

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

August 2, 2011

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Patricia Brill
Angela Dressel
Kass Sheedy

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE JULY 5, 2011 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECONDED BY DRESSEL, THE MINUTES OF THE JULY 5, 2011 PLANNING COMMISSION MEETING WERE APPROVED AS RECEIVED.

VOTE: 5-0

AYE: BEGLEITER, BOWMAN, BRILL, DRESSEL, SHEEDY

NAY: NONE

ABSENT: BROWN, JOHNSON

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE CONCERNING ALCOHOLIC BEVERAGE SERVICE IN RESTAURANTS.

Mr. Lopata summarized his report to the Planning Commission that reads as follows:

“As you can see from the attached June 15, 2011 letter from Attorney Mark Sisk representing the Santa Fe Grill, the City is being asked to consider amending the Zoning Code to permit, through a revised special use permit process, the service of alcoholic beverages for consumption on the premises to patrons at downtown restaurant bars. As a result, as its June 27th meeting, City Council directed the Planning and Development Department to prepare a Zoning Code amendment for the Planning Commission’s and eventually Council’s consideration regarding this matter.

Please note that under the current regulations [Zoning Code Section 32-56.4(a)(3)] the consumption of alcohol for patrons at a bar is not permitted for restaurant facilities that are within 300 feet of residentially zoned property and churches, which would apply to the Santa Fe Grill. Moreover, under the current Zoning Code specifications [Section 32.56.4(b)], which did not originally apply to the Santa Fe Grill, the consumption of alcohol on any restaurant premises for all downtown properties is not permitted for sites that are adjacent to any residentially zoned property. In this case, the parking area to the rear of the Santa Fe Grill is adjacent to RM (multi-family dwellings –

garden apartments) zoned property. In other words, all relevant aspects of the current regulations will need to be changed to permit new and revised alcoholic beverage service at the Santa Fe Grill (and similarly situated restaurants) if the Code is to be revised in this regard.

In any case, the Planning and Development Department has provided background material below, along with Zoning Code amendment language for your consideration.

Background

When the Zoning Code alcoholic beverage regulations were last amended on May 23, 2005, the Department and the Planning Commission had recommended that property line adjacency of a restaurant to any of the so called “protected uses,” (church, library, school, nursing home, hospital, dormitory and residential zoned property) in the downtown area would necessitate an affirmative vote of five members of City Council through the special use permit process. When this item was considered, Council revised the proposal to include a service of alcoholic beverages prohibition if the restaurant was located at a location adjacent to residentially zoned property. Please also note, in this regard, the Code stipulates that any permitted restaurant bar is limited to a seating capacity of no more than 15% of the total restaurant seating and that required special use permits for restaurants selling alcoholic beverages (with or without bars) can be revoked by City Council.

Regarding the required special use permit process, Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate the proposed use will not:

- “A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the comprehensive development plan of the city.”

In addition to Council’s consideration of the review criteria noted above, Zoning Code Section 32-56.4(f) also requires that Council consider Police Department and Code Enforcement Division reports regarding the business, along with any available information from the Delaware Alcoholic Beverage Control Commission.

Recommendation

In light of Council’s direction regarding the request to amend the Zoning Code regarding restaurant bars, and if the Planning Commission, once it receives public input, decides to recommend that Council approve the relevant changes, the Planning and Development Department suggests that **that the Planning Commission recommend the following:**

- A. **That City Council amend Zoning Code section 32-56.4(a) by deleting subsection (3) which reads,**

“No bar facilities, defined as any counter in which alcoholic beverages may be stored, displayed and served, and which patrons sit and/or stand and consume alcoholic beverages, shall be permitted.” [As a result this prohibition would no longer apply to facilities within 300 feet of the protected uses noted above.]

- B. **That City Council amend Zoning Code section 32-56.4(b) by deleting the last sentence which reads,**

“Such facilities, however, located within the area established herein shall not be permitted if the property line of any such facility is adjacent to a district boundary line of any residentially zoned property (RH, RT, RS, RD, RM, RA, RR, AC).” [The area “herein,” is essentially E. Main St. between Chapel Street and Elkton Rd.]”

Ms. Kass Sheedy: Is the current situation that the Santa Fe Grill cannot serve liquor?

Mr. Lopata: They can serve liquor at tables because when they opened they happened to come under a different set of rules but they couldn’t serve liquor at a bar.

Ms. Sheedy: So, why for the Santa Fe Grill does the property line issue need to be amended because it doesn’t actually apply to them. Is that why?

Mr. Lopata: It applies to the Santa Fe Grill – the prohibition on a bar – because adjacent to the rear property line of the site that this restaurant sits in, there are homes.

Ms. Sheedy: I just want to be clear. The first amendment applies to the bar issue.

Mr. Lopata: Both amendments, in effect, do. You need to do both. The reason we are suggesting the second one is so it is crystal clear that they are allowed to have alcohol. The first one is specific to the bar. The second one is broader, otherwise we would have an inconsistency where you would allow alcohol service at a bar but you wouldn’t allow alcohol service. That makes no sense at all so the two amendments need to go together.

Ms. Sheedy: So, that would make it not necessary to have a special use permit?

Mr. Lopata: No, they still need a special use permit. Everybody needs a special use permit now. All the restaurants go through the same process if they sell alcohol, whether or not they have a bar.

Ms. Angela Dressel: At the moment are there other properties on Main Street that are in the same situation that you know of?

Mr. Lopata: California Tortilla might be in the same situation. They haven’t asked for alcohol, but they are a restaurant with the back of their property line adjoins the parking lot of the Methodist Church.

Ms. Dressel: So, those are the only two properties that you can think of.

Mr. Lopata: Other restaurants could be proposed at other locations that aren’t there now. So, we can’t be sure of where this might apply in the future.

Mr. Ralph Begleiter: Roy, is the City permitted to serve alcohol in its parking lots?

Mr. Lopata: We are exempt from the Zoning Code actually.

Mr. Begleiter: So, you could serve alcohol behind California Tortilla in the parking lot.

Mr. Lopata: The City doesn’t serve alcoholic beverages.

Mr. Begleiter: I am going to ask the opposite of the question that was just asked. Can you tell us how many restaurants, if any, on Main Street are actually, in fact, limited by the 300 foot rule in any way?

Mr. Lopata: That currently sell alcoholic beverages.

Mr. Begleiter: It doesn't matter. Even California Tortilla doesn't sell alcohol, would they be limited?

Mr. Lopata: I can't think of any off the top of my head but that doesn't mean there aren't.

Mr. Begleiter: Is this to make us feel good that we have it on the books that there is a limit but there really isn't?

Mr. Lopata: You mean the other restrictions? Yes, there are lots of restaurants that are affected by that potentially. Again, it is potential.

Mr. Begleiter: Are there any existing restaurants that are limited by the 300 foot rule or are they all specially exempted?

Mr. Lopata: Catherine Rooney's had to get a variance from the Board of Adjustment to the 300 foot rule, so they were affected by it.

Mr. Begleiter: But they got it.

Mr. Lopata: Yes, but we left that restriction in the Code.

Mr. Begleiter: My question is a serious one, which is, why are we making swiss cheese out of the rule if nobody is actually limited by it in every case? Whenever there is an application, there is a variance granted. What difference does it make?

Mr. Lopata: The Italian Bistro did not get approved and that is where California Tortilla is now. So, it hasn't always been approved.

Mr. Begleiter: I'm not asking about the distant past. I'm asking whether maybe it is a good thing to think about now when we don't have any limits.

Mr. Lopata: I was the chairman of the Alcohol Abuse Commission several years ago that came up with a whole series of reforms that moved the ball a lot further along, including these, with lots of contentiousness between the City, folks involved with the Robert Wood Johnson Foundation – you may remember that group – and it was a very difficult process. I would prefer not to open up that can of worms and deal with a minor amendment. In any case, the sense at the meeting was that Council wanted this changed; and that the bar limitations in and of itself didn't seem to make a whole lot of sense because if you are going to allow alcohol, why can't you let people have it at a bar.

Mr. Begleiter: That is exactly my point.

Mr. Lopata: In this regard, there are other rules under that section, 32-56.4(a).

Mr. Begleiter: But, what we are essentially doing is to avoid the political inconvenience of having to deal with the overall debate over whether alcohol should be sold on Main Street. To avoid that what we are doing is kind of swiss cheesing it by . . .

Mr. Lopata: I would put it a different way – we are avoiding reinventing the wheel. We went through a huge exercise, which was just a few years ago. You were probably here when we did some of this. We went through a whole series of amendments to the Zoning Code and what's happened since that time is there have been some variances. And with the special use permit mechanism, which was just in use over the last several years, we felt that, so far, it has been a very good tool because the big change now is the alcohol beverage special use permits are revocable. Special use permits typically run with the land. Those don't. So that has been a major reform. All the restaurants that have a special use permits if

they get out of line with alcohol abuse problems, City Council can shut them down. In a college town, however, I think it is more than likely that alcohol beverage regulations amendments will continue to be discussed.

Mr. Bowman: The applicants are here. If they wish to come forward and address the issue, they can come forward now.

Mr. Mark Sisk: I am an attorney here in Newark. At my left is Javier Acuna who runs the Santa Fe Grill and has run it for the last seven years in an exemplary way. That is the reason for the application. He finds himself in an anomalous situation. I think it is pretty clear after the discussion that took place what we are looking for. If you have specific questions for Javier or me about his operation, we are happy to answer those. But, at least to me, it is reasonably clear what the Code amendments are. I would add something else, the California Tortilla property in addition to the church thing, there is a deed restriction on that property. That is a most complex issue compared to this. This is relatively straight forward. We will be happy to answer questions if you have them, but we think the ground has been covered in terms of what we are here for.

Mr. Bowman: Are there any questions for the applicants? Okay, are there any members of the public who wish to address Item 2 on the agenda? If there is no further discussion, the Chair will entertain a motion.

MOTION BY SHEEDY, SECONDED BY DRESSEL THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

A. THAT CITY COUNCIL AMEND ZONING CODE SECTION 32-56.4(A) BY DELETING SUBSECTION (3) WHICH READS,

“NO BAR FACILITIES, DEFINED AS ANY COUNTER IN WHICH ALCOHOLIC BEVERAGES MAY BE STORED, DISPLAYED AND SERVED, AND WHICH PATRONS SIT AND/OR STAND AND CONSUME ALCOHOLIC BEVERAGES, SHALL BE PERMITTED.”

B. THAT CITY COUNCIL AMEND ZONING CODE SECTION 32-56.4(B) BY DELETING THE LAST SENTENCE WHICH READS,

“SUCH FACILITIES, HOWEVER, LOCATED WITHIN THE AREA ESTABLISHED HEREIN SHALL NOT BE PERMITTED IF THE PROPERTY LINE OF ANY SUCH FACILITY IS ADJACENT TO A DISTRICT BOUNDARY LINE OF ANY RESIDENTIALLY ZONED PROPERTY (RH, RT, RS, RD, RM, RA, RR, AC).”

VOTE: 5-0
AYE: BEGLEITER, BOWMAN, BRILL, DRESSEL, SHEEDY
NAY: NONE
ABSENT: BROWN, JOHNSON

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF THE MAJOR SUBDIVISION, SITE PLAN APPROVAL, AND SPECIAL USE PERMIT APPROVAL FOR THE .88 ACRE PROPERTY AT THE PARKING FACILITY OF 157-159 EAST MAIN ST. (TRADER’S ALLEY) FOR A FOUR STORY BUILDING WITH SECOND FLOOR INTERIOR PARKING AND TWO UPPER LEVELS OF 14 APARTMENTS.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On March 31, 2011, the Planning and Development Department received applications and plans from Trader’s Alley, LLC for the redevelopment of the property at 157-159 E. Main Street. Subsequently, on June 30, 2011, the Department received significantly revised plans for the site. In any case, the applicants are now requesting major subdivision approval in order to construct a four story building with ground and second level parking and 14 upper floor apartments at the location of the Trader’s Alley’s existing private surface parking lot. In addition, the applicants are requesting a BB zoning required special use permit for the upper floor apartments and site plan approval to permit a variation in a normally applicable zoning area specification.

Please see the attached Landmark JCM development plans, applicant’s supporting materials and building elevation drawings.

The Department’s report on the Trader’s Alley project follows:

Property Description and Related Data

1. Location:

At the rear of 157-159 E. Main Street.

2. Size:

Total Site (including existing structure): .88 acres.

3. Existing Land Use:

The Trader’s Alley site is a developed property containing a two-story building fronting on E. Main St. with commercial uses on the first floor and eight second story apartments. A 44-space parking lot is located to the rear of the building.

4. Physical Condition of the Site:

Trader’s Alley is a developed site containing one two-story building. The site also contains a fairly large surface parking area and shared access ways to E. Main Street and E. Delaware Avenue.

In terms of topography, the site is very level with a slight increase in elevation from south to north.

Regarding soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service, Trader’s Alley contains Matapeake – Sassafras Urban Land Complex soil. The Natural Resources Conservation Service indicates that this is disturbed soil that has been used for development purposes. No development limitations for the proposed uses are indicated.

5. Planning and Zoning:

Trader’s Alley is zoned BB. BB is a central business district zone that permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.

- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, the applicants have requested site plan approval for conformity with the fifteen foot rear yard requirement; the plan shows a one foot rear yard. The plan meets all the other applicable specifications.

Regarding adjacent and nearby properties, the Schlosser and Dennis properties, including Camera's Etc., other commercial facilities and a shared surface parking lot are located immediately east of the site on E. Main Street occupying lands zoned BB. BB zoned commercial businesses are also located west of the site and on the north side of E. Main Street, across from the Trader's Alley building. An easement providing access to the Trader's Alley parking area from E. Delaware Avenue roughly bisects the adjoining Campus Edge site to the south. A parking area for the adjoining properties to the west lies immediately adjacent to the proposed new multi-story Trader's Alley facility. The recently approved mixed use, commercial and residential Campus Edge project, to include 24 upper floor apartments in two three-story buildings, is located south of the site.

Regarding comprehensive planning, Comprehensive Development Plan IV calls for "commercial (pedestrian oriented)" uses at this site. The Plan defines these uses as:

"Shopping and commercial uses of all types including retail facilities for buying and selling of goods and services as well as administrative and professional offices, personal service establishments, eating establishments, and shopping centers typically included in central business districts with customers, to a lesser extent, relying on the automobile to patronize these businesses. Residential uses, as noted in detail above and in Chapter II, may be permitted under certain circumstances."

In addition, the Plan's Downtown Economic Enhancement Strategy shows the Trader's Alley site within the "District One- Downtown Core District," which is described as:

"This is the center of Newark's Central Business District that is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and

parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. Beyond that and particularly to encourage owner occupancy downtown, the City may consider reducing the permitted downtown density in the projects in this district for residential projects.”

More generally, concerning downtown residential uses, the Plan includes the comment that:

“Regarding the City’s review of downtown mixed use redevelopment projects with housing components, the intent is to make it abundantly clear that the City seeks positive impacts from such residential uses. One key positive impact from an individual project, for example, might include the potential at the site for affordable housing for owner occupants. In particular, and perhaps most importantly, to implement this Action Item, Council may need to actively consider density reductions for projects of this type, on a case-by-case basis, depending upon the location, other site conditions and the nature of the project. Through the City’s multi-year effort to limit the proliferation of off-campus student housing in traditional neighborhoods, we have learned that the best zoning tools to promote affordable owner occupied housing is of significance to limit permitted density in approved residential projects to individual families or to no more than two unrelated tenants, or with similar specifications. For example, in the developments of Casho Mill Station, Abbotsford, Country Place and Williamsburg Village, the City has very successfully preserved these communities for primarily owner occupant relatively affordable housing. If this approach worked at these locations, it should also work downtown. This zoning and development approval tool can be packaged with other incentives to encourage owner occupancy. In sum, we want Newark, especially downtown, to become a “destination city” featuring affordable housing for owner occupants, with an emphasis on occupancy for young couples and families, singles, recent University graduates, retirees, and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence.”

Concerning gross residential site density, please note that the Trader’s Alley plan calls for 25 dwelling units per acre. [This calculation includes the existing eight apartments in the original Trader’s Alley building as well as the acreage upon which that building is located]. By way of comparison, the density of the adjoining Campus Edge project is 28.24 dwelling units per acre; the density of the nearby Washington House mixed use project is 36.1 units per acre, and the densities of other downtown similar mixed use projects at 102, 108 and 129 E. Main Street are 20.83, 14.7 and 34.68 units per acre respectively.

As noted above, the applicants have also applied for site plan approval because Trader’s Alley does not conform to the BB zone rear yard requirement. In this regard, the Zoning Code describes the purpose and intent of site plan approval as follows:

“. . . to provide alternatives for new development and redevelopment proposals, to encourage variety and flexibility, for new development and redevelopment, and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations stated in this chapter.” The Code adds that site plan approval, “. . . shall be based upon distinctiveness and

excellence of site arrangement and design and including energy conservation defined as site and/or construction design that the Building Department has certified meets or exceeds the “certified” level as stipulated in the LEED (Leadership and Energy in Environmental Design) United States Green Building Council Program or a comparable Building Department approved energy conservation program.”

Obviously, the Planning Commission will need to evaluate the Trader’s Alley proposal in light of these review criteria.

Status of the Site Design

Please note that at this stage in the Newark subdivision and review process for projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features and existing utility lines; and, in addition, contextual color scale elevations showing the front Main Street facades of all buildings immediately adjacent to the property. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision plan and agreement for the project.

Be that as it may, the Trader’s Alley development plan calls for a new four story building located to the rear of the existing two-story Trader’s Alley commercial and upper floor residential facility that fronts on E. Main Street. The existing 44 space ground level portion of the site will be dedicated to the City to be used as public parking (see General Note #21). The proposed second floor parking deck will provide parking for the existing eight units in the portion of Trader’s Alley fronting on E. Main Street and the 14 new apartments built above this parking facility. Access to the site is proposed to be through shared easements at the Campus Edge property to the south to E. Delaware Avenue and to the north to E. Main Street between the Trader’s Alley building and the one story commercial building to the east.

Please consult the applicant’s submitted elevation drawings and supporting letter for additional information concerning the proposed site and building design.

To evaluate the proposed architectural design, the Planning Commission may wish to review the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations Appendix XIII(d).

Please note in this regard, that on a voluntary basis, the applicants reviewed the proposed building elevation drawings with the Downtown Newark Partnership’s Design Review Committee. As a result, the Committee recommended in favor of the project and noted that the building was, “very well designed.” The Committee also suggested that the applicants consider some form of pedestrian “throughway,” on the ground floor level of the garage to assist pedestrian access through the site.

Subdivision Advisory Committee

The City’s Subdivision Advisory Committee - consisting of the Management, Planning and Operating Departments - has reviewed the proposed Trader’s Alley development plan and has the comments below. Where appropriate, the subdivision plan

should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. The Planning and Development Department notes that the proposed upper floor residential land use at the Trader's Alley site corresponds to the development pattern of recently approved downtown development projects. In addition, the proposed density of 25 dwelling units per acre closely corresponds to the densities of other mixed use projects approved by City Council in the recent past. Moreover, we believe the addition of 14 apartments at this location – to the rear and beside adjoining properties – will have a limited impact on neighboring properties.
2. The Planning and Development Department suggests the following, regarding subdivision site design conditions:
 - The architectural design of the proposed facades of the Trader's Alley building should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - The parking area lighting should be designed to limit impact on adjoining and nearby properties.
 - Regarding site plan approval, the Planning and Development Department notes that the Planning Commission should review the proposal in light of the criteria noted above.
3. The Planning and Development Department notes that to be consistent with Council's approval of the Campus Edge project, the Commission may wish to recommend that the new Trader's Alley apartment site be deed restricted to a maximum of 82 total tenants.
4. The Planning and Development Department notes that DelDOT entrance/exit review and approval will be required through the construction improvement plan process, with verification of required cross access agreements.
5. The Code Enforcement Division indicates that the proposed new structure must meet all applicable City Building and Fire Code requirements. The new building will be required to be sprinklered.
6. The Code Enforcement Division also indicates that for site plan approval, compliance with LEED "certified level" energy conservation standards or similar such certification, approved by the Division, will be required through the building permit process.
7. The Public Works Department indicates the following regarding stormwater management.
 - The subdivision plan and agreement will need to specify that all underground stormwater facilities installed at locations eventually dedicated to the City will remain the responsibility of the applicant.
 - The applicant should review stormwater management and sediment control details with the Department, through the construction improvement plan process.
8. The Public Works Department notes the applicant should review parking space design and isle width dimensions with the Department to insure adequate internal and external traffic flow. In addition, the height of the garage clearance needs to be verified with the Department.
9. The Electric Department has the following comments:

- While electrical service is available from the existing transformer on the site, a new high voltage underground cable extension and installation of a new pad mount transformer, located adjacent to the existing facility will be required.
- The applicant will be required to pay \$13,500 toward the cost of the transformer and meters and will be responsible for the transformer pad, primary cable, conduit, and all secondary conduits and cable.
- Any switch gear must be approved by the Department through the building permit process.

10. The Water and Wastewater Department indicates the following:

- Through the construction improvement plan process, the applicant needs to review with the Department the capacity of sewer mains on Main Street.
- Prior to the issuance of the first certificate of occupancy, an STP fee will be required.
- Easements on adjoining properties need to be specified that they are applicable for water and sewer service.
- The proposed water and sewer laterals may be in conflict with the location of existing utilities serving the buildings at the E. Main Street entrance; this should be reviewed with the Department prior to the plan's consideration by City Council.

11. The Police Department notes concerns with the increased vehicular and pedestrian traffic and potential access issues on E. Delaware Avenue during peak traffic periods.

Recommendation

Because the Trader's Alley subdivision, site plan approval and special use permit plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on adjacent and nearby properties, because the proposal (with site plan approval) meets all the applicable Code requirements, because the proposed use does not conflict with the development pattern in the nearby area, because the plan conforms to Comprehensive Development Plan IV's land use recommendations for the site, and most importantly, because the plan will add to the City's inventory of available public parking while at the same time providing parking for the residential uses on the site, the Planning and Development Department suggests that, subject to the Subdivision Advisory Committee conditions, **the Planning Commission recommend that City Council approve the Trader's Alley major subdivision, site plan approval and special use permit plan, as shown on the Landmark JCM, Inc., plan dated July 1, 2011."**

Ms. Patricia Brill: Are there four bedrooms per apartment?

Mr. Lopata: I will let the applicants describe that. I think there are various unit sizes but I will let them discuss that.

Ms. Sheedy: Roy, you said it would add to the inventory of public parking, but it looks like it is 44 now and it will be 44 parking spaces.

Mr. Lopata: Those are private now. That is a big difference. It becomes a public parking lot and used by anybody. This is a private lot that, for example, has either 8 or 16 spaces – I forget – set aside for apartment use that nobody from the public can use at all, even if you are going to Trader's Alley or Flavor or some of the other stores. All those spaces would be open and available for the community to use. If you examine the history of all the City lots, every single one of them were private property at one point. And we get revenue from it, too, which is a very big point.

Ms. Sheedy: I see the point you are making, So, we currently have, in terms of parking spaces that are available for people who are doing business in that area, there are 36 now? And, there will be 44 afterwards?

Mr. Lopata: I will let them explain that.

Mr. Begleiter: Roy, this is a question about the general plan comments that you included in your report, not about the design of the project. The portion of the plan which you quoted includes the following sentence, "We want Newark, especially downtown, to become a destination city featuring affordable housing for owner occupants with an emphasis on occupancy for young couples and families, singles, recent University graduates, retirees and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence." I realize you were shortcutting your presentation, but could you comment on in what way does this proposal meet that request of the general plan which you included in your report?

Mr. Lopata: It does not, but there is other language that is here that it does. This is the identical language we used for the Campus Edge project, and I have repeated it over and over again for downtown projects because it is part of our Comprehensive Plan. The Planning Commission and City Council, we have all begun to indicate that we have to look more closely at residential projects downtown to try to encourage owner occupancy. And, that is what this language reflects. The Plan, however, also recommends looking at these projects in a way that examines whether they provide a contribution to the quality of downtown and to the community. This is in my report as well, so which language do you use?

Mr. Joe Charma: I am with Landmark JCM. Tonight I have with me the members of the Tsionas family and Larry Tarabicos. Mr. Tarabicos is with Elzufon Austin Reardon Tarlov & Mondell. Also tonight we have Kerry Haber of Bernardon Haber Holloway.

Tonight we are very pleased to present a downtown infill project at the property known as Trader's Alley that will have a very positive impact on the City. Our proposal is for the construction of a two story building above a one level parking structure. The apartments in that building will contain three bedrooms. The resulting building will be the height of approximately a four story building very similar in height to that of Campus Edge that was recently approved by City Council. We are requesting site plan approval of this infill project because of its distinctive nature and excellent use of the existing land resources, not only to allow for new housing downtown, but to assist the City in solving one of its ongoing problems. That is parking. At this point I must interject, we, the City that is, are victims of our own success. Having created such a healthy downtown economy, the steady influx of people has put a huge demand on parking. This project will not exacerbate that problem but will provide additional public parking and revenue for the City. As a condition of approval, the owners of Trader's Alley will dedicate 38 ground level parking spaces to the City as a public parking facility. The 36 deck level parking spaces will be reserved for the tenants of the 14 new apartments as well as the eight existing apartments that are in the Iron Hill building. Again, providing Code compliant parking for the proposed apartments and maintaining allotted parking for the existing apartments.

The architecture of the building will include roof lines designed to screen rooftop mechanical equipment from public view. Walls with window openings will screen deck level parking from public view and provide a secured sheltered parking environment for tenants. The proposed building being constructed above the existing parking lot, not only conserves valuable land resources but will not increase the degree of impervious cover. The ground level parking area, geometry and vertical clearances of the parking deck above will be designed to accommodate local delivery and service vehicles currently using the parking area and access ways. A public walkway will connect the proposed walkway through Campus Edge continuing through Trader's Alley providing the pedestrian connection from Delaware Avenue to Main Street. The building will fit into the urban environment downtown and not be an imposing structure as it will be set back more than 160 feet from the street lines and partially blocked from view by existing buildings. While the building is set back some distance from the streets the two primary building entrances will each be accessible by an existing 24 foot wide fire lane, one from Delaware Avenue and one from Main Street. Those fire lanes were created by the original Trader's Alley record plan that was recorded as microfilm 12692. The parking deck will be constructed with noncombustible cast and place concrete, structural steel

framing and masonry building elements. Additionally, the structures will be fully sprinklered and protected by fully automatic sprinkler systems.

In short, the proposed parking deck and building will meet or can be made to meet all applicable City, State and International Fire Codes.

This project will have a density of approximately 25 dwelling units per acre, which is consistent with the densities of the surroundings projects recently approved in the BB zoning district and is consistent with the recommended development patterns in the City's Comprehensive Development Plan. The density of this project is also less than what was recently approved by City Council for the Campus Edge project (that was at 28.2, I believe). The new building, parking structures and overall site will be designed to exceed the minimum energy conservation and design criteria established as LEED certified by the United States Green Building Council and as stipulated by the City Municipal Code. Such features as green roofs and partially solar powered parking lot lighting will provide some green and sustainable alternative practices which will be incorporated into this project.

In summary, this project will be an environmentally sustainable design which is in compliance with the City's Subdivision Code, Zoning Code, Building Code and Comprehensive Development Plan adding quality housing units downtown and provide the City with revenue generating resource and an opportunity to keep the positive economic momentum going in the City.

Our team will be happy to answer any questions you might have.

Mr. Begleiter: Joe, do you have, by any change in your arsenal there tonight, a site plan that includes both Campus Edge and Trader's Alley? It would be really nice to see these two projects together. I realize they are separate projects.

Mr. Lopata: The building elevation drawings give you a little bit of that.

Mr. Charma: I have the original Campus Edge plan.

Mr. Begleiter: Which is not the revised one.

Mr. Charma: But, it shows the relationship of the two projects.

Mr. Begleiter: That is what I am looking for to see the relationship because I am missing some pieces here that I am going to ask you questions about.

Mr. Charma: What I am holding up is a composite plan of Trader's Alley and Campus Edge. To my right is E. Main Street and that would be Trader's Alley; and, to my left is the Campus Edge plan that was recently approved.

Mr. Begleiter: That is exactly what I was looking for. Can you walk over to your display and on one of the three diagrams put your finger approximately where the third story apartments would be on the west side of the building. Some of them are on the east side and some of them face west. There are windows on the west side.

Mr. Charma: The windows run around the parameter of the building.

Mr. Begleiter: Put your finger on a westward facing window, and there is a fire in that window. Where does the fire truck go to spray water on that window.

Mr. Charma: The fire truck does not go to that window. It is accessible by ladder which does meet the Fire Code. The building is set back 10 feet from the property line which allows openings in that side of the building. It varies. It is a Building Code issue. Three or less feet, you can't have any window openings. Three to five you can have a percentage. Five to ten, 15% openings; ten or more, all you need to do is be able to get a ladder to that side of the building. It is ten feet off the property line.

Mr. Bowman: Keep in mind, Ralph, that building is going to be required to be fully sprinkler protected, which has major impact on this type of thing.

Mr. Charma: Additionally, as I mentioned, we are building a safe building here. The location of this building and its proximity to the property lines is no different than any of the other buildings that have built in Newark in the last ten year. Not at all.

Mr. Begleiter: I want, just for the record, to say I'm not questioning anything about the safety of the construction techniques or anything of that sort. I don't know what the construction techniques are. I am not suggesting that you are doing something unsafe in the construction techniques, but the answer to the question is no fire trucks, ladders only. Where would the ladders come from to reach that window? If you were carrying a ladder yourself, how would you get to that window?

Mr. Charma: The firemen could traverse between the two buildings. This is ground here. This is open. They could come around here and walk down this side and place the ladder.

Mr. Begleiter: They wouldn't come from Main Street.

Mr. Charma: They could come from Main Street or Delaware Avenue and come around.

Mr. Begleiter: Here is the piece that I think is missing, but I am not sure. In the far left diagram on your chart there all the way on the left-hand side, there is an indicator of an existing building. There is a line and it says "existing building." That indicator does not appear on the other two diagrams. Is that because the existing building isn't going to be there when the construction is done or is that an omission from those other two diagrams?

Mr. Charma: That is because my CAT operator clipped it, but the building is there.

Mr. Begleiter: What is the space between that existing building and the Iron Hill Brewery building?

Mr. Charma: At the closest point it is about 15 feet.

Mr. Begleiter: But, that is not an access way, or is it? Is that a vehicle access way?

Mr. Charma: That is a little alley way through there.

Mr. Begleiter: Your renderings on the other chart show cars parked in that location – lower left-hand corner. I don't know how long those cars are – 10 feet long, maybe.

Mr. Charma: The parking space is 18 feet, but they are not in that alley. They don't start until back here. You come around the building and there is a little jog when you get into the parking area.

Mr. Begleiter: If we assume you will be before us with a similar proposal for the adjacent property and you will build ten feet to the property line as you are proposing in this case, would there be an access way there between those two projects?

Mr. Charma: It would be ten feet.

Mr. Begleiter: Would it be 20 feet – ten and ten – or would it be ten? Would you seek a variance?

Mr. Charma: The Iron Hill building, if you note, it doesn't have any windows on this side, so it is built on the property line or fairly close to it. There are no window on that side which allows you in a BB zone to build on the property line.

Mr. Begleiter: So, is it unreasonable for me to assume that in the future when the next project comes through on that Post House property and the adjacent property behind it,

that that side of the residential property that you are proposing for this project would be accessible not by any safety vehicles. It would only be ladders.

Mr. Charma: And further, I just have to make this comment kind of in jest that I don't want to be representing anybody who's going to try to take the Post House out.

Mr. Begleiter: Of course not. None of us would want to do that. Probably it would never leave anyway.

Mr. Charma: It is an historic asset and I think it would be similar to the diner.

Mr. Begleiter: Perhaps my count, which may well be wrong, in the existing property diagram that you have, I count 44 parking spaces using your numbers – 16, 10, 11, 7.

Mr. Charma: There are 44 spaces.

Mr. Begleiter: And the new situation would be 38 that you are turning over to the City.

Mr. Charma: Yes.

Mr. Begleiter: So, is it accurate to say that the City is gaining 38 spaces in exchange for losing 44 spaces that are open to the patrons of Iron Hill Brewery.

Mr. Charma: No. Eight of those spaces are reserved for the tenants in the Iron Hill building. They are signed, reserved. So, they are not available for any public use.

Mr. Begleiter: Will those spaces remain in the new project?

Mr. Charma: Those spaces go up on the deck. For the 14 apartments, we have 28 new spaces for those plus 8 spaces Iron Hill apartment tenants. There is a net gain on the ground of two spaces open to the public.

Mr. Bowman: At this point, if there are no further questions from the Commission for the applicants, we will open this item to the public. We will take the written requests in the order that I got them.

Mr. John Rudd: Deputy Fire Chief with Aetna Hose Hook and Ladder Company, Newark, Delaware, 31 Academy Street. The Fire Department does not object to the use, the zoning or height of the building, but as Mr. Lopata alluded to earlier, we do have some concerns with access and compliance. So, we would like to meet with the City and the design team at some point to iron out the little problems we have with it. To answer the question between the Post House and Iron Hill, we can get down there, but when that last parking space is occupied it makes it awfully hard to get in there, but you can get a fire engine down there.

Mr. Jeff Bergstrom: 5 Darien Road, Newark. I wanted to come up this evening and address a couple of things that I saw on this plan. It actually concerns the site because the drawings of the building you have can't possibly work. And, I really pretty strongly object to a plan that is incomprehensible and impossible to do.

I guess what really incensed me over this was the public notice I believe pretty strongly in FOIA and to put the notice of the sign for something like this behind a fence inside a stormwater pond is just beyond (inaudible) as to how that could even get us hear this evening.

Briefly, you have seen some concern about fire trucks and access to the place. We will get through the building plan, and Roy is 100 percent right about that, the building will be built to the existing Code. The Fire Code for this building is going to require a like a two hour rating on the walls that are less than five feet from the property line. It will be a rather interesting endeavor. The seven drawings that they have shown you, they have shown you the infeasibility of a trash truck and a fire and emergency vehicle accessing the site and, in fact, the impossibility of even a passenger car getting

onto the second floor and using the parking spaces or the availability of the first floor availability of the first floor parking spaces because you just can't make the swings from the (inaudible). These pictures prove that the swings just don't work. If you are considering a site plan, you should have a site plan that is conceivably possible for this building floor. You shouldn't just be able to make up an imaginary building that would possibly get the required number of parking spaces in there or not lose quite so many as otherwise be lost and then go ahead and get the Planning Commission to approve a site plan when, in fact, it is going to turn out that this just can't be built. I don't believe there is any other building in town that doesn't have any frontage. It only has frontage on a fire lane that exists for two existing buildings. The fire lane from Trader's Alley is supposed to serve as primary egress and ingress for this building. It is just a very dangerous scary situation to build buildings (inaudible). I'm sure the Building Department will have plenty to say about it when they come in for building permit plans, but I just could not sit down and not address the Commission with my concerns about this submission. I have never come to the Planning Commission before. I have lived here since 1987. I made one Council meeting and now one Planning Commission. This offends my sensibilities.

Mr. Kevin Davies: I represent Iron Hill Brewery. I am one of the three partners. I am very happy to be doing business in Newark. We have been here 15 years now. My partners and I have discussed it. We are very much in support of the project. We like the fact that the parking is being turned over to the City. We think that is a good thing. We had some reservations about the project behind us (Campus Edge) with the parking waiver they received. But, I see this as a really positive project for the City. I don't see how it is going to negatively impact our business although construction will be an issue, but that is always an issue with any project. I just wanted to let everyone know that we support the project and we think it is good.

Mr. Mark Sisk: I am here on behalf of Hessler Properties who owns the adjoining parcel. You've been through a lot of these. I've been through a lot of these. They tend to be learning experiences. In the last go around with Campus Edge Sassy came and opposed that project here and then had some concerns answered by the time the matter got to Council and was in a position, she felt, to support that project. We are having some questioned answered tonight and we appreciate the time everyone has taken both tonight and beforehand to explain things.

I would say our main remaining concern is the closeness of the building to her property. It is right up against the property line. Is it not?

Mr. Charma: The building itself is ten feet deep. The parking structure is ten feet from the property line. The ground level parking is about six feet in. So, it is not right up against the property line.

Mr. Sisk: We appreciate the clarification. We still find this very close for our comfort.

Mr. Shawn Tucker: I am an attorney with Drinker Biddle & Reath here in Delaware and I represent two neighbors this evening in regard to this application – Campus Edge LLC, which is the property located to the south of this property which is highlighted in yellow on this board that I put up; and also, Schlosser and Dennis LLC, which is represented in green and to the east side of the applicant's property that you are considering this evening.

With your permission, Chairman, I would like to hand out a letter that I put together late today along with some attachments that I would like to discuss briefly with the Commission regarding some of my client's concerns about this application.

If I could begin by indicating that both of my clients are longtime residents and/or business folks here in the City and both of my clients have no objection to the applicant's lawful Code compliant use of their property. My clients do, however, have certain specific issues which I have listed in my correspondence to the Commission this evening that we are concerned about that we do have questions about and just to give you an idea of timeline, I would have much preferred to get this to the applicant before this evening.

But, this timeline is really driven by the applicant more so than us. I was retained just late last week by the Schlosser LLC and about a week to a week and a half ago by Campus Edge. So, we have scrambled pretty quickly to look at the plans, understand the issues, have different folks take a look at the plans, and in fairness to the applicant, we don't expect them to be able to answer all the issues that we are going to raise this evening. But, in fairness to us, it takes time to put these things together, understand them and analyze them.

If I could start with #1 which is on page #2 of the handout, one concern that Campus Edge has is that there is an easement that cuts through Campus Edge and serves this application. One of the concerns is the height of the first floor. The first floor as we scale it is about 8 to about 8 ½ feet. One of the concerns is that large vehicles, trucks and/or emergency vehicles that may want to gain access or need to gain access. We are having a problem with height. Campus Edge proposed 14 feet for that very reason, and, in fact, it was approved at 14 feet. So, one of the things that we are asking the applicant to consider and the Commission to consider would be that their building would be lifted to 14 foot height to address that access issue. What we don't want is vehicles coming up and not being able to get through because of the height has it backed up on that easement and have to back out into Delaware Avenue which would create a conflict on our client's site. We have a similar issue on the Main Street side where access is taken there which could create some unsafe backing situations. Again, not something that is a show stopper but it is something that we think the Commission and Mr. Lopata should take a look at.

Mr. Lopata: We raised that issue in the report.

Mr. Tucker: I have not seen your report.

Mr. Lopata: I said it during my summary.

Mr. Tucker: Sounds like that is on the radar screen which we appreciate. I spoke briefly to the applicant's counsel and I am glad to say that he said that they are looking at as well.

The second issue that has come up and Mr. Bergstrom spoke about it – some turning radiuses that I looked at just before the hearing. There is some significant concern over how vehicles would move within the structure. One of the things you don't see on the plan is where the pillars fall, which will raise some other potential issues.

Mr. Lopata: I raised that issue in my report.

Mr. Tucker: Mr. Lopata, I was out of the room for about half the meeting, so I apologize if I missed that.

Mr. Lopata: I just wanted to make sure you know.

Mr. Tucker: One of the things that may further complicate this is where those pillars fall, but it appears that you can't make certain turning movement, especially with larger vehicles. Again, our concern is this potential backing up issue especially with larger vehicles. Again, not something we would submit as a show stopper. That is not why we are here, but something we would like the applicant to address realizing this may be coming up for the first time tonight. We don't necessarily expect that he or she must address it tonight, in all fairness. We are also looking a little bit at whether or not Campus Edge would be overburdened by this use. We are not certain of that. We are looking at that. I have discussed that briefly with Mr. Tarabicos. I think Mr. Tarabicos and I agree to a certain case that is sort of instructive on this. I am not saying that it does that but we want to better understand the project and whether it is going to be a municipal lot or not a municipal lot. Currently, I understand it is proposed for a municipal lot. That may change. We're not sure. We are trying to talk through some of those issues and we wanted that as part of the record.

Regarding the construction of the building and the parking area, one of the things that came to our attention was where are the vehicles going to be parked. Where is the

crane going to go to build this because there are no constructions easements that we are aware of? It appears to us. Again we are not certain and need to know from the applicant and understand from the applicant where the vehicles are going to come in to construct this and how they are going to do that without appropriate easements. There is another project that I am involved in where that wasn't addressed at this level and now there is going to be a lawsuit over it on Main Street. It is going to result in litigation and expense. It is unfortunate. It's not something in your code book necessarily, but it is something we would submit from a planning standpoint as worth looking at and examining and asking the applicant how they are going to do that.

We have retained the services of Bill Davison who has looked at some of the fire safety issues. Literally, when I walked in tonight I got a copy of what he had put together and I have handed that out with the letter to you. Again, I am just seeing it for the first time and understand that the applicant is seeing it for the first time, but there are a list of issues, questions and concerns that he has and with the Commission's permission, he would like to speak and give a summary of those, if you would like.

Mr. Lopata: There is some confusion here. We certainly didn't raise the issue of the easement access; the one you just mentioned. And we normally don't raise the issue of construction easements, as you've just said. The Fire Code must be complied with. I said it a lot briefer than that but the Commission has been told that that has to happen.

Mr. Tucker: Regarding trash pickup. It is our understanding, and maybe the applicant can clarify this – that trash pickup would have to incur with vehicles in and taking access for municipal trash pickup coming in on Main Street. It doesn't appear that the truck can turn or get through so there could be a potential backing up into Main Street issue. Again, looking to see how the applicant is going to work around that or design around that. We think they probably can. This plan doesn't give us enough detail to understand how that would work and at the height, we don't think it does.

Probably the most significant issue for us is #7. I have attached the easement to the packet. This easement is an easement between the Schlosser property and the Trader's Alley property. What this easement does is give certain cross access rights that Schlosser enjoys on the Trader's property and vice versa. If you look, in particular, eight pages into the packet, I believe there is an Exhibit A attached to the easement which shows where specific parking is and where the cross access rights exists. There is some very specific language in the easement agreement that I provided you that states that this parking is to be uninterrupted parking easement for all marked spaces as identified by Exhibit A. There are two problems that jump out at us, in that regard, that really need to be addressed we think. And, the City is, we understand, going to be a party to this if it is a municipal lot. How can you have a municipal lot where there is a cross access giving our client rights to use those spaces today. We would respectfully say you can't. So, that raises the issue of whether it really could be a municipal lot or not because, in our opinion, you can't put a municipal lot in and charge for spaces where somebody already has a contractual right to use that by the season. So, that is obviously a concern.

The second issue is, there is a specific exhibit attached to this easement that you can all look at where it identifies parking. That parking all changes now. That is inconsistent with what we believe the easement says and the exhibit to the easement. Again, we are looking to hear from the applicant on that. I know Mr. Tarabicos indicated kindly today that he would like to talk more about this. And, again, in fairness to Mr. Tarabicos and his client this is all sort of coming up tonight, but it is not our timeline. It is the applicant's timeline. We are trying our best to raise the issues that we think we need to address our client's property rights concerns and work through these issues.

Those are, I think, the key seven issues that we are really concerned about and need to better understand. Maybe the applicant can address some of them tonight, but maybe not. Again, we understand why not if he can't or they can't.

Having said that, I am happy to answer any questions that folks may have of me. Mr. Davidson, I know, would like to speak briefly if it is okay with the Commission. If the Commission thinks that for another day, you have the materials he has provided. My

client may also want to say a few words just from personal experience on the property and some of these parking issues as well.

Mr. Bowman: First of all, I think Roy answered the questions about the fire protection issues, that the building must comply with the appropriate City Fire Code. So, any further elaboration on that issue is going to be a waste of everybody's time at this point. We have a document in front of us. The City is well aware of the codes. The Deputy Fire Chief spoke about some minor issues he has, so I would just as soon let that issue lie. It is on the record with the materials you have submitted. Reiterating the Codes is not going to solve a lot of problems here tonight other than drag this meeting out. If there are questions from the Planning Commission on these issues, fine, let's ask them. If the applicants want to respond, that's fine.

I'm starting to get the feeling that the effective way of maybe dealing with this is to put this on the table and let you folks work out your differences. I'm a little bit concerned that a lot of this stuff popped up tonight just out of the clear blue sky not only surprising the Planning Commission but also surprising the Planning Director, some things that he, apparently, had not heard about before. I know that from the past meeting there were some combined issues here when there was an attempt to get a combined project. I think rather than drag this thing out and not solve anything tonight, that might be the way I am going to recommend that the Commission go.

Mr. Begleiter: Mr. Chairman. I just want to say for the record that I think there is a procedure for allowing public comment and I believe if a member of the public wants to make a comment, we don't really have the standing to deny the opportunity to do that.

Mr. Bowman: We don't have the standing to deny them, but we have a matter of record that states that this building needs to comply with the Fire Codes and to basically drag the meeting out by having a re-education on the Fire Codes I don't think, personally, that is necessary. Now, if the members of the Commission want to override the Chair, fine. That is up to you.

Are there any other questions? Are there any other comments, in general, from the public on any issues that haven't been raised at this point? If we are going to beat over the same issues, we are, again, wasting our time if we are just going to reiterate what Mr. Tucker said. Do you have anything to add above and beyond what Mr. Tucker has said?

Mr. Tucker: Mr. Chairman, again, out of respect to the Chair and the Board, as I indicated, we didn't want to present any further if you didn't think appropriate. My client just has a few comments from his own personal experience.

Mr. Paul Schlosser: I am half owner of the Trader's Alley property with my brother-in-law and sister (Schlosser and Dennis). We do oppose the project, by-the-way. I don't know if you have heard of a company called Schlosser and Associates. We do very large complex projects, and I have not been contacted that they are building this building. If you look at their building on this property line back here, what are the means and methods that they are going to use to construct that building without being basically on my property. They are on the property line. They need a lay down area of at least what my parking is back here. Where are they going to put their dumpsters; where are they going to put their port-a-john; where are they going to put the people every day that are going to come to this job to work and park? The construction process is quite unique. What are the means and the methods that we are going to use and not interrupt and bother other people while we are working. I will leave it at that.

Mr. Bowman: Is there anyone else from the public that wishes to comment? Back to the table. Again, I, as the Chair, am going to strongly recommend that we look to a motion to table. If you have other ideas, we will entertain them.

Mr. Tarabicos: Mr. Chairman, do we have an opportunity to respond?

Mr. Bowman: You may.

Mr. Tarabicos: I am the attorney for the Tsionas family. Mr. Chairman, members of the Commission and Mr. Lopata, I appreciate your time this evening. I would like to respond to some of these issues. I would like to ask Mr. Charma to respond to one and the Construction Manager Dave Grayson to respond to the issue about the construction.

I do want to clarify. We didn't create this last minute timeframe. Ms. Matulas, Gus Tsionas' daughter has been trying for several weeks – and she did contact Ms. Geissel. She had a lot of difficulty because she wouldn't get return calls from Mr. Dennis, but she has been trying since the end of June to contact them. She has left messages. The last minute sort of ambush here wasn't our doing. There has been an effort to contact them. She has been in contact for months and months with the Campus Edge developers.

I did want to address a few issues. Mr. Chairman, I think you are right, frankly. What I said to Mr. Tucker earlier today was that there are issues that are not City zoning issues regarding these easements that should be resolved between the parties. I do want to give you some background and explanation. We made a decision back when you considered the Campus Edge project. My clients made the decision not to speak that night and not to oppose it. I happen to agree with you, Mr. Begleiter, and other members of the Commission, that they should have been handled together. They should have been processed together. And, immediately after that hearing we hired their engineer and we allowed them to sort of run our project. Mr. Mayhew who is one of the principals of Campus Edge represented to us that he had reviewed all of these things with Mr. Dennis. So, if that was the case, we were misled. And, I apologize for that. If there are issues that are outstanding that weren't resolved then we do need to resolve them. When I suggested to Mr. Schlosser earlier and he told me he wasn't interested, I said we ought to sit down like human beings and together sit around a table and work these issues out. And, that is what needs to be done and I agree with you, Mr. Chairman. I do want to say that the easement issues are complicated issues and the easement is our easement and we have the right to use it. But, we aren't going to shove anything down anybody's throat. We were going to eliminate our rights to use their parking. If they don't want us to, we can. We can continue to use it forever if that's what they want. Those are the issues that need to be worked out. It is unfortunate because a lot of these issues would have, in fact, been addressed if both plans had gone through at the same time. It kind of reminds me of a phrase that Dr. Soles (my old college professor here) used to say and then the Supreme Court Justice Jack Jacobs, "Someone is hoisted on their own petard." And, that is what we have here. People that are upset because they didn't do what we suggested they do and what some of you had suggested they do that we all work on this together and process it together. So, we have some people that are hoist on their own petard. That is unfortunate, but we are here to say that we want to sit down and work and if it is the Commission's pleasure on a 14 apartment project that we table it and come back, we are happy to do that.

I did want to address a couple of other issues. Ms. Sheedy and Mr. Begleiter made a very good point about owner occupied. I want you to understand that this building and the Tsionases own about 75 apartments now in the City of Newark. They are known as pretty much one of the best operators. They have the lowest incidences of any problems in any of their apartments, and they have very high quality properties. It is very interesting the way these apartments have been designed. They are two story apartments. It is not two stories of apartments. They are two story apartments. It is like townhouses on the inside. You go in on the third floor and then you have internal access to the fourth floor, so to speak, where your bedrooms are. And, you have private parking on the second level so you can actually walk right into your front door and then access your entire unit. We designed them this way because we want them to be adaptable and sustainable into the future so we can convert this to condominiums someday. Right now the market is what the market is. There is not a very good real estate market for building and selling properties but we do believe this is an amazing city and it will be someday so it is important not to build four bedroom apartments that can't be used by anybody but students but, to do this type of apartment that is accommodating and adaptable to that future owner occupancy. I did want to address that. The Campus Edge project has a restriction that allows 140 occupants. One of the misstatements in the recommendations, I think there was at one time a mix of three and four bedrooms, but now it is all three

bedrooms now. So, ours would actually be limited to 70, not even 82. Five is the restriction that Council had put on.

Mr. Lopata: If you want to give your clients less occupants . . .

Mr. Tarabicos: What we were proposing was to be consistent with Campus Edge all along.

Mr. Lopata: You can be inconsistent,, but I don't want to hoist you on your own petard.

Mr. Tarabicos: Okay, well thank you.

Regarding Mr. Rudd's comment and we will sit down and work with them on the Fire Code issues. We will continue to work with Ms. Geizel and her attorney on the closeness of the building. I do think it is important for us to sit down and talk with our neighbors. We have been trying to do that for weeks. We have been talking with Kevin and Kevin and Mark Ziegler, who are the principals of Campus Edge, for months. Unfortunately, it didn't work out for the two plans to come in together so we are not here as a joint plan. That is the basis of some of these issues and on the parking issues. If you are interested, Mr. Grayson can tell you how this building can be built without construction easements and I think Mr. Charma would like to address the issue of the turning movements, but I don't know how important it is to deal with that tonight.

Mr. Bowman: In my opinion, and until you folks get your differences worked out, all we are doing tonight is spinning wheels. Personally, I would like to hear a complete story after all the parties get together and hammer this thing out so you can come back with no surprises and we hear a complete straight story – one opinion.

Mr. Tarabicos: We are happy to do that, of course, it takes two to tango, so to speak. They have to be willing to sit down and talk.

Mr. Lopata: It is probably three because you have Schlosser, Dennis, three sets of parties that will need to continue to try to get together. I will just tell you, for the record and so the Commission understands this. Mr. Tarabicos sort of touched on it in passing. The Planning and Development Department has since day one tried to get the parties to work together including Mr. Dennis who was at our initial meetings and is Mr. Schlosser's partner. Unfortunately, we have never been able to get everybody to agree as you can see. Witness tonight's discussion. We have a ways to go. I'm forever optimistic that these things can be worked out. I These issues will have to be resolved before you see the plan again, and you will be seeing, I think, a somewhat different plan.

Mr. Tarabicos: We appreciate all of your efforts. We acknowledge that you have been trying all along to do that.

Mr. Lopata: It is a very complicated thing to develop property in Newark. It is a very complicated thing to develop property when you have neighboring landlords who may or may not have shared interests. If I can answer any other questions, I will be happy to.

Ms. Dressel: First of all, I would like to thank Mr. Tarabicos for making your very levelheaded statements so that we can understand that there have been efforts made across the board because I think that is important to see. But, I do agree that this needs to be tabled. There seems to be too many issues, unfortunately.

Mr. Begleiter: First of all, I would just like to say that this is more than just a 14 apartment project. This is an infill project as Mr. Charma correctly noted at the beginning which will set a very important precedent for many other properties in downtown along Main Street. There is a whole boat load of places along Main Street where similar situations either do already exist or very easily will conceivably exist in the future. I think the way the City and its property owners handle this case is very important, not just for this case but for others in the future. One adjacent property owner in this case opposes the project. Another adjacent property owner has raised concerns about it tonight. The Deputy Fire Chief of the City has concerns but for some reason he

declined to specify. The Planning Director himself has raised, although, rather obliquely, the issue of the access height under the fuel bearing vehicles and residential units of the Campus Edge project. And, there are the parking easement issues which I was unaware of and they are certainly complicated issues. I just want to say before we vote that this is precisely why I voted against the Campus Edge project when it first came up before this Commission. I don't remember if I was the only one who voted against it. Maybe I was. It doesn't matter. I think I said at the time – and I feel the same way tonight – this is a shake and bake project. It has not been thoroughly thought through as the parties themselves tonight have acknowledged publicly. So, I feel good about my initial vote. I think we should have required these parties to work together at the time the first project was initiated so things wouldn't be too far down the road for changes to be made that could have accommodated all the projects on this property.

Mr. Bowman: Let me remind people that if we have a motion and it is seconded, it is not debatable.

MOTION BY BEGLEITER, SECONDED BY DRESSEL, TO TABLE THE TRADER'S ALLEY MAJOR SUBDIVISION, SITE PLAN APPROVAL AND SPECIAL USE PERMIT PLAN.

VOTE: 5-0

AYE: BEGLEITER, BOWMAN, BRILL, DRESSEL, SHEEDY

NAY: NONE

ABSENT: BROWN, JOHNSON

MOTION PASSED UNANIMOUSLY

As there was no other business, the Planning Commission adjourned at 8:23 p.m.

Respectfully Submitted,

Elizabeth Dowell

Secretary to the Planning Commission