

Planning Commission Hearing

Minutes

December 13, 2010

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

•I. **Announcements:**

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Commissioner Nash congratulated Billy Shreve on his win in the election for BOCC and thanked him for his service on the Planning Commission,

II. **Approval of Minutes:**

Approval of the **November 8, 2010** Planning Commission Minutes as amended:

MOTION: Commissioner Bokee.

SECOND: Commissioner Stoyke.

VOTE: 4-0. (Commissioner Brooks abstained)

Approval of the **November 15, 2010** Workshop Minutes as amended:

MOTION: Commissioner Stoyke.

SECOND: Commissioner Brooks.

VOTE: 5-0.

Approval of the **December 10, 2010** Preplanning Commission Minutes as amended:

MOTION: Commissioner Stoyke.

SECOND: Commissioner Brooks.

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".

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•IV. Public Hearing-Consent Items:

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(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. PC10-422FSU-Final Subdivision Plat-First Missionary Baptist Church

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PLANNING COMMISSION ACTION:

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MOTION: Alderman Russell moved to approve PC10-422FSU.

SECOND: Commissioner Bokee.

VOTE: 5-0.

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•V. Miscellaneous:

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B. Approval of 2011 Planning Commission Calendar

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MOTION: Commissioner Bokee moved to approve the 2011 Planning Commission Calendar.

SECOND: Commissioner Brooks.

VOTE: 5-0.

C. East Frederick Rising-Update

INTRODUCTION OF CASE BY THE PLANNING STAFF:

Mr. Colonna entered the entire staff report into the record. He stated that the purpose of this meeting is to review the proposed text revisions to the East Frederick Vision document. The East Frederick planning area is comprised of approximately 2200 acres consisting of farms, vacant lots, strip development, and industrial uses. This area is bounded by 14th Street on the north, Interstate 70 to the south, Frederick Airport on the east, and Carroll Street on the west.

Mr. Colonna noted that the draft text was included in the packets for review, comment and recommendations. Staff, on behalf of the Planning Commission will forward the Planning Commission's recommendations to the Mayor & Board of Aldermen for their input.

The planning process for East Frederick will follow a sequence of phases similar to the Golden Mile Area Plan recently started and as outlined in the Small Area Plan Guidebook. The East Frederick planning process will be a community-based planning approach involving property owners, businesses, residents, and local government.

Additionally, this document will assist the City's Planning Department in looking at a new planning and regulatory framework that can best further the goals of East Frederick and the City's Comprehensive Plan. The intent is to promote flexibility in creating a sense of place in focusing on the external public realm and to provide good design principles for melding old and new development. These include various types of incentives, flexible regulations for attraction of employment, envisioned design, and infrastructure.

City Staff will continue to identify and address concerns of all stakeholders as the process moves forward.

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INITIAL PLANNING STAFF RECOMMENDATION:

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Staff would like a positive recommendation to the Mayor & Board of Aldermen.

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PLANNING COMMISSION QUESTIONING OF STAFF:

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There was no questioning of staff from the Planning Commission.

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

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City was applicant; presentation was given as the introduction.

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PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

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

PUBLIC COMMENT:

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Krista McGowan, President of EFR, concurred with Mr. Colonna and the presentation and feels that they have been responsive with addressing the concerns of the community and hope that the Planning Commission will endorse the plan.

PETITIONER REBUTTAL:

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There was no petitioner rebuttal.

PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:

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

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RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:

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There were no restatement/revisions from Planning staff.

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PLANNING COMMISSION ACTION:

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MOTION: Commissioner Bokee motioned to recommend approval of the vision statement to the Mayor and Board of Aldermen with the additional comments and corrections that staff has put into the report since the last version that the Planning Commission has reviewed.

SECOND: Commissioner Brooks.

VOTE: 5-0.

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•VI. Old Business:

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

INTRODUCTION OF CASE BY THE PLANNING STAFF:

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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.

INITIAL PLANNING STAFF RECOMMENDATION:

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Staff supports a positive recommendation to the Mayor and Board of Alderman for the rezoning of the property at 889 Butterfly Lane in order to remove the Institutional (IST) floating zone and to reestablish the base zoning of R12 on the property while maintaining the HNO overlay as previously approved.

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PLANNING COMMISSION QUESTIONING OF STAFF:

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Commissioner Nash asked Mrs. Dunn to clarify what the Planning Commission will be doing this evening and what we are not doing as far as the zoning.

Mrs. Dunn stated that this action would reestablish the R12 zone which would set the ground work for the applicant to then pursue submitting development plans in accordance with the R12 district. With the IST lifted the applicant will be able to submit applications in accordance with the R12 zoning.

Commissioner Nash asked how long the property has been zoned R12.

Mrs. Dunn replied since 1996.

Commissioner Nash questioned the IST district and if the zoning would go back "de facto" if the institution went away.

Mrs. Dunn stated that the Institutional Floating Zone was applied in 2005 and was applied like a Euclidean zoning district. The City looked at properties that were used as institutional at that time. The way the regulations are designed it is really more of an applicant driven request. She added that there is nothing in the code that states that the IST district would go away on its own when a use leaves and that the district itself was applied through the zoning map amendment so we need some sort of process to make it vanish.

Commissioner Brooks stated that in 1993 an easement was granted and asked Mrs. Dunn to explain what an easement would do to this property.

Mrs. Dunn replied that the property is the site of Prospect Hall which is the well known historical resource in the City. The Maryland Historical Trust has an easement over the property that protects it and that the parameters of the easement describe how it is perpetual so its owners are bound to the terms of that easement and it also covers some of the land area surrounding the house as well. She added regardless of the zoning of the property that easement stands.

Commissioner Nash asked staff to speak to how a Historic Preservation Overlay (HPO) may relate to this project.

Mrs. Dunn commented that if you were looking for a mechanism under the local authority, it would be the HPO and a single site designation process.

Commissioner Brooks asked what the HPO would do.

Mrs. Dunn stated that it would be like any other Historic District and there will be some sort of guideline set up and a review process that it would go through.

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

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Mr. Andrew DiPasquale-Miles & Stockbridge stated that they are seeking the Planning Commission's recommendation for approval. He feels that the IST was mistakenly applied to the property and that even despite their questions regarding the application that his client agreed to go forward with the process to have it lifted and have it revert back to the R12 medium density.

PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

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Commissioner Brooks asked if the client would be willing to help put an HPO over the property.

Mr. DiPasquale commented that he is in no position to answer that question. The contract purchaser has equitable title on the property. He added that he has no issue with the historical significance to this property; it was recognized by the Maryland Historical Trust and protected as such. He also said that he would imagine that it would be an item of consideration if and when they come up with development plans. Mr. DiPasquale believes the area that is identified by the easement appropriately depicts and protects the historic structure and the area leading up to the historic structure. He thinks that you would not have the leeway to expand what the Maryland Historical Trust already identified as historic.

Commissioner Brooks feels that we need to protect this from anything happening to the property.

Mrs. Dunn commented the subdivision and site plan application process does have an archeological component and that subdivisions/site plan applications are not required at the time of rezoning but the subdivision/site plan process is what triggers the archeological assessment. That during this process, the applicant submits a generalized discussion of the property and other documentation and the City contracts with an archeologist who reviews it and offers her recommendation as to whether further study is required or not needed. She added that another thing to just keep in mind is that with the institutional zoning district, the concerns you have still exist and that the base or floating zone should not be viewed as the mechanism to offer that level of protection. If it were institutional they could come in with a site plan to build new big buildings right next to that easement and it would be the same as building 50 new townhouses in terms of the impact on the historical context.

PUBLIC COMMENT:

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Mr. Richard Lyons resides at 1400 Purple Wing Place stated that when he hears about this property going from institutional to a R12 zoning designation he has real concerns about that intersection. This is a historical property and there are real concerns that the he ad the community with the use of this property.

PETITIONER REBUTTAL:

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There was no petitioner rebuttal.

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PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:

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

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RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:

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There were no restatements/revisions from Planning Staff.

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PLANNING COMMISSION ACTION:

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MOTION: Commissioner Brooks motioned to table this case until there has been time to research applying an HPO over the easement area that the Maryland Historical Trust has on it.

SECOND: Commissioner Bokee for discussion.

DISCUSSION: Commissioner Brooks stated that if we push for an HPO on the land, it would establish authority over the property at a local level.

VOTE: 1-4. (Alderman Russell, Commissioner Nash, Bokee & Stoyke opposed)

PLANNING COMMISSION ACTION:

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MOTION: Commissioner Bokee motioned to support a positive recommendation to the Mayor & Board of Aldermen for the rezoning of the property 889 Butterfly Lane in order to remove the Institutional floating zone and to reestablish the base zoning of R12 on the property while maintaining the HNO overlay as previously approved and as read into the record by staff .

SECOND: Alderman Russell.

VOTE: 4-1. (Commissioner Brooks opposed)

•VII. New Business:

E. PC10-375FSI-Final Site Plan-Hood College Athletic Center

INTRODUCTION OF CASE BY THE PLANNING STAFF:

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Ms. Reppert entered the entire staff report into the record. She stated that the Applicant is requesting final site plan approval for the construction of an athletic

center totaling approximately 41,735 square feet, a new surface parking lot, and internal pedestrian and vehicular circulation improvements.

The Applicant is requesting modifications under Section 605, "Landscaping Standards."

INITIAL PLANNING STAFF RECOMMENDATION:

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Staff recommends approval of a modification to Section 605(e) for Level I screening on the lot line based on the limited planting area available.

Staff recommends approval of a modification to Section 605(e) for the Level II parking lot screening based on the provision of a Level II screening buffer on the adjacent FMH property subject to the execution of maintenance and access agreement to secure the retention of these plantings and the supplemental plantings provided along W 7th Street.

Staff recommends approval of a modification to Section 605(f) for the required street trees along the W 7th Street frontage to allow for the trees to be placed on the Applicant's property subject to the execution of a maintenance and access agreement.

Staff recommends conditional approval of final site plan PC10-375FSI for Hood College Athletic Center subject to the following conditions to be met:

In Less than 60 Days:

- 1. Correct photometric plan to show zero light spillover across property lines.

- 2. In accordance with the Water Line Capacity certificate condition of approval, label the abandoned WHC and show the proposed WHC, plus label the fire line to be abandoned.
- 3. Correct the project square footage landscaping number to 62 trees provided to match the plant lists and drawing.
- 4. Place the Magnolia Avenue signage for "Buses Do Not Enter" at the entrance to the College off of Magnolia Avenue.
- 5. Provide "one-way" and "do not enter" signs as the internal directions for the parking lots.
- 6. Correct C-0 Note #20 that Proposed Additional Impervious surface + Proposed Building + Total Existing Impervious equals 2.38 acres.

Greater than 60 days and Less than one year:

- 1. The Applicant must submit a management plan by certified arborist establishing the preparation and maintenance initiatives that will be taken to preserve the 61" Red Oak plus other trees impacted by the LOD.
- 2. Show landscaping easement area and record an easement and maintenance agreement between Hood and FMH.
- 3. Show and record the access construction easement between Hood and FMH.
- 4. Show street tree easements for trees located on private property and record maintenance agreement with the City.
- 5. Landscape Plan must be signed and sealed by a Licensed Landscape Architect.

PLANNING COMMISSION QUESTIONING OF STAFF:

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Commissioner Nash said that at the PC Workshop, they had discussed not allowing buses to park on Magnolia Avenue.

Ms. Reppert stated they could add signs along that street.

Commissioner Nash asked what the traffic engineers suggestions may be for affecting the traffic on this residential street via signage.

Mrs. Devon Hahn-City Traffic Engineer stated that they have not specifically considered the "no trucks or bus parking" sign. Previously, sight distance concerns at driveways exiting Hood College had been evaluated, most notably at the exit onto Rosemont Avenue at Ferndale Avenue. She added that if Magnolia were made a "no truck or bus" route that traffic would just be pushed onto another street and that she wants to make sure we are fixing the problem and not just relocating it.

Alderman Russell asked if the diagonal spaces along Rosemont were provided by the City as some agreement with Hood College or more on the history of how they got there.

Mrs. Hahn replied she is not sure what the history is but can look into it.

Ms. Reppert commented that as for the signage for Magnolia, that the applicant was going to locate signage prohibiting buses at the beginning of Magnolia which will address the fact they will never get to the entrance of the college.

Alderman Russell asked if there is some provision for a routing requirement and can we do that with this?

Mrs. Dunn stated that they could place a condition and add notes to the plan.

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

President Ron Volpe -Hood College, stated they want to construct a fitness center/gymnasium and it will be essentially for Hood College, it is not a City recreation center and gave a brief description of what it would be used for specifically some sports and as well as commencement. He added that they are flexible with any type of signage they will have to deal with and working towards keeping our campus traffic towards Rosemont Avenue instead of Magnolia.

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PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

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

PUBLIC COMMENT:

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Mrs. Sarah Patton stated that she understands the need for constructing the building. She added that her concern was how it will effect locations and property values on Magnolia Avenue. She also stated that other concerns were additional lighting, additional traffic, how many trees will be cut down and will they be replanted.

Commissioner Nash asked how many mature trees will be lost in that parking area.

Ms. Reppert commented that she had an estimation of approximately 60 trees being cleared but they are going to be replant more than what is required and feels confident that we have lots of protection for the 61" dbh Red Oak tree and other trees that will be impacted outside the Limits of Disturbance (LOD).

Commissioner Nash wanted Mrs. Reppert to speak about the lighting because there is not supposed to be any spill over.

Ms. Reppert stated that she believes the applicant was going to use the same lighting that they have across the campus currently. She added that they do have close to 0 lighting spillover on the property line.

PETITIONER REBUTTAL:

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Mr. Mark Buchholz-Warner Construction stated that the lighting that will be used is an acorn style fixture which matches a lot of the historic fixtures on site and they will be LED with a mechanism to block light from going beyond the property line. He added that they are sensitive about the trees in terms of removal and have brought in experts to make sure that the trees are flagged to be saved are going to have proper root pruning and make sure the canopy is saved as well.

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PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:

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

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RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:

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In less than 60 days:

1. Correct photometric plan to show zero light spillover across property lines.
2. In accordance with the Water Line Capacity certificate condition of approval, label the abandoned WHC and show the proposed WHC, plus label the fire line to be abandoned.
3. Correct the project square footage landscaping number to 62 trees provided to match the plant lists and drawing.

4. Place the Magnolia Avenue signage "Buses Do Not Enter" at the entrance to the College off of Magnolia Avenue.
5. Provide "one-way" and "do not enter" signs as the internal directions for the parking lots.
6. Correct Sheet C-0 Note # 20 the Proposed Additional Impervious surface + Proposed Building + Total Existing Impervious equals 2.38 acres.
7. Correct the drive aisles, parking spaces, and radii in accordance with Exhibits 1-5.
8. Correct the sidewalk width to accommodate the fire exit doors along the east wall.
9. Applicant shall work with staff on routing and signage for bus traffic to avoid Magnolia Avenue.

Greater than 60 days and less than one year:

1. The Applicant must submit a management plan by certified arborist establishing the preparation and maintenance initiatives that will be taken to preserve the 61" Red Oak plus other trees impacted by the LOD.
2. Show landscaping easement area and record an easement and maintenance agreement between Hood and FMH.
3. Show and record the access construction easement between Hood and FMH.
4. Show street tree easements for trees located on private property and record maintenance agreement with the city.
5. Landscape Plan must be signed and sealed by a Licensed Landscape Architect.

The Planning Commission approved the three (3) modifications listed below each with a separate vote of 5-0.

- Modification to Section 605(e) for Level I screening on the lot line based on the limited planting area available;
- Modification to Section 605(e) for the Level II parking lot screening based on the provision of a Level II screening buffer on the adjacent FMH property subject to the execution of maintenance and access agreement to secure the retention of these plantings and the supplemental plantings provided along W. 7th Street; and

- Modification to Section 605(f) for the required street trees along the W. 7th Street frontage to allow for the trees to be placed on the Applicant's property subject to the execution of a maintenance and access agreement.

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PLANNING COMMISSION ACTION PER SECTION 605(e) for Level I Screening:

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MOTION: Commissioner Bokee moved to approve Section 605 (e) for Level I screening on the lot line based on the limited planting area available for application PC10-375FSI.

SECOND: Commissioner Brooks.

VOTE: 5-0.

PLANNING COMMISSION ACTION PER SECTION 605(e) for Level II Screening:

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MOTION: Commissioner Bokee moved to approve Section 605 (e) for Level II parking lot screening based on the provision of a Level II screening buffer on the adjacent FMH property subject to the execution of maintenance and access agreement to secure the retention of these plantings and the supplemental plantings provided along W. 7th Street as read into the record by staff.

SECOND: Commissioner Brooks.

VOTE: 5-0.

PLANNING COMMISSION ACTION PER SECTION 605(f):

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MOTION: Commissioner Bokee moved to approve Section 605 (f) for the required street trees along the W. 7th Street frontage to allow for the trees to be placed on the applicant's property subject to the execution of a maintenance and access agreement as read into the record by staff.

SECOND: Commissioner Brooks.

VOTE: 5-0.

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PLANNING COMMISSION ACTION FOR PC10-375FSI:

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MOTION: Commissioner Bokee moved to recommend approval of PC10-375FSI for Hood College Athletic Center subject to the 9 conditions in less than 60 days with the 9th condition to identify the appropriate bus traffic routing and parking signage as it relates to Magnolia Avenue and then the 5 conditions for greater than 60 days and less than 1 year as presented by staff

SECOND: Commissioner Brooks.

VOTE: 5-0.

F. PC10-376FSCB-Combined Forest Stand Delineation/Preliminary Forest Conservation Plan-Hood College Athletic Center

INTRODUCTION OF CASE BY THE PLANNING STAFF:

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Ms. Reppert entered the entire staff report into the record. She stated that the Applicant is requesting approval of a combined forest stand delineation and preliminary forest conservation plan to mitigate for the proposed athletic center. The Applicant is proposing a fee in lieu payment of afforestation totaling \$6,534.00.

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INITIAL PLANNING STAFF RECOMMENDATION:

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Staff recommends conditional approval of combined forest stand delineation and preliminary forest conservation plan PC10-376FSCB for Hood College Athletic Center for the payment of fee in lieu of totaling \$6,534.00 subject to the following conditions to be met:

In Less than 60 Days:

- 1. Verify and match LOD of disturbance with the site plan, 3.31 or 3.29 acres and correct fee-in-lieu of amount accordingly.
- 2. Change LOD around Tree #1731 at drip line.
- 3. Move the LOD 10 feet west from Hemlocks to be saved, since 50% of the root zone is being encroached.
- 4. For clarity change the protection signage symbol in the legend for more difference compared to LOD.
- 5. Change #1296 tree labels to Red Oak.

Greater than 60 days and Less than one year:

- 1. Update Area D part of the Tree Survey to reflect tree condition of trees to be saved.

PLANNING COMMISSION QUESTIONING OF STAFF:

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There was no questioning of staff from the Planning Commission.

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

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There was no presentation given.

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PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

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

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PUBLIC COMMENT:

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There was no public comment.

PETITIONER REBUTTAL:

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There was no petitioner rebuttal.

PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:

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

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RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:

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There were no restatements/revisions from Planning Staff.

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PLANNING COMMISSION ACTION:

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MOTION: Commissioner Bokee recommended conditional approval of the combine forest stand delineation/preliminary forest conservation plan PC10-376FSCB for Hood College Athletic Center with a payment fee in lieu of \$6,534.00 subject to the 5 conditions to be met in less than 60 days and the 1 condition to be met in greater than 60 days but less than 1 year as presented by staff.

SECOND: Commissioner Stoyke.

VOTE: 5-0.

G. PC10-322PND-Master Plan-Waverley View

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INTRODUCTION OF CASE BY THE PLANNING STAFF:

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Ms. Reppert entered the entire staff report into the record. She stated that the Applicant is requesting approval of a revision to the previously approved master plan for the Waverley View Planned Neighborhood Development (PND). The Applicant proposes to revise the phasing schedule in order to redistribute the units and revise components of the infrastructure timing.

The Applicant is also proposing to revisions to the design booklet.

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INITIAL PLANNING STAFF RECOMMENDATION:

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Staff recommends approval of the revised Design Booklet to amend the typical detail for the Single-Family Detached units with a Detached Garage to establish the alternative option of a 20'x20' parking pad for two (2) parking spaces.

Based on the analysis provided in the staff report, should the Planning Commission support Staff's recommendations for modifying the proposed phasing schedule, the following conditions should be met:

In less than 60 days:

- 1. Correct total number of units to 732 in the Site Information table.
- 2. Change recreation center to be built prior to 351st **building permit**.
- 3. Correct Approved Phasing Plan Exhibit table for Phase 4 to 69 units and Phase 5 to 268.
- 4. Revise the Infrastructure Phasing notes on the master plan to reflect the following:
 - - The bonding/construction of Shookstown Road east of the intersection with Waverley Drive be required prior to plat recordation for lots within Phase 2
 - The bonding/construction of the Park Path to be completed prior to Phase 2.
 - The bonding/construction of Shookstown Road west of land area C to be completed Phase 3.
 - ○ The following be completed prior to Phase 5:
- Guarantee of Christopher's Crossing improvements,

- Execute a 3-party agreement between the applicant, city, and county stipulating the construction and maintenance responsibilities for Kemp Lane and the T-intersection of Kemp Lane/Christopher's crossing.
- Enter into a cost sharing agreement with the City for the construction of the proposed Old Camp Road Bridge,
 - o The recreation center to be constructed prior to the issuance of the issuance of the building permit for the 351st lot.

Should the Commission find that the Applicant's proposal is appropriate and should support the application as proposed, conditions 1-3 above should be met as outlined.

PLANNING COMMISSION QUESTIONING OF STAFF:

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Commissioner Bokee asked how they landed on the units that would trigger the phasing so we have a new unit allocation.

Mrs. Dunn replied that the applicant proposed the division of the phases by the unit numbers so there would be an even distribution of units. In Staff's analysis of the phasing, this number was viewed as static. Going from the 192 units in Phase 1 under the approved phasing to 139 units in the Phase 1 under the proposed phasing is lowering the unit count that will trigger when that improvement would have taken place. She indicated that a lot of the recommendation is based on practical considerations not a formal traffic study that assessed the impacts of the timing of the construction

Mrs. Hahn stated that a lot came down to the motoring public, the fact that Shookstown is already an existing street. The City will have a four 4-lane section of this road up to the limits that are depicted on the phasing plan.

Commissioner Bokee wanted to know what the legal obligation of the Applicant was to the City to construct the improvements. With the existing approval this doesn't change. There is still the obligation that those improvements have to be made and that the concern from Staff is that they may not be made because of the fewer number of units that are left in the last phase.

Mrs. Dunn replied that is correct, that Staff's concern is that there is a relatively small proportion of the development still remaining with fairly significant improvements still to be made in the last phase. She added that under the current phasing schedule, 439 units would have been recorded and 300 would still be out there by the time those requirements came due. Under the proposed, 596 will be recorded when these improvements are required so only 150 lots will be left. She added that is a reason for concern to staff because there is such a small percentage of the project and if they fail to move forward with that, does the cost of those improvements outweigh the benefit of receiving the sale of those 150 units.

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

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Mr. John Anderson-RGHGAB stated that they have gone through the planning process and were delayed due the lack of water allocation for a significant period of time. He added that at this point he has some optimism to pull this off after all these years and are at the beginning of a recovery. The approval of the phasing doesn't work with today's economic value where not only did the market collapse but the commercial lenders' criteria are different. He briefed the Planning Commission how costly this type of plan can be and what will be done in each of the phases.

Krista McGowan-Miles & Stockbridge stated that this project has been approved for over 10 years. The project cannot proceed now with the current phasing schedule as approved. She added that they have proposed something they think will work which will get this property off the ground. The eastern section of Shookstown Road would be delayed by this new phasing schedule but as staff has pointed out it, is really more of a practical difficulty not traffic impact. She noted that their traffic consultant didn't do a full traffic study again because the improvements are not changing it is just the

timing of them. She feels that without this new phasing schedule this will not get off the ground anytime soon to coordinate with the City's Shookstown Road project. She stated that they believe it works from an economic standpoint, will work from a traffic standpoint and it might be possible that the apartments may go first as originally contemplated in the phasing schedule. She stated that they are looking for a partnership with the City, a way to move this thing forward to get it off the ground. She concluded by noting Section 504 (d) (3) (b) of the LMC that deals with preliminary plat approvals which states "An applicant may request a revised phasing schedule from the Planning Commission with documentation on why the applicant is not able to comply with the adopted phasing schedule. The Planning Commission shall not unreasonably withhold approval of a revised phasing schedule if documentation of the delays are reasonable and outside the control of the applicant" and she feels that documented the reason for the delays that were outside of their control.

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PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

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Commissioner Bokee wanted to know the total number of units for each of the areas in the phasing.

Mr. Anderson stated that the first grouping 1, 2, 3 is a total of 240 apartments, 55 single family detached and 199 townhomes. Section 4 & 5 is approximately 140 2 over 2 units and the rest are townhomes.

Commissioner Nash questioned what happens if the Applicant gets through Phase I and into Phase II, and there are no takers for area C. What will happen to those improvements that would have been concurrent with C?

Mr. Anderson stated that C is only 37 units.

Mrs. Dunn commented that regardless of the timing of the phasing, as the developer builds units they are going to have to build the improvements that serve those units.

Commissioner Brooks said that section C & A that used to be in the Fort Detrick area, is that considered Area B with Fort Detrick.

Mr. Anderson answered that it is adjacent to it.

Commissioner Bokee asked if this will be City water?

Mr. Anderson stated yes and that the ground water generally flows towards Fort Detrick and is 20-68 feet below the existing grade and have also tested the site for dioxins associated with Agent Orange and are clean.

Commissioner Brooks suggested that the section that turns from blue to green on the phasing exhibit up to the Christopher's Crossing Section along with the recreation center to be moved up Phase 1.

Mr. Anderson said that is where the bridge is and that is the "lion's share" of the next 3 million dollar amount so that is a challenge. He said that the apartments will be 240 permits that is all at once that will trigger it and that the goal of moving the recreation center is that when it is built, it has enough and participants to operate it. If we have 350 residents, before we get another permit, the recreation center needs to be open and will bring the project to a halt if not done.

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PUBLIC COMMENT:

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Mr. Paul Gordon resides at 202 Meadow Lane stated that his concerns are the bridge that needs to be replaced the one over the Carroll Creek and when they are going to work on it. He feels that the City should talk to EPA and the Health Department to get their input prior to doing work due to the contamination issues with Fort Detrick.

Ms. Belinda Morton- Vice President of NAC 5- stated that the east portion that Mr. Gordon was talking about was the east portion at Waverley Drive. It is dangerous. With the homes that Mr. Anderson will construct there will be an additional 300 students going to the schools and she feels that it will be putting the children and residents in danger. She added that if they are going to do this project it needs to be done right and have the road built at least to Waverley Drive. Another issue she wanted to mention was the change of design that was being looked at in favor but when the NAC mentioned the change in design or change in idea it was immediately downed and that was the idea of the apartments. She added that the plan for the western portion of Frederick specifically states no further apartments and the problem is crime. Lastly, she states that this land was supposedly foreclosed on and up for sale and if not owned by these people then why is all this still going on?

Commissioner Nash commented that all of Waverley Drive will be abandoned and removed which will take all the school traffic east of the bridge over Carroll Creek so you will not be able to come from the school onto that bridge anymore.

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PETITIONER REBUTTAL:

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Mr. Anderson stated that prior to purchasing the land they entered the voluntary program with MDE to obtain a "no further requirement" designation which required testing and that will be disclosed to each purchaser. Based on the recent news in the press regarding Agent Orange in the 40's & 50's and after reading the reports they found it did not address the dioxin associated with those chemicals and so they tested it and it came back clean. As far as the foreclosure, they have brought in new investors and have restructured with the bank by buying the banks note with the new investors at a discounted price. That they are no longer the owner but now the development manager and the fees associated with it. Mr. Anderson stated that with

the apartment use the approvals are not easy to obtain and at this stage we are not going to change uses.

Commissioner Nash asked what the dollar amount was for the sewer outfall.

Mr. Anderson replied the portion of it all the way to the east the CIP is about \$250,000.00 plus buying an easement for it.

Alderman Russell asked what the time frame was for this project.

Mr. Anderson replied that is tough, his goal is to start next year.

Commissioner Nash stated that the City needs these roads improvements as fast as we can get them built and can truly appreciate how the world has changed since the original schedule was done from a financing standpoint trying to balance and likes the idea that this is much more of a balanced unit coming online rather than peaks and valleys.

The Planning Commission gave their suggestions of when improvements should be done in which phase.

Commissioner Bokee stated that Shookstown Road would be triggered at 289 which would be Phase III because Shookstown Road east would have to be built before the recording of the plat. That verses what the current phase schedule is of 192 that is when Shookstown Road would have to go through. He feels if that number is lowered it protects you if the apartments suddenly go forward which is 240 and you don't have as many of the fee simple lots until the single family townhomes go through so it would still get triggered sooner in Phase II. His concern was that the apartment units come all at once and that is a big impact to the road.

PLANNING COMMISSION DISCUSSION AND QUESTIONS FOR STAFF:

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

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RESTATEMENT/REVISION OF PLANNING STAFF RECOMMENDATION:

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In less than 60 days:

- 1. Amend the Applicant's Proposed Phasing Schedule as follows:
 - a) Change Phase 2 number of units to 125;
 - b) Change Phase 3 number of units 175;
 - c) Delete references to Park Path which will be handled through the Final Forest Conservation Plan phasing; and
 - d) Change the requirement for the cost sharing agreement for the construction of the proposed Old Camp Road Bridge to actual contribution to be paid to the City prior to Phase 4, based on pro rata transportation impact of Waverley View PND.

- 1. Correct total number of units to 732 in the Site Information table.
- 2. Change recreation center to be built prior to 351st building permit.

More than 60 days and less than one year:

- 1. Revise Final Forest Conservation Plan to reflect the revision to the construction phasing schedule.

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PLANNING COMMISSION ACTION FOR THE DESIGN BOOKLET:

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MOTION: Commissioner Bokee moved to approve the design booklet submitted by the applicant and as discussed in the staff report to amend the typical detail for the Single-Family Detached units with a Detached Garage to establish the alternative option of a 20'x 20' parking pad for 2 parking spaces for case PC10-332MP.

DISCUSSION: Commissioner Bokee stated that from a design standpoint to have the uniformity of all the detached garages and based on staffs decision that the impervious surface isn't changing.

SECOND: Commissioner Brooks.

VOTE: 5-0.

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PLANNING COMMISSION ACTION FOR PC10-332MP PHASING SCHEDULE:

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MOTION: Commissioner Bokee stated that based on analysis provided and testimony this evening and Planning Commission discussion that was entered into the record we propose the following amendments to the applicants proposed phasing schedule as it concerns units and infrastructure improvements. 1) that Phase I remain at 139 units for area E, F-2, F-3, that units for Phase II would be 125 units not 150 for area C, E, F-2 or F-3, Phase III would be 175 units not 150 for area C, E, F-2 or F-3 that the Phase IV would be 150 units area A, strike path and Phase V would be 143 units that's area A the park path would be struck from the construction unit phasing schedule the path would be tied to the forest conservation plan phasing schedule 2) the contribution for the Old Camp Road bridge from the applicant will be submitted prior to the first recorded plat of Phase IV. In less than 60 days note # 1 to correct total number of units to 732 in site information table # 2 to change the recreation center to be built prior to the 351st building permit # 3 has been struck and the 1 condition in greater than 60 days but less than 1 year revise the forest conservation plan to reflect the changes of the phasing schedule.

SECOND: Commissioner Brooks.

VOTE:

5-0.

Meeting adjourned at 10:00 P.M.

Respectfully Submitted,

Carreanne Eyler

Administrative Assistant