

**Planning Commission Hearing Minutes  
September 12, 2011**

PC MEMBERS	PC MEMBERS ABSENT	STAFF PRESENT
Meta Nash Alderman Russell Elisabeth Fetting Josh Bokee Gary Brooks Rick Stup		Gabrielle Dunn-Division Manager of Current Planning Joe Adkins-Deputy Director for Planning Matt Davis-Division Manager for Comprehensive Planning Pam Reppert- City Planner Jeff Love- City Planner Brandon Mark-City Planner Devon Hahn-City Traffic Engineer Carreanne Eyler-Administrative Assistant

**I. ANNOUNCEMENTS:**

Mrs. Dunn welcomed Matt Davis to the Planning Department as the new Division Manager for Comprehensive Planning.

**II. APPROVAL OF MINUTES:**

Approval of the **August 8, 2011** Planning Commission Hearing Minutes as amended:

**MOTION:** Commissioner Bokee.

**SECOND:** Commissioner Stup.

**VOTE:** 5-0.

Approval of the **August 15, 2011** Planning Commission Workshop Minutes as amended:

**MOTION:** Commissioner Stup.

**SECOND:** Commissioner Brooks.

**VOTE:** 5-0.

Approval of the **September 9, 2011** Pre-Planning Commission Minutes as amended:

**Minutes to be reviewed and will be approved at the October 10, 2011 Planning Commission Hearing.**

**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.)

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V. **OLD BUSINESS:**

A. **PC11-278ZMA, Zoning Map Amendment, Historic District Designation, Nicodemus**

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

Ms. Mroszczyk entered the entire staff report into the record. She stated that the Historic Preservation Commission (HPC) is requesting approval for a Historic Preservation Overlay (HPO) Zoning Map Amendment for a portion of Nicodemus Property. The Nicodemus Property, historically known as the Brengle Farm, contains an intact early nineteenth century Federal/Greek Revival style house and associated domestic outbuildings, a bank barn, dairy barn and milk house and a tenant house.

This is the second of two required public hearings for a zoning map amendment.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation to the Mayor & Board of Aldermen for the rezoning of a portion of the Nicodemus Property, 7926 Gas House Pike, in order to apply the Historic Preservation Overlay (HPO) zone while maintaining the base zoning of R12.

**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:**

City was applicant, no presentation was given.

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

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

**PUBLIC COMMENT:**

Mr. Chris Smariga, Harris, Smariga & Associates stated that he doesn't understand why a Historic Preservation Overlay is necessary on this property because we have been through the approval process. He stated that when you look at the comments from planning staff, they have incorporated those changes into the plan as they have moved forward. Mr. Smariga added that if this had been an overlay since "day one," when the plan was submitted, they could have met with staff and discussed what was significant on the site and then discussed whether or not to place an overlay district on the property. He feels that with this overlay placed on the property there will be conflicts and that the HPC may make recommendations that can't be met. Mr. Smariga concluded that they don't support the Historic Preservation Overlay and feel that it will complicate the process.

Commissioner Bokee asked about the HOA documents and about the level of protection they provide on the property.

Mr. Smariga stated that there was language added in the documents about the house, smokehouse and the privy in terms of retaining them and the HOA would actually review any changes to the house. He added that by putting them in the HOA documents, it does tie everything back to the master plan approval so those things can't be demolished.

Commissioner Stup stated that HOA documents as a long term solution for preservation of anything that is of the public interest doesn't work. HOA's get older, officers change, and there tends to be less enforcement. The City can't require approval of an architectural review committee of an HOA before they issue any permits. He asked how the HOA documents would protect the property.

Mr. Smariga stated that they could look at ways to strengthen the documents. Over time people may or may not know that it is in a Historic District Overlay and that they could do things with a plaque just east of the house; it could reference the structure that is set to be retained through the Planning Commission approvals. He stated that maybe the best way to do this is through some documentation that is visibly there on the site.

**PETITIONER REBUTTAL:**

There was no petitioner rebuttal.

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

Commissioner Nash asked staff if they could elaborate on the architectural controls of the farm house.

Mrs. Dunn stated that the master plan being subject to the TND design regulations has to comply with the performance standards which one of those is urban design elements. With this master plan, what will be unique is that the single family homes are comingled with the townhomes and other units. They are going to have site plans for those units and they will have to comply with the urban design standards.

Commissioner Nash asked if there was anything in the architectural controls that would prohibit if a porch rots from putting on something inappropriate.

Mrs. Dunn replied not to the extent that you have with the Historic Preservation Overlay.

Commissioner Nash if there was a way to know the implications of this overlay and impacts on the forest conservation and the issues they have worked through.

Mrs. Dunn said she is not sure what the HPC would like to see in terms of the forest conservation. She thinks it would be a matter of bringing it forward and reviewing it to make those determinations.

Ms. Mroszczyk stated that the HPC does not review planting. So any additional trees that are being planted is not something that the HPC would be reviewing or requiring and that the HPC only considers the removal of trees that are greater than 12 inches in diameter.

Commissioner Bokee stated that the challenge is that a master plan/preliminary plan have been approved and now the City is looking at a request from the City to put an overlay on that the applicant is resistant to.

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

There were no restatement/revisions from planning staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Brooks motioned to deny the positive recommendation to the Mayor & Board of Alderman.  
**SECOND:** Commissioner Bokee.  
**VOTE:** 3-2.

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**B. PC11-218FSU-Final Subdivision Plat, H & V Properties, Lot 1**

**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 subdivision plat approval for the consolidation of two parcels known as 1460 W. Patrick Street and 5776 Old National Pike as well as dedication of a portion of right-of-way for Old Camp Road.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommends conditional approval of final subdivision plat PC11-218FSU with the following conditions:

To be met in greater than 60 days and less than one year:

1. Show all easements recorded as required through the improvement plan process.
2. Address technical comments 1-5 as listed in the staff report.

**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. Matthew Allen, Bohler Engineering concurred with the staff report.

**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:**

To be met greater than 60 days and within one year of approval date:

1. Show all easements recorded as required through the improvement plan process.
2. Address technical comments 1-5 as listed in the staff report.
3. Revise the vicinity map to correct the label of Mt. Phillip Road.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Fetting moved to approve final subdivision plat PC11-218FSU with the 3 conditions to be met in greater than 60 days and less than one year.

**SECOND:** Commissioner Brooks.

**VOTE:** 5-0.

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**C. PC11-539-Right of Way Abandonment, E 8<sup>th</sup> Street**

**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 from the Planning Commission to the Mayor and Board of Aldermen for the abandonment of a section of right of way along N. East Street and for the abandonment of right of way that was previously dedicated for E. 8<sup>th</sup> Street.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation from the Planning Commission to the Mayor and Board of Aldermen for the abandonment of Tract 1- E 8<sup>th</sup> Street- and Tract 2- N East Street- as depicted in the Applicant's request packet subject to the following conditions:

- 1) Tract 2" right-of-way is restricted to "no access" from either East Street or 9<sup>th</sup> Street.
- 2) That access points along 9<sup>th</sup> Street be spaced a minimum of 200 feet from the East and 9<sup>th</sup> Street intersection
- 3) That a permanent design for Pontiac Avenue is identified and the Applicant contributes towards these improvements as determined by the Mayor and Board.
- 4) That the applicant will be required to submit a Vacation Plat in accordance with LMC Section 512. As a condition of plat approval, the applicant shall be responsible for abandoning all water and sewer connections in excess of 1 water and sewer connection per lot.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Brooks asked if staff is requesting that the applicant construct the cul-de-sac.

Mrs. Dunn said the intent is to formalize the currently functioning dead end however to reflect the abandonment. She added that from staff's perspective, the alternatives presented in the report are intended to allow the decision making authority to identify how that need is best met.

Commissioner Nash asked if there were any comments from DPW about any difficulty in servicing it the existing homes on the street.

Mrs. Devon Hahn, City Traffic Engineer stated that in conversations with DPW and the Fire Safety Engineer, they commented on the lack of the turnaround that it may be more difficult.

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

Ms. Laurie Mills, Swordfish LLC, stated that they want to use the existing building but to make a positive impact on East Street. She added that the plan is to put some offices in the main building and in the show room, they are hoping for a diner which they are in negotiations for right now. Ms. Mills said that they concur with the recommendations.

Commissioner Nash had concerns of constraining the redevelopment of the site.

Mrs. Dunn stated that question the Commission should be considering is if that right-of-way is needed and is it serving a public function.

Commissioner Nash wanted to state for the record a letter that was received dated September 7, 2011 from Jim Fitzgerald who is owner of 801 E. Street across, from 880 N. East Street, and they fully support the request.

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

Commissioner Bokee asked if the applicant is proposing to deed back the area; do we need to change anything on the 3<sup>rd</sup> condition.

Mr. Scott Waxter, Assistant City Attorney stated that it hasn't been decided what is needed for the cul-de-sac as of yet and if the Planning Commission's recommendation is to approve the abandonment of that tract, it would be possible to condition the approval by stating that they recommend the abandonment provided that City gets what it ultimately needs.

**PUBLIC COMMENT:**

Mr. Bill Ashton resides at 932 Cherokee Trail feels that this is a great idea and a plus for the neighborhood.

Ms. Gladys Coshercar resides at 892 Pontiac Avenue stated that she has a concern since the abandonment of the right-of-way and questioned if it will allow the applicant to use Pontiac Avenue as an access and egress from the property?

**PETITIONER REBUTTAL:**

There was no petitioner rebuttal.

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

Mrs. Dunn replied to the concern of Ms. Coshercar and stated that there isn't anything that will strictly prohibit that.

Commissioner Bokee asked if when this goes to Mayor & Board in regards to a permanent design for Pontiac Avenue, would it be appropriate not to have reverse access from the commercial lot to Pontiac Avenue.

Mrs. Dunn stated that staff is recommending denied access on East Street or 9<sup>th</sup> Street and likewise, this could be stipulated for Pontiac Avenue.

Ms. Laurie Mills asked if they deed back a portion to the City for a cul-de-sac, the City would own that could not be used ingress/egress.

Commissioner Nash corrected Ms. Mills and noted that it would be possible to apply for a curb cut even if City owns it.

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

There were no restatement/revisions from planning staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee made a positive recommendation to the Mayor & Board of Aldermen for the abandonment of Tract 1-E. 8<sup>th</sup> Street and Tract 2-N. East Street as depicted in the applicant's request packet and subject to the 4 conditions as read into the record by staff.

**SECOND:** Commissioner Fetting.

**DISCUSSION:** Commissioner Bokee stated that he would like it conveyed in the letter to Mayor & Board of Aldermen that reverse access from the property back to Pontiac Avenue would be denied as part of the consideration.

**VOTE:** 5-0.

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**D. Plan Maryland**

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

Mr. Adkins stated that Maryland Department of Planning is to create a Comprehensive Plan for the State of Maryland. He recapped the concerns that the Planning Commission had regarding the percentage of the City that was included in the Growth Print Area. He added that the Growth Print Area will eventually take over the Priority Funding Area which is the entire City and by restricting that, the State uses the Priority Funding Area to allocate funds to projects within the City. This is to be on the governor's desk in late November.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation from the Planning Commission to the Mayor and Board of Aldermen for the Plan Maryland.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Nash questioned that the new draft had changed drastically, that Mr. Adkins was going to delete the 3 goals references.

Mr. Adkins responded that is correct. In the previous draft letter, it included the references in the plan that how state funding was going to be allocated and they reworked the draft. The overall intent is that in the draft it says Plan Maryland there many indirect references of allocating state monies toward growth areas and previously these monies were directed to Priority Funding Areas.

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

City was applicant, no presentation was given.

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

Commissioner Bokee asked by specifying the areas of the 2 interchanges, does that cover the Tier 3.

Mr. Adkins stated the areas under the bullet points address the current City boundaries.

**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 moved to recommend as discussed this evening the bullet points to include the redevelopment in growth areas identified in the City limits as well as the addition of the language as read into the record by staff.

**SECOND:** Commissioner Fetting.

**VOTE:** 4-1. (Commissioner Brooks opposed)



**E. Adequate Public Facilities Ordinance-School Mitigation Fee**

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

Mr. Adkins stated this is an option for the City of Frederick to adopt an APFO-School Mitigation Fee. He stated that this was first discussed by the Frederick County Builder's Association/Land Use Council and the Frederick County Chamber of Commerce when they made a presentation to the Board of County Commissioners (BOCC) meeting on February 10, 2011. This allows developers to pay a fee depending on what school fails to get out of the APFO for school testing. He added that currently the City has about 5,000 units that either have passed the APFO test or are exempt from it and in the pipeline right now.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation from the Planning Commission to the Mayor and Board of Aldermen for the APFO-School Mitigation Fee.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Nash asked if there is a disadvantage for the City if we did not have it and the county does. Would growth be more directed to out of the city rather than to?

Mr. Adkins responded that the projects that would benefit from this if passed would be the second 5,000 units. It would cut off time from their development review process.

Commissioner Nash stated that in the first bullet on page 3, she asked if developers could build until they hit that or how will that work?

Mr. Adkins replied that the way the county ordinance is written, that at the time of the test if the project is at 119% or less they can move forward regardless and the ordinance also states that if the school mitigation fee is paid for one lot you are paying for all the lots.

Commissioner Bokee stated this discussion is not for an increase or decrease in units.

Mr. Adkins said no this is strictly a timing issue and this is in addition to the school impact fee where everyone has to pay the baseline school impact fee.

Commissioner Bokee asked if the 3 year time limit went far enough out.

Mr. Adkins stated it really depends on the project and what their affecting and how the market is.

Commissioner Stup stated that growth areas need to be more competitive and easier for growth to occur in the City than the county and that changing the 3 year to a 5 year time line goes against that principle.

Commissioner Fetting added that this is a difficult decision because if the City doesn't do something comparable to the county, then a developer may choose the county over the City but in adopting something similar, then we are risking overcrowding the schools.

Commissioner Bokee stated under the current system the developer could wait for 3 years and if there is no additional funding, the projects would come online in 3 years regardless of what the school capacity is. It is a complex issue for the City because we don't control schools.

Commissioner Nash stated she doesn't want overcrowded schools so we need to have a balance. She questioned if there is a way of collecting any funds and the City having some control to direct those monies towards a renovation project that's been waiting.

**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:**

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 Brooks moved for a positive recommendation to the Mayor & Board of Alderman to adopt the APFO-School Mitigation Fee.

**SECOND:** Commissioner Bokee.

**VOTE:** 4-1. (Alderman Russell abstained)

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**F. PC11-486ZTA, Zoning Text Amendment, Forest Conservation**

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

Ms. Reppert entered the entire staff report into the record. She stated that the City of Frederick Planning Department proposes changes to the Land Management Code Section 721, "Forest Conservation," in order to comply with the State mandated changes under the Forest Conservation Act, in addition to some minor technical corrections.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation from the Planning Commission to the Mayor and Board for the State mandated changes and minor technical changes to Section 721

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Bokee questioned if the mitigation opportunity that would become available now would be that the street trees would not have to go on site they could go elsewhere and if the City and the applicant agree to it or would the City designate/

Ms. Reppert stated that we are able to use fund money for street trees which was one of the driving forces behind adopting our Urban Forestry Management Plan.

**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:**

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 moved for a positive recommendation to the Mayor & Board of Alderman for the state mandated changes and minor technical changes to Section 721.

**SECOND:** Commissioner Brooks.

**VOTE:** 5-0.

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**G. PC11-487ZTA, Zoning Text Amendment, Fences, Walls & Hedges**

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

Mrs. Dunn entered the entire staff report into the record. She stated that Staff is requesting a recommendation from the Planning Commission to the Mayor and Board of Aldermen for amendments to sections 301, *General Procedural Requirements*, 611, *Street Improvement Standards*, 821, *Fences, Walls, and Hedges*, and 1125, *Fence Modification*, of the Land Management Code (LMC) as they pertain to fences, walls, and hedges.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff supports a positive recommendation from the Planning Commission to the Mayor and Board of Aldermen for the proposed amendments pertaining to fences, walls, and hedges.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

Commissioner Nash questioned where barbed wire was permitted stating that she believed it was only allow in the industrial areas on top of 6 foot fences.

Mrs. Dunn stated it is permitted in GC as long as the fence is 6 feet or higher and provided it is not abutting a residential property.

**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:**

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 Planning Commission.

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

There were no restatement/revisions from planning staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Bokee made a positive recommendation to the Mayor & Board of Alderman for the proposed amendments pertaining to fences, walls, and hedges.

**SECOND:** Commissioner Brooks.

**VOTE:** 5-0.

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**Meeting adjourned at 7:58 p.m.**

Respectfully Submitted,

Carreanne Eyler-Administrative Assistant