

Planning Commission Hearing  
Minutes  
June 13, 2011

PC MEMBERS PRESENT

Meta Nash  
Alderman Russell  
Elisabeth Fetting  
Gary Brooks  
Rick Stup  
Josh Bokee

STAFF PRESENT

Gabrielle Dunn-Division Manager for Current Planning  
Brandon Mark-City Planner  
Jeff Love-City Planner  
Pam Reppert-City Planner  
Devon Hahn-City Traffic Engineer  
Scott Waxter-Assistant City Attorney  
Carreanne Eyler-Administrative Assistant

I. Announcements:

Commissioner Nash welcomed the new member, Mr. Rick Stup, to the Planning Commission. She also announced the resignation of Nick Colonna, Division Manager of Comprehensive Planning, who will be taking a Director position in Pennsylvania. Commissioner Nash said that he had worked very hard on the Comprehensive Plan and Golden Mile Small Area Plan and will be missed.

Mrs. Dunn announced that the Golden Mile Alliance Kick Off meeting will be held on June 22, 2011 at 6:30 p.m. at the Hillcrest Community Center.

II. Approval of Minutes:

Approval of the May 9, 2011 Planning Commission Minutes as amended:

MOTION: Commissioner Fetting.

SECOND: Commissioner Brooks.

VOTE: 4-0. (Commissioner Stup abstained)

Approval of the May 16, 2011 Planning Commission Minutes as published:

MOTION: Commissioner Brooks.

SECOND: Commissioner Fetting.

VOTE: 4-0. (Commissioner Stup abstained)

Approval of the June 10, 2011 Pre-planning Commission Minutes as published:

MOTION: Commissioner Brooks.

SECOND: Commissioner Fetting.  
VOTE: 4-0. (Commissioner Stup abstained)

### III. Public Hearing-Swearing In:

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

### IV. Public Hearing-Consent Items:

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

### V. OLD BUSINESS:

A. PC11-104ZMA-Zoning Map Amendment, Frederick Alliance for Youth-Hillcrest Youth Center & Charter School

### INTRODUCTION OF CASE BY THE PLANNING STAFF:

Mr. Love entered the entire staff report into the record. He stated that the Applicant is requesting approval of a zoning map amendment to apply the Institutional (IST) floating district to the subject property to allow for the development of a recreation, social services center for the Frederick Alliance for Youth as well as school (charter school) use. The subject property is located on the west side of Hillcrest Drive just east of the Hillcrest Commons Hope VI project and is zoned General Commercial (GC).

This is the second of two required public hearings. This case was first heard by the Planning Commission at the May 9, 2011 hearing.

### INITIAL PLANNING STAFF RECOMMENDATION:

Staff supports a positive recommendation to the Mayor and Board of Alderman for the rezoning of the property at Tax Map 412 Parcel 119 Lot 1 in order to establish the Institutional floating zone on the property.

### 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. Steve Oder, Cavalier Development is representing the Applicant and 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:**

There were no restatement/revisions from planning staff.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Fetting moved to make a positive recommendation to the Mayor and Board of Aldermen on PC11-104ZMA, Zoning Map Amendment for the Frederick Alliance for Youth Hillcrest Youth Center & Charter School

**SECOND:** Alderman Russell

**DISCUSSION:** Commissioner Brooks felt that he could not go forward with the plan due to traffic issues being discussed numerous times.

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

**VI. NEW BUSINESS:**

B. PC11-254FSI-Final Site Plan, Frederick Memorial Hospital-Helipad

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

Mr. Love entered the entire staff report into the record. He stated that the Applicant is requesting final site plan approval for the relocation of the heli-pad from ground level to the roof of the existing hospital building.

#### INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends approval of final site plan PC11-254FSI with the following condition:

To be met within one year:

1. Provide a note on the plan that states, "Documentation of the Federal Aviation Administration's (FAA) approval of the project must be provided prior to building permit approval."

#### 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:

Commissioner Nash mentioned that there are concerns from some of the neighbors regarding the noise. She stated that the Applicant provided a sound analysis and asked them to give an overview on the sound study.

Scott Miller, Weinberg & Miller explained that the Applicant is proposing to construct on the rooftop of the existing hospital building. He also agreed with the staff report.

Mr. Norman Dotti with Russell Acoustics, LLC explained the study of sound and vibration in the patient area. He went over his presentation board showing the two flight tracks. He indicated that the helicopters will be able to land and depart slightly faster from the rooftop pad, which would decrease the time the helicopter sound is heard. He briefed the Commission that helicopters produce more sound when landing than taking off. Also, more sound occurs when the helicopter flies overhead; which is about 10 seconds of sound decimal levels. He mentioned they also put the monitors out further by the flight path for two days (from mid night Friday morning to through late night Saturday). He stated that a helicopter arrived at 10:32 Saturday morning and departed at 10:59 a.m. and with this information the sound levels at these times are not unusual compared to other times and other noises.

Commissioner Nash asked the Applicant to explain when the helicopter lands if they usually shut the engines down or if they sit and idle the engines. Mr. Dotti replied depending how long the helicopter have been flying, it may have to do a one or two minute cool down.

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

Alderman Russell asked why the study was done on a late Friday and Saturday. Mr. Dotti explained when they do a sound study he asks them if they fly on weekends and if they do, he includes a weekday and weekend in their study.

#### PUBLIC COMMENT:

Ms. Lucia Bowes Hall resides at 336 Park Avenue; thanked the Commission members to allow her to speak. She appreciated the thorough study Mr. Dotti presented, but felt that if the study would have been taken from Trail, Park Avenue, or 7th Street, the results would have been different. She experienced helicopters idling more than 10 seconds and believed at some point approximately 15 minutes. She wanted the Commission to know that they have no problem with the flight path it's the idling time of the helicopter. She asked the Commission to reconsider the approval of this application.

Mr. Justin Reed resides at 328 Park Avenue and is concerned about the location of the readings that were in Mr. Dotti's study. He felt that the Applicant should do another sound test in proper locations near the site.

#### PETITIONER REBUTTAL:

Mr. Dotti reiterated to the Commission that helicopter pilots do not like to sit idle for a long period of time.

Mr. Dwight Young, Trinity Health Group explained that having the helipad on the roof that the duration of the transportation for the patient would be greatly decreased.

Mr. Miller explained that the criteria for a helipad has been met and request approval this evening.

Mrs. Dunn referred to Section 828 in the Land Management Code for helistops/heliports that requires the Planning Commission to find that the helipad will not create a nuisance and compliance with the three criteria that are listed in the staff report.

#### 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 to approve Final Site Plan PC11-254FSI with the one condition to be met within one year by providing documentation of the Federal Aviation

Administration's (FAA) approval.  
SECOND: Commissioner Stup.  
VOTE: 5-0.

C. PC11-103FSU-Final Subdivision Plat, Board of Education

INTRODUCTION OF CASE BY THE PLANNING STAFF:

Mr. Mark entered the entire staff report into the record. He stated that the Applicant is requesting final subdivision plat approval for the addition of 0.407 acres from Lot 1 to Lot 2. The subject properties are 7516 and 7446 and Hayward Road, respectively.

INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends conditional approval of the Final Subdivision Plat PC11-103FSU subject to the following conditions:

To be met in less than 60 days:

1. The proposed waterline to serve Lot 1 must be depicted on the plat as approved by the City Engineer and prior to plat recordation, it must be constructed or an acceptable assurance of their installation must be accepted by the Mayor and Board of Aldermen as provided for in Section 506 (a ) and (b ) of the LMC.
2. The Applicant must complete the Forest Conservation Real Estate Transfer Declaration of Intent to be exempt from the Forest Conservation Requirements.

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

1. The Applicant must record and label the Liber Folio reference for the cross access easement agreement between lots 1 and 2.
2. The Applicant must record and label the Liber Folio reference for the sanitary sewer easement.

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. David Beard, Harris Smariga & Associates concurred with the staff report.

PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT:

Commissioner Nash appreciated the Applicant taking care of the issues that were brought up at the Workshop.

**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 within 60 days:

1. The proposed waterline to serve Lot 1 must be depicted on the plat as approved by the City Engineer and prior to the plat recordation, it must be constructed or an acceptable assurance of their installation must be accepted by the Mayor and Board of Aldermen as provided for in Section 506 (a) and (b) of the LMC.
2. The Applicant must complete the Forest Conservation Real Estate Transfer Declaration of Intent to be exempt from the Forest Conservation Requirements.

At greater than 60 days and within one year of approval date:

1. The Applicant must record and label the Liber Folio reference for the cross access easement agreement between lots 1 and 2.
2. The Applicant must record and label the Liber Folio reference for the sanitary sewer easement.
3. The Applicant must depict street trees on the plat to LMC specifications; the trees must be planted or bonded prior to plat recordation.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Brooks moved to approve Final Subdivision Plat PC11-103FSU with the two conditions to be met in less than 60 days and the three conditions to be met in greater than 60 days and less than one year as read into the record by staff.

**SECOND:** Commissioner Fetting.

**VOTE:** 5-0.

D. PC11-183MXE-Master Plan, Riverside Corporate Park

**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 for revisions to the Riverside Corporate Park master plan for the former Sanner Property.

#### INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends approval of the revised Riverside Corporate Park Master Plan PC11-183MXE with the following conditions to be met:

Less than 60 days:

- 1 Label all the forest conservation areas with acreages to verify total in the Land Use Table.
- 2 Remove the forest conservation area under the power lines on Lot 402 in accordance with the forest conservation plan.
- 3 Verify the Land Use Table and make corrections as identified in the report.

#### PLANNING COMMISSION QUESTIONING OF STAFF:

Commissioner Fetting asked if the cultural resource area for the lot was approved at the Master Plan or Site Plan stage. Ms. Reppert replied at the Master Plan stage and the Applicant is asking to revise the Master Plan.

Mrs. Dunn stated one of the things to keep in mind, and one of things that Staff went back and forth with the applicant on, was the intent of that cultural resource. At the time it was originally approved that was to incorporate the design of that structure into the overall complex and have that amenity. The merit for maintaining the cultural area, despite the demolition, in that location was that the area needed to be preserved for the context of the original structure stood was important. On the flip side, and one of things staff struggled with was, does that location provide the greatest availability to people, and is it in the best location, most meaningful component in this community due to the fencing that would be installed around the site

Commissioner Brooks asked if security would be provided. Mrs. Dunn replied a security fence is being proposed.

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

Mr. Chris Smariga, Harris Smariga & Associates stated that the specific lot changes were made to Lots 401, 403 and 404, the Out lot and the Cultural Resource Area.

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

Commissioner Brooks suggested that the bench/plaque be placed inside Lot 402 and go forward with the cultural center on the trail.

Mr. Smariga responded yes.



Commissioner Nash feels that this property is a rich historical area and that something should be placed in the cultural resource area displaying the different histories throughout the years of this property.

Mr. Smariga stated that Matan Companies had a study done and it explains what will be in the cultural center and it does have some of the historical information that was gathered.

Commissioner Brooks stated that he understood that the applicant wanted the Planning Commission's input on the cultural resource center should look like? He stated that he likes the brick wall, the newly constructed ruins.

Mrs. Dunn stated that the concern from staff's perspective with the ruin is that we want to make it clear that there is nothing implying that it was part of the original historic structure.

Alderman Russell stated that if we are going to look at the cultural resource center as having more of a broad history, not just about the farm house, perhaps there is some other piece of architecture that commemorates something other than the farm house.

#### 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:

Less than 60 days:

1. Label all the forest conservation areas with acreages to verify total in the Land Use Table.
2. Remove the forest conservation area under the power lines on Lot 402 in accordance with the forest conservation plan.
3. Verify the Land Use Table and make corrections as identified in the report.

Greater than 60 days and less than one year:

1. Provide at the original farmhouse location a commemorative plaque.
2. Provide as part of the cultural resource area a display that captures the broader history of the area, including information about the vicinity prior to the farmstead based on facts from the archeological report.

PLANNING COMMISSION ACTION:

MOTION: Commissioner Brooks moved to approve master plan PC11-183MXE as read into the record by staff with the 3 conditions to be met in less than 60 days and the 2 conditions to be met in greater than 60 days and less than 1 year.

SECOND: Commissioner Fetting.

VOTE: 5-0.

E. PC11-182PSU-Preliminary Subdivision Plat, Riverside Corporate Park

INTRODUCTION OF CASE BY THE PLANNING STAFF:

The Applicant is requesting approval for revisions to the previously approved preliminary subdivision plat for Riverside Corporate Park, the Sanner Property.

The Applicant is also requesting a modification to Section 8.02, Road Frontage Required, and Section 8.04, Panhandle Lots, of the 1986 Zoning Ordinance.

INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends approval of the modification from Section 8.02 of the 1986 Zoning Ordinance to create Out lot E without road frontage based on the lot being unbuildable and intended for utility or open space use and based on the compensating feature of a common access easement.

Staff recommends approval of the modification from Section 8.04 of the 1986 Zoning Ordinance to permit a 506' panhandle, exceeding the maximum permitted in order to satisfy access to the public right of way Based on the provision of access directly to the lot via a private drive and cross access easement.

Staff recommends approval of the revised Riverside-Sanner Preliminary Subdivision Plan PC11-182PSU with the following conditions to be met:

Less than 60 days:

1. Make 1--9 Technical Corrections.
2. Eliminate the panhandle for Out lot D as previously approved.
3. Obtain Engineering Department approval of revised Water Note #7,

More than 60 days and less than one year:

1. Obtain unconditional approvals of Master Plan PC11-183MXE and Preliminary Forest Conservation Plan PC11-184PFC and add case numbers and dates to appropriate plan notes 1 and 11, respectively.
2. Obtain approval from the City of Frederick and Frederick County for the street name change from Digital Way to Synergy Way.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

There was no questioning of staff from the Planning Commission.

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

Mr. Chris Smariga, Harris, Smariga & Associates 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:**

There were no restatements/revisions from planning staff.

**PLANNING COMMISSION ACTION FOR MODIFICATIONS PER SECTION 8.02 & 8.04:**

**MOTION:** Commissioner Brooks moved to approve the modifications per section 8.02 of the 1986 Zoning Ordinance to create Out lot E and approval of modification per section 8.04 to permit the 506' panhandle.

**SECOND:** Commissioner Stup.

**VOTE:** 5-0.

**PLANNING COMMISSION ACTION:**

MOTION: Commissioner Brooks motioned to approve the revised Riverside-Sanner subdivision plan PC11-182PSU with the following conditions as read into the record the 3 conditions to be met in less than 60 days and the 2 conditions to be met in greater than 60 days and less than 1 year.

SECOND: Commissioner Fetting.

VOTE: 5-0.

F. PC11-184PFC-Preliminary Forest Conservation Plan, Riverside Corporate Park

#### 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 for revisions to the Preliminary Forest Conservation Plan for the Sanner Property as part of the Riverside Corporate Park MXE

#### INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends approval of PC11-184FPC for the Riverside Corporate Park-Sanner Property with conditions to be met:

Less than 60 days:

1. Show protection fencing and signage along the east property line for the 5.3 forest area that buffers the Renn property.
2. Correct landscape credit calculations note to provide 165 shrubs.
3. Add a note: "All landscape credit areas shall have a two-year maintenance and protection agreement and a long term perpetual protection agreement recorded prior to unconditional approval of the Final Forest Conservation Plan."

Greater than 60 days but within one year:

1. Abandon the existing forest conservation easement agreement (L7410 F484) and execute new protection agreement for the lesser amount of 5.3 acres for Lot 402. Relocate the 0.13 acres to be placed under another protection agreement in the future.

#### PLANNING COMMISSION QUESTIONING OF STAFF:

Commissioner Nash asked if the fencing is what the photo provided by Ms. Reppert was for.

Ms. Reppert replied that there have been discussions with the Applicant about the need for a fence along the east property line and that she believes there is a fence row of trees there that have not been graded in building this site. Ms. Reppert feels they could reach a compromise and not require fencing with an inspection assuring a larger tree line.

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

Mr. Chris Smariga, Harris, Smariga & Associates stated that the plan actually shows a limits of disturbance for lot 402 and it is a pretty steep drop off to the tree line and agrees that they can compromise with staff.

#### 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:

Mrs. Dunn stated that if the Commission agrees with the compromise she would recommend revising the first condition to read "unless upon staff's site inspection there is a continuous existing tree line along the property line to serve as a protection instead of fencing."

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

Less than 60 days:

1. Provide protection fencing and signage along the east property line for the 5.3 forest area that buffers the Renn property, unless upon staff's site inspection there is a continuous existing tree line along the property line to serve as protection instead of the fencing.
2. Correct landscape credit calculations note to provide 165 shrubs.
3. Add a note: "All landscape credit areas shall have a two-year maintenance and protection agreement and a long term perpetual protection agreement recorded prior to unconditional approval of the Final Forest Conservation Plan."

Greater than 60 days but within one year:

1. Abandon the existing forest conservation easement agreement (L7410 F484) and execute new protection agreement for the lesser amount of 5.3 acres for Lot 402. Relocate the 0.13 acres to be placed under another protection agreement in the future.

#### PLANNING COMMISSION ACTION:

MOTION: Mr. Brooks moved to recommend approval of PC11-184PFC for the Riverside Corporate Park-Sanner Property with the 3 conditions to be met in less than 60 days as read into

the record by staff and the 1 condition to be met in greater than 60days but within 1 year with the change to item 1 with inspection agreement.

SECOND: Commissioner Stup.

VOTE: 5-0.

G. PC11-179FSI-Final Site Plan, Riverside Corporate Park, Lots 401, 403 & 404

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

Ms. Reppert entered the entire staff report into the record. She stated that the Applicant is requesting final site plan approval for Lots 401, 403, and 404 of the Riverside Corporate Park MXE. Each lot contains a single building for professional/medical offices.

In accordance with Section 910 of the LMC, the Applicant is also requesting approval from the Planning Commission to apply certain standards of the LMC to a project otherwise being reviewed for compliance with the 1986 Zoning Ordinance.

#### INITIAL PLANNING STAFF RECOMMENDATION:

In accordance with Section 910(e)(3)B of the LMC Staff supports the Applicant's request to use the parking regulations established under Section 607 of the LMC and supports the modification to Section 607(b), Table 607-1 to reduce the number of bicycle parking spaces from 44 per building to 14 per building.

Staff recommends approval of the final site plan PC11-179FSI with the following conditions to be met:

Less than 60 days:

1. Add note on plan that prior to final plat recordation, a cross access easement agreement shall be recorded for all common drives and pedestrian pathways depicted on the site plan.
2. Change Phasing Plan to show the private drive from Synergy Way to Lot 250RB to be built in Phase 1.
3. Revise the Landscaping Plan as follows:
4. To respond to Staff's comments regarding the planting of additional trees on Lots 403 and 404 and the substitution of Crape Myrtles.
5. Label all s.f. to interior landscape areas for parking on landscape sheets
6. Section 11.05(3) is to address landscape buffer between lots which is not applicable to the MXE lots. Correct landscape note section reference to Section 11.05(4); and
7. Sheet C-4, Street trees not applicable to Lot 401.
8. Note #1, remove reference to M1 zone.
9. Label 15' side BRL for Lots 401 and 403 along west property line.
10. Provide templates of trucks maneuverability into the loading spaces.
11. Out lot D on drawing shows 6.4 acres and in Area Summary the green is 5.8 acres. A difference of .6 acres; the two should match. Please verify.

12. Out lot E on drawing shows 2.9 acres and in Area Summary the green is 3.5 acres. A difference of .6 acres; the two should match. Please verify.
13. Add a note to state the phasing time between each phase in accordance with Section 309(m).
14. Show private storm drain easement on Lot 403 from 404 (Sheet C3)
15. Obtain Engineering Department approval of revised Water Note #20.

More than 60 days and less than one year:

1. Obtain addresses for Lots 401, 403, and 404 from City agency or remove addresses for future addressing at the final plat stage.
2. Receive approval from the City's Engineering Department for the estimated trip generation study provided for each of the proposed buildings to determine the pro-rata share contribution towards the road improvements outlined in the approved DRRA.
3. Obtain Allegheny Power approval of landscaping plan.

#### PLANNING COMMISSION QUESTIONING OF STAFF:

Mrs. Dunn noted that the Applicant requested to move condition #3 from less than 60 days to greater than 60 days with regards to the landscaping to allow them to work with the tenant layouts and such.

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

Mr. Chris Smariga, Harris, Smariga & Associates stated that the plans that Planning Commission has is modeled on the building expansion that comes from the Riverside Corporate Park into the Sanner property and then heads up to Lot 402. He added that they will create a greenbelt between the buildings to the National Cancer Institute (NCI) building and what isn't shown on the plans is the SWM area which is adjacent to the buildings will be an amenity for the park and the buildings. Mr. Smariga described in detail the phasing plan as it relates to the private access drive to the Planning Commission. He added that part of their concern with building Phase I today, there is not only the NCI issue but the other question is in Phase II if this doesn't come to fruition or something changes how might that impact what is done on Phase II or Phase III. Mr. Smariga proposed to show a connection from Phase I to Progress Drive and that if Phase II is not built that we can have a connection onto Progress Drive.

#### PLANNING COMMISSION QUESTIONING OF PETITIONER/APPLICANT: PUBLIC COMMENT:

Mrs. Dunn asked the applicant for clarification if they were proposing to show an alternative access point on Lot 403 onto Progress Drive should Lot 401 not commence?

Mr. Smariga concurred.

Ms. Reppert stated that the whole premise for the access for this lot was that we require a public access and access to an adjacent property for properties that have more than 100 parking spaces

so the concern is that even though there are 2 access points on the private drive, it is still off of a private drive and only 1 access to the public. They are looking to have an access point off of Lot 404 across Progress Drive and staff had made a suggestion that there could be a temporary access to Progress Drive now that would disappear when they would move forward in phasing.

Commissioner Fetting asked if there was a problem putting an access point on Progress Drive for Lot 402.

Mr. Smariga said the thought with the way the campus was set up is to encourage people to go down to the middle of the project and not have Progress Drive be a front. He said it is a 4 sided architecture so it all is going to look like a front but all the landscaping, the main pedestrian connections it will all funnel through the middle of the site.

#### PETITIONER REBUTTAL:

There was no petitioner rebuttal.

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

Mrs. Devon Hahn, City Traffic Engineer stated that there has been a lot of talk regarding access management and the whole point behind that is to encourage safety and traffic operations which is what the Applicant tried to do by making the private drive internal to their construction and keeping the local trips off of Progress Drive. However, Staff did have concerns with the number of parking spaces and the large building size. She added that with the users coming out onto one point on Progress Drive and knows that Mr. Smariga said those cars could use the Wells Fargo site but she does not see that there is a cross access easement and technically we don't have easements in place for them to be doing that "legally." Mrs. Hahn commented that she was very supportive of the private drive and having it connect from Synergy Way over to the existing drive on Wells Fargo. She also stated that she doesn't support another access point on Progress Drive, however, it may meet the separation standards and we don't currently have in our regulations a strong access management policy.

Commissioner Fetting questioned if any of the private drive will be built with the initial phase.

Mr. Karl Morris, Matan Companies responded yes.

Commissioner Stup asked if there are any drive aisle easements or cross access easements that are already there that would satisfy the concerns of the Planning Commission.

Mr. Morris replied that for Riverside V and Wells Fargo currently there are none in place but that is our plan for Riverside VI, VII, and VIII so yes they will be in play and it is a condition. He stated there aren't any tenants lined up for any of the buildings. Riverside V was very successful and is 100% leased. We looked at the entire campus and what we are trying to achieve is an open atmosphere and the way we can do that is with this plan.



Commissioner Brooks asked how challenging it would be to put in a temporary access on Progress Drive until these other phases come in.

Mr. Morris responded that a lot of money has been put forth on trails, landscaping, curbs, etc... that is all in place. He added that to put a temporary measure and try to market a park that looks temporary, is not beneficial to them and that they are trying to show a finished product.

Commissioner Fetting asked if the concern for not building this private drive to the east is that there won't be any traffic discharging to the east, is that the problem?

Mrs. Hahn indicated that the traffic will be going to where the traffic already is and it is a very congested area.

Commissioner Nash question the private drive north of lot 403 that when it connects, if it is actually tying into a drive aisle on the Wells Fargo parking lot.

Mrs. Hahn replied that it is a drive aisle width of about 20 to 24 feet but there is no parking on it.

Mr. Smariga stated that when Wells Fargo and Riverside V were designed because of the truck traffic that they had for their cafeteria and some of the other buildings we had designated loops.

Commissioner Fetting asked that if lot 404 were to change and you did not end up building this private drive, how you would address the traffic movement to the east from lot 403.

Mr. Smariga responded that they would have to go back and revisit if necessary whether we'd need another access on Progress Drive or not. It may function perfectly fine in this scenario.

Commissioner Fetting asked that this isn't that long of a segment that you would have to build on top of what they are rebuilding so what is the harm of revisiting it and taking it out later.

Mr. Karl Morris stated that yes, it is the cost. He explained that lot 403 is burden with more costs than the other 2 lots and the reason for that is we have to mass grade area that entire quadrant to make it balance up. He added that if we burden it with that private road it does take away our flexibility in the future.

Mrs. Dunn stated that this is the application that has been brought forward to the Planning Commission and as such, it is required to comply with the regulations. She added that Mr. Morris has made a business decisions that having a product that's able to be marketed is beneficial but with that also comes the fact that we have to look at it as a complete project being proposed.

Commissioner Brooks asked what the City Traffic Engineer's (Mrs. Hahn) recommendation is or what her concerns are.

Mrs. Hahn replied that they would prefer to see the whole road in Phase I. She wanted to add that it would be nice to have the right of way dedicated for the TransIT stop as well.

Mr. Morris stated that they met with TransIT to address that particular issue and what had been agreed is to do an educational/promotional thing with our tenants so they know that TransIT is available but per TransIT the ridership numbers have decreased.

Alderman Russell stated that it was her understanding that they are stepping back the TransIT service there to create some TransIT service for Clemson Corner.

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

Less than 60 days:

1. Add note on plan that prior to final plat recordation, a cross access easement agreement shall be recorded for all common drives and pedestrian pathways depicted on the site plan.
2. Change Phasing Plan to show the private drive from Synergy Way to Lot 250RB to be built in Phase 2.
3. Note #1, remove reference to M1 zone.
4. Label 15' side BRL for Lots 401 and 403 along west property line.
5. Provide templates of trucks maneuverability into the loading spaces.
6. Out lot D on drawing shows 6.4 acres and in Area Summary the green is 5.8 acres. A difference of .6 acres; the two should match. Please verify.
7. Out lot E on drawing shows 2.9 acres and in Area Summary the green is 3.5 acres. A difference of .6 acres; the two should match. Please verify.
8. Add a note to state the phasing time between each phase in accordance with Section 309(m).
9. Show private storm drain easement on Lot 403 from 404 (Sheet C3)
10. Obtain Engineering Department approval of revised Water Note #20.

More than 60 days and less than one year:

1. Obtain addresses for Lots 401, 403, and 404 from City agency or remove addresses for future addressing at the final plat stage.
2. Receive approval from the City's Engineering Department for the estimated trip generation study provided for each of the proposed buildings to determine the pro-rata share contribution towards the road improvements outlined in the approved DRRA.
3. Obtain Allegheny Power approval of landscaping plan.
4. Revise the Landscaping Plan as follows:
  - a. To respond to Staff's comments regarding the planting of additional trees on Lots 403 and 404 and the substitution of Crape Myrtles.
  - b. Label all s.f. to interior landscape areas for parking on landscape sheets
  - c. Section 11.05(3) is to address landscape buffer between lots which is not applicable to the MXE lots. Correct landscape note section reference to Section 11.05(4); and
  - d. Sheet C-4, Street trees not applicable to Lot 401.

#### PLANNING COMMISSION ACTION FOR MODIFICATION PER SECTION 607:

MOTION: Commissioner Brooks moved to approve a modification to Section 607 (b) Table 607-1, to reduce the number of bicycle parking spaces from 44 per building to 14 per building.

SECOND: Alderman Russell.  
VOTE: 5-0.

#### PLANNING COMMISSION ACTION FOR PC11-179FSI:

MOTION: Commissioner Brooks moved to approve final site plan PC11-179FSI with the 10 conditions to be met in less than 60 days and 4 conditions to be met in more than 60 days and less than one year as read into the record by staff.

SECOND: Commissioner Stup.

VOTE: 5-0.

#### H. PC08-586PND-Master Plan, Nicodemus Property

#### 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 for revisions to the master plan for the Nicodemus Property Traditional Neighborhood Development (TND).

In accordance with Section 608 of the Land Management Code (LMC), the Applicant is requesting a recommendation from the Planning Commission to the Mayor and Board of Aldermen for a waiver of the parkland dedication requirements.

In accordance with Section 411 of the LMC, Traditional Neighborhood Development, the Applicant is also requesting a modification to Section 405, Dimensional and Density Regulations, and Section 803, Accessory Uses and Structures.

#### INITIAL PLANNING STAFF RECOMMENDATION:

Staff supports a recommendation for a waiver of the parkland requirement as recommended by the Parks and Recreation Commission, conditioned on 1,000 s.f. of parkland to be provided per dwelling unit; the path through the linear park having a public easement recorded; and the parks layout remain essentially the same as presented to the Recreation & Parks Commission.

In accordance with Section 411(c)(5)(C), Staff recommends approval of modification from Section 405 to exceed the maximum ISR of 50% based on the previously approved lot dimensions and the compact lot design which allows for over 18 acres of open space throughout the development

In accordance with Section 411(c)(5)(C), Staff recommends approval of modification from Section 803(a)(5) to exceed the maximum lot coverage of an accessory structure of 30% of the yard where it is located based on the previously approved lot dimensions and the need to accommodate adequate parking on the residential lots.

Staff recommends approval of the TND Master Plan for the Nicodemus Property, case PC08-586MP, with the following conditions to be met.

Less than 60 days:

1. Edit Note #14 to indicate that the commercial space will include multifamily above commercial space
2. Verify Pupil Generation table for phasing of the project based on the accurate type and number of dwelling units.
3. Move Gas House Pike construction and completion into Phase 1 of the infrastructure phasing table.
4. Note #11 should be revised to state on street parking only to supplement the commercial sites.
5. Revise Note #7 to read: A traffic study must be finalized prior to preliminary subdivision plan unconditional approval.
6. In the Design Booklet, label the multi-family parking dividers with a minimum of 4 feet width; otherwise the trees should be removed from the detail.

Greater than 60 days and less than one year:

1. If applicable, obtain Mayor and Board approval of the waiver of the parkland requirement for 10.49 acres and add to Note #5 the Planning Commission recommendation for a parkland waiver and the Mayor and Board approval date.
2. Obtain Preliminary Forest Conservation Plan unconditional approval and complete Note 13 with approval dates.
3. Complete SWM waiver Note10 with approval date.

#### PLANNING COMMISSION QUESTIONING OF STAFF:

Alderman Russell asked if the single family homes have driveways or garages.

Mrs. Dunn replied they have both driveways and garages shown in the detail booklets.

Commissioner Nash stated that in workshop that they had talked about retaining the building and at that meeting, the preservation planner talked about the barns as well, however, that based on her initial comments, both the age and the condition would not warrant retention but that there was a smokehouse which was part of the homestead that is close to the house that is being preserved.

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

Mr. Chris Smariga, Harris, Smariga & Associates, stated that they have master plan approval for 457 units and that this is the maximum cap based on concept layout. he noted that the balance of the units, not in the residential sections was placed in the commercial/residential center. The commercial center will come in with its own site plan and has its own set of criteria. He added that the general intent of the master plan is still the same.

Mr. Smariga noted that with the revision, one of the biggest changes that have come up is the park although it is similar to the original park concept that has a linear park along Monocacy Village to the rear a central park for the community. He stated that it was a bit of a surprise when they went before the Parks and Rec commission and they liked the parks however, they didn't want to maintain them, which brought up the conversation of what are neighborhood parks verses regional parks. Mr. Smariga stated they are requesting a recommendation for a waiver and they would maintain the park but the residents of the community will be responsible for maintaining it.

With regards to the house on the property, Mr. Smariga noted that with the original plan, they proffered to keep the house to be reused as a residence and in the covenants for the HOA, additional language has been added to protect the house. He added that he felt that condition 1 in the staff report does not need to be included.

Mr. Smariga said that the realignment of Gas House Pike has been in Phase II since the original approval and that they are not proposing to change it at this point but that their goal is to do it in Phase I. This is entirely developer funded and the road is worth more than the land is. It has always been in Phase II but that part of the project will have to get started because utility lines will have to be buried, it's going to be a complicated process to get this worked out and that is why it has been set in Phase II. He acknowledged the desire to have it in Phase I but would like to keep it in Phase II because of the complexity. Mr. Smariga also stated that condition number 4 is similar to condition 1 and it does relate to that commercial center. In TND's where the mixed use type center is thought of as somewhat similar to what is in the Downtown Business Districts with apartments above, there may be some situations where some on street parking even for residential units may be appropriate. There is on street parking throughout the neighborhood. He added that when the site plan comes in for the commercial residential center there will be on-site parking.

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

Mrs. Dunn responded in regards to condition number 1 that what staff is asking the Applicant to do is to bring the plan back to how it was originally approved because in the original approval it was set up as the commercial/residential section and there was a notation that indicated that a specific amount of commercial would be provided in the commercial residential center and that apartments will be located above commercial space. She stated that she is basically urging the Applicant to go back to that note that was approved at this point and that in the future, should the Applicant change the layout to be different then what has been indicated, that will come in with the site plan and it will be addressed at that time.

Mrs. Dunn stated that in regards to condition number 4 that is once again trying to bring the notes back to what was approved and that it said "parking would be provided on the commercial residential site as well as credits for on street parking." She added that for just the commercial component that we would not give credit for parking requirements for the other sections on street but that it would be eligible. Mrs. Dunn continued and moved to condition number 3 and it was her understanding that Gas House Pike improvement was contemplated in the annexation agreement originally and it be constructed in some sort of time frame. The goal of the

Engineering Department and staff was to get that to happen as quickly as possible with the road improvements that the City is currently working to get that done. She added that Mr. Smariga is correct in that in Section 310 of the LMC does talk about the parameters that the Planning Commission can look at in approving revisions to master plans.

Commissioner Nash asked if staff has read the language of the annexation agreement.

Ms. Reppert indicated that annexation agreement stated that the road would be built in 1991.

#### PUBLIC COMMENT:

There was no public comment.

#### PETITIONER REBUTTAL:

There was no petitioner rebuttal.

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

Commissioner Nash asked Mrs. Hahn to comment on the relocation of Gas House Pike.

Mrs. Hahn stated that there will be great traffic implications but the bigger issue is the flood plain by raising the road and continuing the berm that's already been started.

Mr. Scott Miller, Wineberg & Miller stated he wanted to follow up with Mrs. Dunn's comments on Section 310 and that they understand the annexation agreement. His perspective is that the annexation is a separate agreement between the Mayor & Board and the property owner. It is really the Mayor & Board's purview to figure out what it should do with the enforcement of the agreement. He added that the goal is to keep the master plan as it was originally approved to that phasing component.

Commissioner Nash questioned if there were time line stipulations in the annexation agreement and if we would not want to approve something that was not in conformance or was in conflict with a certain time requirement in the annexation.

Mr. Scott Waxter, Assistant City Attorney stated that he agreed with Commissioner Nash that if we are changing part of that then that is something that should be taken into consideration when asking for phasing plans and things that seem to be consistent with that. He thinks that is the consideration you give when you're looking at what staff's recommendations are and feels that it is in line with what is permitted by Planning Commission during review of this project.

Commissioner Nash speculated that the reason it was not done was the realization that the cost of all the improvements were more than could be born prior to the development on the parcel.

Commissioner Nash asked the Applicant what the estimated cost of that improvement is.

Mr. Smariga replied around \$3 million.

Commissioner Fetting asked how many units would be in Phase I and how many people would be on this road that was not yet improved.

Mr. Smariga stated that if the commercial center was removed it might be 80-100 households between singles and townhomes. He added that it would be a public road built down to the existing Gas House Pike. So the project will complete the realignment of Gas House Pike horizontally and vertically which will complete the flood control project.

Commissioner Nash asked if Phase I could be built without the levy/

Mr. Smariga replied not without filling. There will be some kind of flood control by the pond which is in Phase I so it can be built and filled in that area without the road being in.

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

In less than 60 days:

1. Edit Note #14 to indicate that the commercial space will include multifamily units integrated into the commercial space.
2. Verify Pupil Generation table for phasing of the project based on the accurate type and number of dwelling units.
3. Clarify in the infrastructure phasing table that Gas House Pike shall be constructed and completed prior to issuance of the first building permit for Phase 2.
4. Note #11 should be revised to state on street parking credits only to supplement the commercial sites.
5. Revise Note #7 to read: A traffic study must be finalized prior to preliminary subdivision plan unconditional approval.
6. In the Design Booklet, label the multi-family parking dividers with a minimum of 4 feet width; otherwise the trees should be removed from the detail.

Greater than 60 days and less than one year:

1. Obtain Mayor and Board approval of the waiver of the parkland requirement for 10.49 acres and add to Note #5 the Planning Commission recommendation for a parkland waiver and the Mayor and Board approval date.
2. Obtain Preliminary Forest Conservation Plan unconditional approval and complete Note 13 with approval dates.
3. Complete SWM waiver Note #10 with approval date.

#### PLANNING COMMISSION ACTION FOR WAIVER OF PARKLAND REQUIREMENT:

MOTION: Commissioner Brooks moved for a positive recommendation for a waiver of the parkland requirement as recommended by the Parks & Recreation Commission, conditioned on 1,000 s.f. of parkland to be provided per dwelling unit; the path through the linear park having a

public easement recorded; and the parks layout remain essentially the same as presented to the Parks & Recreation Commission.

SECOND: Commissioner Fetting.

VOTE: 5-0.

PLANNING COMMISSION ACTION FOR MODIFICATIONS PER SECTION 405 & 803(a)(5) :

MOTION: Commissioner Brooks moved for the approval of Section 405 to exceed the maximum ISR of 50% based on the previously approved lot dimension, compact lot design and modification of Section 803(a)(5) to exceed the maximum lot coverage of an accessory structure of 30% of the yard where it is located based on the previously approved lot dimensions.

SECOND: Commissioner Stup.

VOTE: 5-0.

PLANNING COMMISSION ACTION PC08-586MP :

MOTION: Commissioner Brooks moved for approval of the TND master plan for the Nicodemus property PC08-586MP with the following conditions as read into the record the 6 conditions to be met in less the 60 days and note the change for condition number 3 "move the construction and completion of Gas House Pike prior to the issuance of the first building permit of Phase II based on the pupil generation" and the 3 conditions to be met in greater than 60 days and less than one year.

SECOND: Commissioner Fetting.

VOTE: 5-0.

I. PC08-584PSU-Preliminary Subdivision Plat, Nicodemus Property

INTRODUCTION OF CASE BY THE PLANNING STAFF:

Ms. Reppert entered the entire staff report into the record. She stated that the Applicant is requesting preliminary subdivision plat approval for the 64 acre property to include 457 dwelling units of mixed residential types, civic center, and commercial area.

INITIAL PLANNING STAFF RECOMMENDATION:

Staff recommends approval of the Preliminary Subdivision Plat for the Nicodemus Property, case PC08-584PSU, with the following conditions to be met.

Less than 60 days:



1. Make 1-5 technical changes to the HOA documents.
  2. Correct lot details to mirror the Master Plan Design Booklet.
  3. Correct the Phasing Schedule to mirror the Master Plan approval.
  4. Label Lot 232 BRLs.
  5. Corner Lots 165 and 24 must have curved fronts BRLs to follow the property line.
  6. All sight triangles to be shown on landscaping sheet.
  7. Provide lot numbers on landscaping sheet.
  8. Show Road D to continue to north property to make future connection through the Schley property.
  9. Add to Landscape screening note: The Level I screening design shall be finalized with the appropriate site plan for the single family lots 274-293.
  10. Add a note to the landscape sheet: The landscape forest credit areas should be finalized with the forest conservation plans.
  11. Add two (2) more species of trees to the street tree list.
  12. Add the detail for the private 18-foot wide alley, revise the detail of the 20' wide alley to indicate that it is public with no parking permitted, and revise Note #24 to reflect the plan for public and private alleys accordingly.
- Greater than 60 days and less than one year:

1. Obtain unconditional approval of Master and Preliminary Forest Conservation Plans and provide approval dates in Notes 2 and 13.
2. Receive final approval of the TIS and complete Note #7 with traffic study approval date.
3. Receive approval of the SWM waiver requested and complete Note #10.

#### PLANNING COMMISSION QUESTIONING OF STAFF:

Commissioner Stup asked if a condition should be added to staff's recommendation based on phasing.

Ms. Reppert replied that there is a blanket note that said phasing on this plan has to match the master plan.

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

Mr. Chris Smariga, Harris, Smariga & Associates stated they concur with the staff report.

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

Commissioner Fetting asked about the multi-purpose field across from the future E. Church Street how would you get to that field safely from that community.

Mr. Smariga stated there will eventually be access from 7th Street down to the old Gas House Pike but they will review that with Devon, City Traffic Engineer to do some controlled access to get across.

Commissioner Stup stated that with the TransIT area shown at that same location there should be something on the improvement plan that shows a crossing there.

Mr. Smariga replied that TransIT's interest was on the commercial side and they don't want anything built at this point but there is a tremendous amount of right-of-way there for a pull off so it can easily be accommodated.

#### PUBLIC COMMENT:

Mr. Seymour Stern, Stern & Thornton, stated that he was happy to hear that the Applicant intends to construct a Road D which would be through the Nicodemus Property and eventually hook into 7th Street. He feels that is extremely important because when it was negotiated with Mayor Holtzinger and the previous administration on the sale, road gifting of road right-of-ways and construction of Schifferstadt Boulevard, it was made clear that there would be a road through the middle of the Schley and Nicodemus Farms. Without that process being completed it puts the Schley Farm property in some jeopardy because it would be locked in and only has an access to Schifferstadt. He added that there is concern as to what is going to be done with Gas House Pike and when it is going to be constructed as well as when is it going to be connected from the Nicodemus to the Schley property and will it be in the first phase.

Ms. Reppert stated they did not call the construction of the connecting road out in the phasing and usually the internal roads are constructed with the progress through the development so it would depend on which lot was fronting what roads.

Mr. Stern asked if they complete Phase I will that collector road at that point have to be built, is there a time frame.

Commissioner Nash responded with no.

Mrs. Dunn stated correct there was no timing associated with that. The internal roadways would be built as they move through the subdivision to support the lots so when they got to the area surrounding where the connection is shown that is when they would be dedicating that right-of-way and having it bonded, constructed and getting the plat approved.

#### PETITIONER REBUTTAL:

There was no petitioner rebuttal.

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

Ms. Reppert reminded the Planning Commission that if they wanted to make any comments on saving the historic structure on the property this was the time to do so for a condition.

Commissioner Nash stated that she was looking at the HOA and if it was sold as a private dwelling unit then the HOA would have no control over the outbuildings for the house instead there would have to be a deed restriction on the lot for the single family house.

Mr. Miller stated the declaration covers conditions and restrictions on the use of the entirety of this property. One of the things that were specifically added was with respect to the house that it could not be constructed or reconstructed and further language was added that said it could not be demolished without a change to the master plan.

Commissioner Nash asked to expand the definition of historic house to include the 2 outbuildings.

Mr. Miller responded yes.

Mr. Waxter stated that HOA documents and restrictions are not akin to Historic Preservation notions in terms of material. Mr. Waxter asked Commissioner Nash to comment on what the intent of her request was, if the intent was to establish a preservation aspect to this as oppose to just HOA documents and what they can or can't do to the property.

Commissioner Nash responded that within the purview of the Commission, she was to accomplish that goal, preservation, with the Commission's authority.

Mr. Miller stated that the intention with the HOA documents is to honor the master plan that was originally approved which was to preserve the house and for it not to be demolished. He stated that they have learned there is interest in making sure the privy and the smokehouse are not demolished.

Alderman Russell asked how the HOA documents are enforceable.

Mr. Waxter replied that it sounded like the Planning Commission was trying to create an HOA rule that is going to preserve these buildings or do something with them.

Mr. Miller responded to Alderman Russell's question about enforcing HOA documents. He stated that they do and the way that particular covenant has been drafted was to say the house must be retained and that covenant can only be amended with a corresponding amendment to the master plan that can only be approved by the city.

Ms. Reppert suggested that the note also be on the master plan or preliminary plan that the privy and the smoke house are included and addition to the HOA documents. The HPC is going through with their process that in the future if they are successful would address the materials for that house.

Commissioner Stup would like to see the note on the plat.

Mr. Miller stated that he is fine with that.

Commissioner Brooks asked if the Historic Preservation Commission (HPC) was going to place a Historic Preservation Overlay (HPO) on this property.

Mr. Waxter stated that they are pursuing that, however that is not why we are here this evening. There may be action on that or there may not be action on that. All the Planning Commission is doing is retaining it. HPC has a list of guidelines of how you would preserve, maintain and rehabilitate a historic property. He added that they are in the process of going through and getting a designation of a Historic Preservation Overlay on a portion of that property. It is in the preliminary stages and there has been a site inspection and it will be going to a Historic Preservation meeting. Mr. Waxter stated that what the Planning Commission is doing this evening is the extent of what you can do which is to make sure the covenant indicate that those buildings be retained. It is up to the HPC to say how it is retained.

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

Less than 60 days:

1. Make 1-5 technical changes as outlined in the staff report dated 6/6/11 to the HOA documents, in addition to defining the historic structure definition to include the privy and smokehouse for retention.
2. Correct lot details to mirror the Master Plan Design Booklet.
3. Correct the Phasing Schedule to mirror the Master Plan approval.
4. Label Lot 232 BRLs.
5. Corner Lots 165 and 24 must have curved front BRLs to follow the property line.
6. All sight triangles to be shown on landscaping sheet.
7. Provide lot numbers on landscaping sheet.
8. Show Road D to continue to north property to make future connection through the Schley property.
9. Add to Landscape screening note: The Level I screening design shall be finalized with the appropriate site plan for the single family lots 274-293.
10. Add a note to the landscape sheet: The landscape forest credit areas should be finalized with the forest conservation plans.
11. Add two (2) more species of trees to the street tree list.
12. Add the detail for the private 18-foot wide alley, revise the detail of the 20' wide alley to indicate that it is public with no parking permitted, and revise Note #24 to reflect the plan for public and private alleys accordingly.
13. Edit Note #12 to note the retention of the privy and smokehouse as part of the historic structure and that a note must be included on the final plat for the lot containing the historic structure to that affect.

Greater than 60 days and less than one year:

1. Obtain unconditional approval of Master and Preliminary Forest Conservation Plans and provide approval dates in Notes 2 and 13.
2. Receive final approval of the TIS and complete Note #7 with traffic study approval date.
3. Receive approval of the SWM waiver requested and complete Note #10.
4. Correct road profiles for Gas House Pike in accordance with Section 507(b) of the LMC, to meet the engineering standard for all street grades to be 1% minimum.
5. Correct the Gas House Pike/E Church Street profile along the Nicodemus property to raise road to at or above 1-foot above base flood (100-yr) elevation.

6. Show the full section of Gas House Pike/E. Church Street cross section to the eastern property line as well as the transition to meet the existing Gas House Pike cross-section beyond the property line.

**PLANNING COMMISSION ACTION:**

**MOTION:** Commissioner Stup move to approve of PC08-584PSU in accordance with the staff recommendation and the testimony given with the 12 conditions to be met in less than 60 days and with item number 1 modified to expand the definition of the historic site to include the privy and the smoke house and to add a note 13 to place a note on the preliminary plan with regard in preserving the historic house, privy and smoke house and will also be noted on the final plat for the farmhouse site only and further the 3 "greater than 60 days and less than one year" items listed in the staff report with the addition of the 3 items that were read into the record from the engineering department.

**SECOND:** Alderman Russell.

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

**J. PC08-585PFC, Preliminary Forest Conservation Plan, Nicodemus Property**

**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 Preliminary Forest Conservation Plan for the 64 acres of the Nicodemus property associated with the Preliminary Subdivision Plat for the site.

**INITIAL PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of the Preliminary Forest Conservation Plan for the Nicodemus Property, case PC08-585PFC, with the following conditions to be met.

Less than 60 days:

1. The Applicant must provide a maximum amount of critical root zone to be disturbed which will allow for the survival of specimen trees designated for retention and the Applicant must revise the note referenced in the Specimen Tree Schedule note on Sheet 2 of 2 accordingly.
2. Change Protection Fence detail to the full square wire fencing along the western property line adjacent to Monocacy Village
3. Change forest planting phasing as noted in the Staff Report.

Greater than 60 days and less than one year:

1. Obtain unconditional approval of Forest Stand Delineation case #PC11-253FSD.
2. Revise the design of the landscaping credit areas to comply with Section 721(d)(5) and replace with large canopy trees where applicable, or find other areas to plant for full forest conservation credit.

3.

**PLANNING COMMISSION QUESTIONING OF STAFF:**

There was no questioning of staff from the Planning Commission.

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

Mr. Chris Smariga, Harris, Smariga & Associates stated that they are in agreement with the staff report but in terms of the phasing that was proposed by staff it's a little different than what we have. There are a couple of areas like the linear park where they are responsible for improvements for that park in Phase II but we had it in Phase III and also our units will be constructed up against that park will be in Phase II & III so rather than move that up to Phase I he felt that it makes more sense to do it in Phase II when the other work is being done. He added that floodplain plantings should be Phase II as well and that the plantings in the landscape credit areas should concurrent with the development of those areas. Mr. Smariga agrees with the staff report but those are his suggestions.

Ms. Reppert asked for Mr. Smariga to confirm that they are proposing to do all the forest conservation in Phase II & III.

Mr. Smariga replied with Phase II but that the landscape credits that are on the pocket park on the east & north side of the site, if those units are constructed in Phase I then we would have to plant that area in Phase I.

Ms. Reppert stated she does not have a problem with planting the pocket parks as those areas are developed but the reason why staff suggested the linear park and area near Gas House Pike be planted earlier in the phasing is because the forest conservation areas should be established before the people move in because there are residents who don't like the fact they are going to have a fence behind them. If the forest is planted before people move in and they see it and know that it will be it is less problematic.

Mr. Smariga added the problem he has is that they will be constructing in those areas so he doesn't know how to construct Phase II improvements in Phase I. He feels it should be after construction.

Mrs. Dunn stated that they presented their position on why we would like them in the phases we recommended.

Mr. Smariga continued with the presentation stating that there may be some areas around the pond that we can create more forest conservation plantings so if it is agreeable with the commission he would like to add a condition stating we can work with staff that if they find the areas that we can maybe swap it out for landscape credits.

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

Commissioner Stup asked if there will be any impact of the forest resource area on the side of existing Gas House Pike.

Mr. Smariga stated there is a little bit of a set back of the forest conservation planting from existing Gas House Pike and there is a gap where 7th Street would extend there. He added there are some utilities down in this area and isn't sure how they are going to be relocated so the reason he would like to add a condition is because he may have to take forest credits out in some areas but we did account for keeping the road open.

Commissioner Nash asked if the grading prevented the plantings along the upper part because that area will have to be mass-graded before construction.

Mr. Smariga responded yes and the trails have to be constructed in that area too.

Mr. Stup asked staff if there could be a compromise if the applicant can guarantee the plantings up front.

Ms. Reppert replied they always bond through their phasing.

Mrs. Dunn stated they would be submitting final forest conservation plan for the whole site but the easement documents with the short term and long term for those areas.

Mr. Waxter doesn't think staff's concern was whether or not they would actually do the work but more an issue of when the work would be done.

Commissioner Nash agrees with the applicant and his suggestions.

#### PUBLIC COMMENT:

There was no public comment.

#### PETITIONER REBUTTAL:

There was no petitioner rebuttal.

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

Commissioner Nash stated that she understands staff's desire to get the trees planted so people can see them.

Commissioner Fetting stated that long term survival is better if they waited.

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

Less than 60 days:

1. The Applicant must provide a maximum amount of critical root zone to be disturbed which will allow for the survival of specimen trees designated for retention and the Applicant must revise the note referenced in the Specimen Tree Schedule note on Sheet 2 of 2 accordingly.
2. Change Protection Fence detail to the full square wire fencing along the western property line adjacent to Monocacy Village
3. Change forest planting phasing as follows:
  - a. the 2.64 acres of linear park forest areas in Phase 2;
  - b. the floodplain forest areas in Phase 2 after completion of Gas House Pike in Phase 2; and
  - c. the landscape credit areas to be completed as the project proceeds through development.

Greater than 60 days and less than one year:

1. Obtain unconditional approval of Forest Stand Delineation case #PC11-253FSD.
2. Revise the design of the landscaping credit areas to comply with Section 721(d)(5) and replace with large canopy trees where applicable, or find other areas to plant for full forest conservation credit.

#### PLANNING COMMISSION ACTION MODIFICATIONS:

MOTION: Commissioner Stup moved to approve Nicodemus PC08-585PFC in accordance with the testimony tonight with the 2 conditions as listed and item 3 change to "change forest plantings phasing that the linear park 2.64 acres be constructed as part of Phase II and after construction of Gas House Pike prior to the first building permit in Phase II that the flood plain forest area should be planted in Phase II as well as the landscape credit areas be completed as they proceed with construction" to be met in less than 60 days. To be met in greater than 60 days and less than one year the 2 items listed in the staff report.

SECOND: Commissioner Fetting.

VOTE: 5-0.

Meeting adjourned at 10:40 P.M.

Respectfully Submitted,

Carreanne Eyler  
Administrative Assistant