PUBLIC COMMENT:**

There was no public comment.

**PETITIONER REBUTTAL:**

There was no petitioner rebuttal.

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

Commissioner Bokee stated that based on the discussion with the applicant he said he would want to propose a condition for more than 60 days but less than 1 year that the height of the landscaping that fronts W. 7<sup>th</sup> Street shall be the minimum of 30 inches but to not obscure the base of the sign.

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

There were no restatements/revisions from Planning Staff.

**PLANNING COMMISSION ACTION FOR ACCESS MANAGEMENT MODIFICATION:**

**MOTION:** Commissioner Bokee recommended approval of modification of Section 601 in Access Management table 601-2 separation standards with the 4 modifications to the entrance

separation distances as noted in the staff report and as read into the record by staff with the compensating features as also reported in the staff report .

**SECOND:** Commissioner Stoyke.  
**VOTE:** 5-0.

**PLANNING COMMISSION ACTION TO ELIMINATE STREET TREE REQUIREMENT:**

**MOTION:** Commissioner Bokee moved for the approval of modification for Section 605 (f) to eliminate the requirement to plant street trees along W. 7<sup>th</sup> Street due to the City's future plans to expand the right of way and the provision 2 additional trees on the site as compensating features as reported into the staff report as well as discussion this evening.

**SECOND:** Commissioner Stoyke.  
**VOTE:** 5-0.

**PLANNING COMMISSION ACTION ARCHITECTURAL ELEVATIONS:**

**MOTION:** Commissioner Bokee recommended approval of the architectural elevations based on the compliance of the shopping center design criteria outlined in Section 863 of the LMC based upon the staff report and discussion this evening with the posts being either silver or color that will be consistent with the existing shopping center.

**SECOND:** Commissioner Stoyke.  
**VOTE:** 4-1. (Commissioner Shreve opposed)

**PLANNING COMMISSION ACTION PC10-231FSI:**

**MOTION:** Commissioner Bokee moved to recommend approval of final site plan PC10-231FSI with the conditions to be met in less than 60 days condition 1 as it reads in the staff report condition 2 remove the note referring to the rain garden and show the final placement of the sign conditions for more than 60 days but less than 1 year conditions 1-3 as it reads in the staff report and adding a 4<sup>th</sup> condition that would be a minimum height of the landscaping that fronts W. 7<sup>th</sup> Street of 30 inches from grade.

**DISCUSSION:** Alderman Russell asked if we could delete the "or provide documentation from Frederick Shopping Center LLC rejecting the signage" because it doesn't seem to be in play anymore.

Mr. Miller stated he would be more comfortable leaving that in because he does not want to go back to the shopping center owner to negotiate where it is placed. He added that they would be okay with striking it out.

**SECOND:** Commissioner Stoyke.  
**VOTE:** 4-0.

**E. PC10-350FSCB-Combined Forest Stand Delineation/Preliminary Forest Conservation Plan-Get Go Convenience Store.**

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



Ms. Reppert entered the entire staff report into the record. She stated that the applicant requests approval of a Combined Forest Stand Delineation and Preliminary Forest Conservation Plan as required in coordination with the GetGo Convenience Final Site Plan.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of the FSD/Preliminary Forest Conservation Plan PC10-350FSCB with no conditions.

**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:**

There was no presentation 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 Bokee moved for the approval of the combined forest stand delineation/preliminary forest conservation plan PC10-350FSCB.

**SECOND:** Alderman Russell.

**VOTE:** 5-0.

**VII. New Business:**

**F. PC10-381PCM-Fence Modification-326 Lindbergh Avenue**

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

Mr. Mark entered the entire staff report into the record. He stated that the subject property is 326 Lindbergh Avenue in the John W. Grove subdivision recorded in 1937. The zoning for the property is R6, Low Density Residential. The proposal is to construct a fence that does not meet the setback requirements for a "through lot" per Section 606(h) and Section 821 of the Land Management Code (LMC). The Applicant is requesting approval of a modification in order to install a fence along the property line abutting Freedom Drive which then jogs northeast along the northern property line of the parcel.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of modification PC10-381PCM for the construction of a 6' wooden fence along the Freedom Drive front yard of the property located at 326 Lindbergh Avenue, based on compliance with the modification criteria established under Section 309(k) and Section 821(d) of the LMC and with the following condition:

- 1) On the building permit to be submitted for the construction of the fence, the fence must be shown at least 12' from the back of the curb along Freedom Drive.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Bokee asked if the road was an alley would that change the sight distance issue whether it should be 12 feet verses 10 feet.

Mrs. Hahn stated that without doing a full analysis she can't give a straight forward answer. She said the lowest speed limit ASHTO will look at is 25mph and if she would do an analysis she would have to do it based on that speed limit. So she did a field review and came up with the 12 feet. She added that if she would do an ASHTO analysis she would imagine that the applicant would have to set the fence back further from the curb but feels that how that road is functioning the 12 feet would be sufficient.

Commissioner Nash stated that she has seen properties where they cut and make the triangle open. She asked if there is an opportunity to do that.

Mrs. Hahn replied that there may be but doesn't feel comfortable without looking at the other property to specifically see where the fence would be relative to where the driver is stopping.

Commissioner Nash stated she sees 2 issues with this case. The sight distance issue and the other are building something on the city right of way. She asked if it set back because its classified as an arterial but functions as an alley but doesn't matter how it functions if it has this right of way that is what is driving the set back is that correct.

Mrs. Hahn stated that for her the 12 feet was strictly based on the site distance. She thinks that planning was looking at it from another perspective to deal with the right of way the Planning Commission is speaking of.

Mrs. Dunn stated the 12 feet that staff was recommending keeping it out on the property line and out of the public right of way and it also coincided with the amount of space Devon felt was necessary for sight distance.

Commissioner Shreve asked if in workshop if staff knew where the right of way was.

Mrs. Dunn stated that based on the center line of the road and the location of the road way we estimated it at that 12 feet.

Commissioner Shreve questioned if there was ever a survey done.

Mrs. Dunn replied no.

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

Mr. Bob Bastide stated this has been treated as an alley. He said the city never did a sight distance analysis because they do consider it as an alley. He stated that if this is considered an alley then why we can't have a right of way of 3 feet for example. He commented that they feel like they are being penalized for going through the proper channels because a lot of the neighbors have fences and hedges that are not in compliance. If they were to build a fence there that was less than the 12 feet and if the city wanted that right of way he said they would be happy to remove it and would even be willing to sign a contract with the city saying that.

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

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

**PUBLIC COMMENT:**

Ms. Marcia Hall resides at 101 Council Street stated there are several issues here the sight issue the right of way issue and then the definition of an alley issue and feels that may be the core of the problem. She thinks with this case when we use the width of the pavement as the only definition for an alley or a street we don't really get an accurate definition. Ms. Hall added that she called a meeting of neighbors with Gerald Palm who is head of the sanitation department that had some concerns about the new large trash cans and stood in the middle of Groveland and had the meeting and that is when they were told that trash could not be picked up along the alley.

**PETITIONER REBUTTAL:**

There was no petitioner rebuttal.

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

Commissioner Bokee commented that there is a problem how we handle fence modifications requests and having the process of the applicant go before the Planning Commission because of the cost stand point for the applicant and city.

Commissioner Shreve concurred with Commissioner Bokee.

Commissioner Bokee also stated that the right of way issue is more problematic because the Planning Commission does not have the authority saying that we are allowing a homeowner to put up a fence on city's right of way. He added that unless it goes to Mayor & Board of Aldermen saying that we allow the fence but on the condition the city agrees to vacate that right of way but without that condition I just don't see how we have the authority to do that.

Commissioner Nash questioned if a motion could be done that would require a sight distance angle from engineering to cut the corner of the fence so it does not obstruct sight distance and would require an encroachment agreement.

Mr. Scott Waxter, Assistant City Attorney stated that if the Planning Commission gives approval for anything less than 12 feet essentially letting them build into the city's right of way and then requiring them to go and get an agreement from the city what happens if they do not get approval, then they would have another meeting to come back to the Planning Commission.

Commissioner Nash asked if the sight distance could be done to the satisfaction of the traffic engineer, what your concern would be about the right of way encroachment agreement.

Mrs. Dunn replied it was the sight distance issues but also a liability maintenance issues. She added we don't want encumbrances on our property because it is city property and to have the flexibility to what whatever we want with it. She stated that is the city right of way and if we feel that it is an appropriate right of way then vacating addresses that problem.

Mr. Bastide commented that the property has been there since the 1930's and doesn't envision sidewalks being built there and if we did the contract with the city then we would remove our fence if need be.

Alderman Russell stated that she would have to support staff and thinks that encroaching on the right of way is a much bigger issue than just building a fence on some city right of way in 1 particular neighborhood. She said to protect the city we need to protect that right of ways.

Mr. Bastide stated that people have put up fences that are not in compliance with the right of way and there is several right in our neighborhood that we can point out. What happens to those people? Are they told to remove their fence or remove their hedges, no that they remain grandfathered in?

Mrs. Dunn stated there were legally non conforming meaning you were constructed prior to the regulation was in place illawful and legal non conforming features, structures are allow to persist so long as nothing is done. We don't regulate things that people don't come in for permits.

Mr. Bastide stated they will be okay with the 12 feet rather than appeal it to the city and not get approved.

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

There were no restatements/revisions from Planning Staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee moved to recommend approval of modification PC10-381PCM for the construction of a 6' wooden fence along the Freedom Drive front yard of the property located at 326 Lindbergh Avenue, based on compliance with the modification criteria established under Section 309(k) and Section 821(d) of the LMC and with the following condition: 1) On the building permit to be submitted for the construction of the fence, the fence must be shown at least 12' from the back of the curb along Freedom Drive.

**SECOND:** Commissioner Stoyke.

**VOTE:** 5-0.

**G. PC10-387PCM-Sign Modification-Clemson Corner**

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

Mr. Love entered the entire staff report into the record. He stated that the applicant has provided a modification package in accordance with §864(k) (3) to permit in increase in the permitted signage for the Clemson Corner shopping center.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommended conditional approval of the modification to increase the amount of permitted attached signage in accordance with §864(k) (3) and in the amount on the architectural elevations provided with the following conditions:

To be met in less than 60 days:

1. Revise the calculations for Tenant 1 on the corner retail building per the Applicant's requested revisions.
2. Revise the calculations for the provided signage for Wegmans to switch the amounts shown for the rear and side 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 concurred with the staff report and recommendation.

**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:** Commissioner Bokee moved for the conditional approval of the modification to increase the amount of permitted attached signage in accordance with §864(k) (3) and in the amount on the architectural elevations provided with the following conditions: To be met in less than 60 days: 1) Revise the calculations for Tenant 1 on the corner retail building per the Applicant's requested revisions. 2) Revise the calculations for the provided signage for Wegmans to switch the amounts shown for the rear and side elevations.

**SECOND:** Commissioner Stoyke.

**VOTE:** 5-0.

**H. PC10-384ZMA-Zoning Map Amendment-889 Butterfly Lane-St. John's Literary Institute**

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

Mrs. Dunn entered the entire staff report into the record. She stated that the applicant is requesting approval of a zoning map amendment in order to remove the Institutional (IST) floating zone from the property and in order to reestablish the R12, Medium Density Residential zoning classification.

This is the first of two required public hearings for zoning map amendments.

**INITIAL PLANNING STAFF RECOMMENDATION:**

This is the first of two public hearings and as such, no action is required at this time.

**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. Andrew DiPasquale, Miles & Stockbridge stated he concurred with the staff report and answer any questions the Planning Commission may have.

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

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

**PUBLIC COMMENT:**

Mr. Neil Kirkpatrick resides at 6446 Jefferson Pike stated he has concerns on the traffic impact this will have in the development. He asked if staff had any idea to the degree of what development would take place, what the anticipated yield would be, number of residential units and what the point of access would be.

Mrs. Dunn stated that at this stage they are looking at the zoning concept and that subsequent phases will come along. Either a master plan or if they wanted to develop in accordance with the R12 requirements which allow 12 units per acre they could come through with a preliminary subdivision plan and that would come before this board. She added that would be the first stage where we'd look at the traffic impacts and doing a Traffic Impact Study (TIS). She added that there are a good number of questions and things that are unanswered with the ultimate infrastructure and how that will be completed and what roll this development will play in completing some of that infrastructure but we'd look at that at a subdivision plan or site plan phase if they opt to do total multi-family development.

Mr. Kirkpatrick commented that if this were an agricultural zoned property and there was a request to zone to R12 wouldn't things such as adequate public facilities and the condition of the existing roadways be considered at the rezoning stage.

Mrs. Dunn replied not at the rezoning stage to the extent that they have to document a change of mistake in order for the Planning Commission to approve a rezoning from one base zone to another base zone they have to approve either that there has been a change that wasn't anticipated at the time of the comp rezoning or that there was a mistake that the board had bad information and didn't make the right decision based on not having the right information with that zoning. In terms of the other findings of fact that they do consider a population change the availability of public facilities, present and future transportation patterns, compatibility with the existing and proposed development and the amendment to the city's comprehensive plan. So it is not actually APFO testing at that point but those are findings of fact along with the change of mistake that go into consideration.

Mr. Kirkpatrick asked if there are any preliminary plans or anticipated yields.

Mr. DiPasquale stated he has trouble with characterizing this as a rezoning this is a reversion and we have a base zone of R12 that is depicted on the 2005 zoning map and we are asking for that to be lifted so that the school can make beneficial use of the property. In terms of future development on the site the people that have expressed an interest have an interest in things that would fit neatly within the existing institutional zone but we have also had others who had interests in condominiums or something with a reasonable density. There are no specific development plans and what has caused a problem for sale of the property is this zoning issue.

**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:**

This is the first of two public hearings and as such, no action is required at this time.

**Meeting adjourned at 8:40 P.M.**

Respectfully Submitted,

Carreanne Eyer  
Administrative Assistant