FREDERICK COUNTY PLANNING COMMISSION
August 8, 2018

TITLE: Tuscan Acres: Combined Preliminary/Final Plat Review

FILE NUMBER: S 1091 (AP#18367, APFO#18368 & FRO#18369)

REQUEST: Combined Preliminary/Final Plat
Requesting Combined Preliminary/Final Plat approval for a 3-lot commercial subdivision on an 11.33-acre site.

PROJECT INFORMATION:
LOCATION: Located on the northeast quadrant Green Valley Road (MD 75) and Fingerboard Road (MD 80).
ZONE: GC (General Commercial)
REGION: Urbana
WATER/SEWER: W-5, S-5.
COMP. PLAN/LAND USE: GC (General Commercial)

APPLICANT/REPRESENTATIVES: (as applicable)
APPLICANT: Fred Giordano & Oscar Fuster
OWNER: Fred Giordano & Oscar Fuster
ENGINEER: B&R Design Group
ARCHITECT: Not Listed
ATTORNEY: Not Listed

STAFF: Graham T. Hubbard, Principal Planner

RECOMMENDATION: Conditional Approval

Enclosures:
Exhibit #1: Combined Preliminary/Site Plan
Exhibit #2: Proposed APFO Letter of Understanding (LOU)
Exhibit #3: Panhandle modification
BACKGROUND
The Applicant has submitted a Combined Preliminary/Final Plat for a 3-lot commercial subdivision on an 11.33-acre site. The site is located on the northeast quadrant of Green Valley Road (MD 75) and Fingerboard Road (MD 80) in the Urbana Planning Region. Both roads are classified as minor arterials.

This property has been the subject of several subdivision applications since 1965.
- 1977 – Section 1, Lot 1
- 1977 – Section 2, Lot 1
- 1985 – Section 2, Lot 2
- 1988 – Section 2, Lot 3
- 1999 – Section 2, Lots 4-6

Seven (7) lots have been created from the original 1965 parcel. This application proposes creation of the 8th – 10th lots since 1965 and is considered a major subdivision.
ANALYSIS

Zoning/Comprehensive Plan: The site is situated entirely within the General Commercial (GC) Zoning District. The GC zone is intended to provide general retail commercial and business services, located on roads with a minimum classification of collectors as designated by the County Comprehensive Plan.

Land Use and Design Requirements:

Land Use § 1-16-217.
(A) The land use pattern of the Comprehensive Development Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision. The proposed land use(s) will be reviewed at the time of Site Plan application.

(B) The subdivision design shall take advantage of the uniqueness of the site reflected by the topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.

The existing site is currently vacant and includes a small portion of flooding soils and associated 25’ flooding soil buffers along the northern boundary of Lot 201. No streams, wetlands, wetland buffers, or FEMA floodplain exist on site.

Design Requirements § 1-19-6.100.
The setback requirements for Commercial Uses within the GC zoning district are 25’ front yard, 25’ rear yard, and 8’ side yard. The minimum lot size is 12,000 sf and minimum lot width is 100’. Proposed lots 201-203 meet all dimensional lot requirements.

Activities with Floodplain District § 1-19-9.110.
There is a small tip of flooding soils and associated 25’ flooding soil buffers along the northern boundary of Lot 201. No development is permitted in areas of flooding soils or their buffers. The flooding soils and required 25’ setback are shown on the plat and discussed in note 8.

Access/Circulation

Public Facilities § 1-16-12(B)(3)(b).
Lots must directly access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width. Except, however, 5 lots or less within a major subdivision (counting proposed and previously recorded lots) will be permitted to have direct access on existing gravel or stabilized surface roads with a minimum 16 foot travelway, provided that the gravel or stabilized surface road is not an access route for other development on the original parcel and provided that all other requirements for adequate public facilities are met.
Lot Access to Streets § 1-16-240.

(A) The Planning Commission shall have the right to approve or disapprove any point of ingress and egress to any lot, tract, parcel or development from any street or highway.

(B) The Planning Commission may require the subdivider to provide ingress and egress to a particular lot or tract through the remainder of the property or other properties over which the owner has control.

(C) In approving ingress or egress from any state highway, the Commission can only approve those access points that are not in conflict with safety standards of the state highway administration or with the right-of-way or through highway line of a limited or denied access highway.

(D) (1) Where a proposed commercial, industrial or residential subdivision involves frontage on an expressway, freeway, major arterial or a minor arterial highway or street, the street layout shall provide vehicular access to such subdivision by 1 of the following means:
   (a) A parallel street;
   (b) A series of culs-de-sac;
   (c) An access driveway;
   (d) A reserve strip;
   (e) Common driveways.

   (2) The specific requirements for each of the above methods shall be as specified in the Design Manual. If any of the aforementioned arrangements are used, the statement “vehicular egress and ingress denied” shall be shown along the limits of the road frontage on the final subdivision plat to prevent residential, commercial or industrial driveways from having direct access to freeways, expressways, major arterial and minor arterial highways and streets.

The Applicant proposes a common access easement to the site from MD 75 (Green Valley Road) which is a 20’ wide minor arterial roadway that meets the minimum 20’ travelway width requirement. A declaration of common access easement (agreement) must be recorded prior to the recordation of this plat. Access is denied along Green Valley Road and MD 80 (Fingerboard Road), except at the approved MDOT SHA access point. Cross ingress/egress easements will be recorded with the plat. The proposed lots will meet all County and State access requirements.

Panhandle Lots §1-16-219 (C)(2).
Panhandle lots may be approved by modification of the Planning Commission in major subdivisions only when it is determined by the Commission that “excellence of design” will be achieved or that such lots are inaccessible to the road due to odd shape and/or topographical constraints. In each case, the Planning Commission will determine “excellence of design” based on the spatial relationship of the panhandle lot to other lots and the public road. Only physical design criteria such as odd shape and road inaccessibility, topography, existing utilities, proposed and existing well and septic constraints (Health Department criteria) and natural or man-made features shall be used by the Planning Commission in granting modifications for panhandle lots in major subdivisions.
There are several reasons why the panhandle modification is needed. First, the approved septic fields on Lots 202 and 203 are situated too closely together to provide the 100’ minimum lot width between the fields necessary to avoid a panhandle lot. Second, access southward to Fingerboard Road is denied by State Highway Administration due to the close proximity of its intersection with Green Valley Road. Therefore, a panhandle modification is being sought to provide fee-simple road frontage to Lot 201.

**Adequate Public Facilities Ordinance (APFO) § 1-20.**

This commercial project was reviewed for potential impacts to schools, roads, and water and sewer infrastructure. A proposed letter of understanding (LOU) outlining the proposed mitigation is attached as Exhibit #2.

**Schools:** Schools are not impacted because the future development of the property will not be residential.

**Roads:** As proposed by the applicant and accepted by staff, the site is capped at 49 am and 49 pm weekday peak hour trips. No APFO testing is required since the future development is proposed to be generating 50 or fewer trips during the peak hours of the adjacent street. However, should site plans be submitted for these proposed lots that alone or in combination exceed the 49 trip limit, that site plan(s) would require APFO testing, as described under the piecemeal provision of § 1-20-30(B).

In accordance with Section 1-20-12(H) of the County Code, the Developer is required to pay its proportionate contribution of $281,016 toward existing escrow accounts in the area of the project, as outlined in the attached proposed LOU.

The APFO approval is proposed to be valid for five (5) years from the date of Commission approval; therefore, the APFO approval would expire on August 8, 2023. This is one more year than prescribed by § 1-20-8(D)(2), but preferred by the applicant and staff to match the 5 year subdivision approval term, subject to Planning Commission approval as permitted under § 1-20-8(D)(4).

**Water and Sewer:** The Property is currently classified in the County’s Water and Sewerage Plan as S-5 and W-5. The proposed lots will be served by well and septic. Each lot will be required to connect to public water and sewer at such time as it becomes available, at the individual owner’s expense.

**Forest Resource Ordinance (FRO):**

Applicant has submitted a FRO Plan, which was previously approved in 2015 under AP 13279. Forest mitigation will be satisfied by either the purchase of 1.57 acres of NEW forest banking credits or 3.14 acres of EXISTING forest banking credits. FRO mitigation must be provided prior to lot recordation, grading permit, and building permit.
OTHER AGENCY COMMENTS

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<thead>
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<td>Development Review Planning:</td>
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<td>Health Dept.</td>
<td>Hold. Wells need to be drilled.</td>
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<td>State Highway (SHA)</td>
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<td>DPDR Traffic Engineering</td>
<td>Approval</td>
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<tr>
<td>Forest Resource Ordinance (FRO)</td>
<td>FRO Plan approved under AP 13279. FRO mitigation must be provided prior to lot recordation, grading permit, and building permit.</td>
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FINDINGS
Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, APFO and FRO requirements once the conditions of approval have been met. Staff has no objection to conditional approval of this Combined Preliminary/Final Plat.

RECOMMENDATION
Should the Planning Commission conditionally approve this Combined Preliminary/Final Plat for Tuscan Acres S-1091 (AP# 18367, APFO 18368 & FRO 18369), the motion for approval should include the following items:

1. Combined Preliminary/Final Plat approval is valid for five (5) years from today’s date, or until August 8, 2023.

2. APFO approval is valid for five (5) years from today’s date, or until August 8, 2023.

Based upon the findings, conclusions, and modifications as presented in the staff report, Staff finds that the application meets or will meet all applicable Zoning, APFO, and FRO requirements once the following modification is granted and conditions met:

Planning Commission approval of the following modification request from the Applicant:

1. A panhandle modification per Section 1-16-219(C)(2) to create a panhandle lot in a major subdivision.

2. APFO approval for five (5) years from the date of Commission approval; which is one more year than prescribed by § 1-20-8(D)(2), but permitted under § 1-20-8(D)(4) subject to Planning Commission approval.
Staff-proposed conditions of approval:

1. Comply with all agency comments through the completion of the project.

2. A declaration of common access easement (agreement) must be recorded prior to the recordation of this plat.

3. FRO mitigation must be provided prior to lot recordation, grading permit, and building permit. Forest mitigation will be satisfied by either the purchase of 1.57 acres of NEW forest banking credits or 3.14 acres of EXISTING forest banking credits.
Exhibit #2: APFO Letter of Understanding (LOU)

FREDERICK COUNTY GOVERNMENT
DIVISION OF PLANNING & PERMITTING

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Tuscan Acres

Combined Preliminary/Final Plat #S1091, APFO#18368

In General: The following Letter of Understanding (“Letter”) between the Frederick County Planning Commission (“Commission”) and Fred J. Giordano & F Squared Engineering Corporation (the “Developer”), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Tuscan Acres Combined Preliminary/Final Plat of Subdivision (the “Project”), in compliance with the Frederick County Adequate Public Facilities Ordinance (“APFO”).

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements and contributions to road escrow accounts, as specified below are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer’s 11.3279 acre parcels of land, which are zoned GC (General Commercial), located in the northwest quadrant of MD 75 (west leg) and MD 80. This APFO approval will be effective for development of 3 new commercial lots, which is shown on the combined preliminary/final plat for the above-referenced Project, which was conditionally approved by the Commission on August 8, 2018.

Schools: Schools are not impacted because the development of the property is a non-residential use.

Water and Sewer: The Property is currently classified in the County’s S-5, W-5. The Project is currently served by well and septic.

Road Improvements: This site is capped at 49 am and 49 pm weekday peak hour trips, as proposed by the Developer. No APFO testing is required as this site generates 50 or fewer trips during the peak hours.

In accordance with Section 1-20-12(H) of the County Code, the Developer is required to pay its proportionate contribution toward the following existing escrow accounts in the project study area as follows:

1. MD 80/Ijamsville Road Intersection - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3383 for a capacity improvement of this intersection.

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Tuscan Acres
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As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata contribution to this road improvement is $478.

2. MD 355/MD 75 - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3847 for installation of a new traffic signal. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata share of this road improvement is $663.

3. MD 75 Relocated: South of CSX to Baldwin Road - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3891 for the realignment of MD 75 and any other improvements deemed necessary by the County. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $247,368.

4. MD 75 Relocated: South of MD 80 - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3965 for the realignment of MD 75 just south of MD 80. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata share of this Road Improvement is $6,818.

5. MD 75 @ I-70 Westbound Ramps - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3252 for installation of a new traffic signal. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata share of this road improvement is $388.

6. MD 75 @ I-70 Eastbound Ramps - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3251 for installation of a new traffic signal. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $418.

7. MD 80/Campus Drive - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 1249 to provide capacity improvements. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $905.

8. MD 80/Carriage Hill Drive - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3924 for eastbound capacity improvements. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $3,844.

9. MD 80/Carriage Hill Drive - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3925 for a new signal. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $1,458.

10. MD 80/Carriage Hill Drive - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3892 for westbound capacity improvements. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata contribution to this road improvement is $1,358.

11. MD 355 Relocated south of MD 80 - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3232 for a new roadway link. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata share of this road improvement is $6,819.
12. MD 80/Pontius Court - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3923 for capacity improvements. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $2,171.

13. MD 80/Royal Crest - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3926 for capacity improvements. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $1,402.

14. MD 80/Royal Crest - the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 2927 for installation of a new traffic signal. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is $1,338.

15. MD 75/I-70 Interchange – the Developer shall contribute the appropriate pro-rata share to Existing Escrow Account No. 4063 for reconstruction of the interchange. As determined by DPDR-Traffic Engineering Staff, the Applicant's pro-rata contribution to this Road improvement is $5,590.

Therefore, prior to plat recordation, the Developer hereby agrees to pay $281,016 to the escrow accounts for these Road Improvements. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering construction cost index.

Period of Validity: The APFO approval is valid for five (5) years from the date of Commission approval; therefore, the APFO approval expires on August 8, 2023.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures next page]
Fred J. Giordano & F Squared Engineering Corporation:

By: __________________________ Date: 6-20-2018

Fred J. Giordano

By: __________________________ Date: 6-20-18

D. Oscar Fuster, F Squared Engineering Corporation

FREDERICK COUNTY PLANNING COMMISSION:

By: __________________________ Date: __________

Chairman or Secretary

ATTEST:

By: __________________________ Date: __________

Gary Hessong, Director, Permits & Inspections

Planner’s Initials / Date __________________________
(Approved for technical content)

County Attorney’s Office Initials / Date __________________________
(Approved as to legal form)
March 2, 2018
June 14, 2018

Mr. Michael Wilkins, Director
Department of Development Review
Planning and Permitting Division
30 North Market Street
Frederick, MD. 21701

Subject: Tuscan Acres, Lots 201-203, Section 2
Hanson AP No. 13279, SP 02-19
Job No. 12-494

Dear Mike:

On behalf of the Owners, Fred Giordano and Oscar Fuster, the applicant, we respectfully request the County’s Planning Staff support of the proposed temporary modification requirement to Chapter 1-16, Subdivision Rules, Section 1-16-219 Lot Size and Shape for a temporary panhandle lot in the General Commercial zone.

Applicant’s Justification for the Modification

The Applicant’s initial site plan approval in 2003, contemplated three buildings with each site having individual septic areas, well, and parking areas. The three buildings were situated to allow for a land reservation for the future relocation of MD Rt 75 in accordance with a study prepared by LSAA, dated March 6, 2001, and was noted as SHA’s preferred alignment. Access was anticipated to be located at the easterly intersection of MD Rt 75 and MD Rt 80. Subsequent to the initial approval of the site plan, several design elements of the relocated Maryland Route 75 have been revised by the State.

The one change that has had the largest impacted on this project, is the revised alignment of Md Rt. 75. This revised alignment creates an access issue for project since the access to Md Rt. 75 was moved from the interior of the property to the westerly property line. The project has an approved common access entrance from MDOT SHA. The location common drive is shown on the site plan. Upon the relocation of the MD Rt 75, the access to the lots will be relocated to the new road along the northerly property line. Proposed Lot 203 will be required to use the new road in order to have a full movement entrance located on Md Rt 75. The realignment creates several unique situations; the first is the access to the rear building was removed until a new road is constructed along the common northerly property line with the property to the north. The location of this roadway is shown on the preliminary highway relocation design. To rectify this situation, the Applicant is proposing to create a temporary panhandle along the northerly property, which would be situated along and adjacent to the new road’s right of way. This temporary situation would allow the Applicant to record the subdivision, an action they have
been trying to accomplish since 2004. MDOT SHA has informed the Applicants that upon the relocation of Md Rt 75, the Applicant would be required to relocate the common driveway due to the construction of a median from Md Rt 80 to the new intersection.

The access issues created by revised alignment of Md Rt 75 and the fact that the proposed subdivision is on private well and septic, the Applicant is limited in their ability to move property lines compared to a subdivision that is served by water and sewer.

**Authority for Modification**

Section 1-16-30. MODIFICATIONS states as follows:

(A) Where the Planning Commission finds that because of unusual circumstances of shape and topography or other physical features or conditions of the proposed subdivision, or because of the nature of adjacent developments, extraordinary hardship may result from strict compliance with this chapter, there may be granted a modification of this chapter when requested by the subdivider or developer.

The Applicant believes and maintains that this modification for a panhandle at this location maximizes the design options for access improvements for the current and future conditions. The modification requested supports the permitted use of the property and is compatible with the nearby commercial and residential community. The granting of the modification will not impede future development in the area but will enhance the accessibility of the Property. With this modification, a better and more functional access to the property will be achieved.

For the above stated reasons, the Applicant respectfully requests the Planning Staff’s support for this modification request that will be presented to the Planning Commission.

Sincerely,

[Signature]

William J. Brennan, Jr., PE

Cc: Oscar Fuster
    Fred Giordano
    Noel Malano