

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

November 1, 2011

7:00 p.m.

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

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Edgar Johnson
Kass Sheedy

Commissioners Absent: Patricia Brill
Angela Dressel

Staff Present: Roy H. Lopata, Planning and Development Director
Maureen Feeney Roser, Assistant Planning and
Development Director
Jerry Clifton, Councilman, District 6

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

1. THE MINUTES OF THE OCTOBER 4, 2011 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECONDED BY BEGLEITER, TO APPROVE THE MINUTES OF THE OCTOBER 4, 2011 PLANNING COMMISSION MEETING.

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

2. REVIEW AND CONSIDERATION OF THE REZONING FROM BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS DISTRICT) OF THE .345 ACRE 132 E. DELAWARE AVENUE PROPERTY WITH MAJOR SUBDIVISION, A PARKING WAIVER AND SPECIAL USE PERMIT FOR A FOUR STORY BUILDING WITH 6,000 SQ. FT. OF COMMERCIAL SPACE AND 14 UPPER FLOOR APARTMENTS. [TABLED AT THE OCTOBER 4, 2011 MEETING].

MOTION BY BEGLEITER, SECONDED BY SHEEDY, THAT THE 132 E. DELAWARE AVENUE PROJECT BE LIFTED FROM THE TABLE.

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

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

“On October 4, 2011, the Planning Commission tabled the proposed redevelopment project for the properties at 132 E. Delaware Avenue and the parking area to the rear of the building at 123 E. Main Street, after reviewing the Planning and Development Department’s September 27th report, hearing the applicant’s presentation, receiving public comment, and discussing the matter in detail. As a result, the applicants, E. Delaware Avenue Associates, LLC, have submitted the attached substantially revised rezoning, major subdivision, special use permit and parking waiver plan that no longer makes use of the parking area parcel at 123 E. Main Street for building construction and, instead, proposes a smaller three story mixed use facility with 6,000 sq. ft. of commercial first floor space and 14 upper floor apartments, fronting on E. Delaware Avenue.

Please see the attached Landmark JCM revised development plans, applicant’s new supporting letter, and the original building elevation drawings [these have not changed from the plan previously submitted for Commission review]. For reference purposes, we have also attached the Planning and Development Department’s September 27th report for the initial subdivision plan that describes the site and includes related project information.

The Planning and Development Department’s summary regarding this revised 132 E. Delaware Avenue redevelopment plan follows:

	<u>Original Plan</u> [Plan Originally Submitted for Commission Review]	<u>Revised Plan</u>
Site Area	.680 acres	.448 acres
To be Rezoned BB	.345 acres	.345 acres
First Floor Commercial	4000 sq. ft.	6000 sq. ft.
Apartments	28	14
Maximum Number of Bedrooms	3	3
Building Footprint	15,600 sq. ft.	6,000 sq. ft.
Building Height	4 stories	3 stories
Density	41.18 units per acre	31.25 units per acre
Parking Waiver	51 spaces	19 spaces
Parking Waiver Fee	\$211,447	\$42,289

Subdivision Advisory Committee

Except as otherwise modified below, the relevant City Subdivision Advisory Committee comments in the Planning and Development Department’s September 27, 2011 report continue to apply to the 132 E. Delaware Avenue redevelopment project. The revised Committee comments are as follows:

1. The Planning and Development Department notes that the applicant’s latest plan corresponds to our suggestions for a decrease in the number of units proposed, restrictions on number of bedrooms per unit, and, by substantially reducing the building’s size, limiting the overall intensity of the project.

2. The Public Works Department indicates that the proposed 10 foot wide storm drainage easement along the eastern boundary of the property will need to be revised to a minimum width of 20 feet; this may necessitate a revision in the proposed building footprint.
3. In light of the relocation of the proposed building, the Parks and Recreation Department indicates that a landscape plan should be submitted taking into account this change.

Recommendation

Following the Planning Commission's review of this report and its consideration of the applicant's presentation and public comment, if the Commission determines that the revised 132 E. Delaware Avenue redevelopment plan is compatible with recently approved downtown projects in terms of design, scale and intensity of development; that it will not have a negative impact on adjoining and nearby properties; and that it conforms to the guidelines of Comprehensive Development Plan IV, the Planning and Development Department suggests that the Commission take the following actions:

- A. Recommend that City Council approve the rezoning of the portion of the 132 E. Delaware Avenue property currently zoned BL (business limited) to BB (central business district), as shown on the attached Planning and Development Department Exhibit A, dated October 5, 2011;
- B. Recommend that City Council approve the 132 E. Delaware Avenue major subdivision and special use permit plan, as shown on the Landmark JCM revised plan dated July 22, 2011, with the Subdivision Advisory Committee recommended conditions;
- C. Approve the requested 19 space parking waiver for the 132 E. Delaware Avenue redevelopment project."

[Secretary's Note: Mr. Lang, the Planning Commissioners and public referred to visuals brought to the Planning Commission by the applicant for his presentation to the Commission].

Mr. Jeff Lang: 13 Spring Water Way. I appreciate the time tonight to talk about our project. We, obviously, were here last month and had a detailed presentation about the project at 132 E. Delaware Avenue. We will summarize our project and the subsequent modifications.

Here is the present parcel as it stands right now. It is two houses that front on Delaware Avenue. The garage of one of the houses is in the parking lot which supports not only the two houses, but also the adjacent property at 123 E. Main Street.

The original proposed plan was a building that fronted on Delaware Avenue and had two wings to the building. The idea was to create a pedestrian walkway between Washington House and the building, as well as extend the pedestrian walkway, which presently existed at 129 E. Main Street and carry it all the way back out to Delaware Avenue to create two nice walkways from Main Street. And, we were going to pull in, park underneath the building and pull out. It created a building, as Mr. Lopata said, of approximately 15,000 ft. footprint. It had 28 upper level apartments in it. One of the reasons for the four story building originally was to create a scaling, which made sense with relationship to the Washington House. Here was the proposed building and the Washington House next to it.

After a couple of meetings with Washington House residents, there were some significant concerns, most specifically about the location of this portion of the building. When we came to Planning Commission and what did cause some reason for concern was the initial revised plan, which we discussed at length at that meeting and the merits thereof, associated with taking the wing of the building and pushing it over to the other side of the building, basically, creating an L-shaped building. We, basically, would

maintain a similar sized building. It would be a little bit smaller but would have 24 units and four story structure. We discussed parking, access, unit count, and density, at length at the last meeting.

In any case, after reviewing where we were at that meeting and the fact that we were tabled, we got together and talked about the thought process associated with the entire project and came up with an idea of consolidating really well the development up onto Delaware Avenue, taking the original two wings that created an L-shape and, instead, create a rectangular building of a much smaller size. We also thought about the concerns that the Washington House residents had with regards to the four stories. We thought that it made more sense to reduce it and scale it to three stories. So, we came up with a project that looks this size. It is a very similar footprint of the front portion of the old building. It is only three stories tall. It has 14 units. The units are still designed similarly with one, two and possibly one or two three bedroom units. We have parking underneath a small portion of the back of the building. What we have, basically, done is agreed not to even more the property line. So, all our development is on the property that exists and is owned by 132 E. Delaware Avenue where the two houses are. So, we haven't done any development, any modification to the property line that exists for 123 E. Main Street. There was some significant discussion about whether we were using that parking for the benefit of this building and vice versa, and we thought it was somewhat of a cumbersome conversation and we thought we would just maintain the same amount of spaces that are on 123's parking lot. Let's design a building that works on Delaware Avenue, keep it as far away from Washington House as possible. We have moved and consolidated the entrance like we had in the modified plan, which we talked about at our last meeting. We have enough spaces for one space for every unit, which was another concern. We talked at the meeting about if we were successful in eventually converting the building to owner occupancy, would there be parking available for every unit. Yes, there would be parking available for every unit on the parcel that the building resides on.

We thought this was a good compromise. We met with the Washington House residents before the meeting here. I think – and they will probably tell you – they were appreciative of the modifications, although, not necessarily entirely supportive of the overall idea of development on the parcel, but I think they will voice the fact that they are appreciative of a three story structure vs. a four story, the fact that we have made the building smaller and the fact that we have reduced the parking waiver. From a design perspective we think it is also very important to note that we have now incorporated balconies in all the units because we think from an overall design of the unit and the marketability of the unit that balconies are very, very important. That is one reason we have changed the façade. We will have balconies on the front and back of the building. Joe Charma, Dan Hoffman and Chris Locke from our group are here to answer any questions.

Ms. Kass Sheedy: Does the new layout still incorporate the walkway from Main Street to Delaware Avenue on one side or the other?

Mr. Lang: The walkway on the Washington Street side will continue to be the way it is. We are not modifying it at all. It is not on our property so we don't have the opportunity to modify it. There is an opportunity to create a pedestrian walkway here in the east side of the plan. We haven't shown it on this plan. It is something we had considered and possibly could extend it down here instead of having some of the green space there, but it could be a continued walkway on that side of the property.

Ms. Sheedy: Is the walkway on the Washington House side is part of the Washington House?

Mr. Lang: Yes.

Ms. Sheedy: I want to make sure that I understand that the quarter acre that is missing is the quarter acre that is not coming from the 123 parcel?

Mr. Lang: We had actually thought about moving the property line here and we have changed it back to where it is.

Ms. Sheedy: Is that why this size is different?

Mr. Lang: Yes.

Ms. Sheedy: In a couple of places it says there will be 5,000 sq. ft. of commercial space and other places, it says 6,000.

Mr. Lang: The footprint of the overall space is 6,000 feet. I didn't point out that we are going to have an elevator in the building. We will have an elevator lobby; we will have two stair towers. So, when you take that area out, you end up with 5,000 ft.

Ms. Sheedy: So, the actual available commercial space is 5,000 on a 6,000 ft. footprint.

Mr. Lang: Yes.

Mr. Begleiter: One of the other changes between the previous proposal and this one is that there is nothing in this proposal about deeding any parking spaces to the City.

Mr. Lang: Yes, you are correct.

Mr. Begleiter: You, obviously, have had a lot of conversations with a variety of people concerning this project since last month. In any of those conversations was there any discussion of the driveway access issue that we raised at the last meeting – the consolidation of those?

Mr. Lang: We talked about it at the meeting whether it would be possible to engineer and/or implement with them and with DelDOT. So, we have talked about trying to design something out that could work, submit it to them for review. Obviously, we have to go through the State approval process for our entrances, too. So, we are more than happy to work with them. There were some concerns about their pedestrian access and how you get across if you have joint access. There are some logistical issues, but we are more than happy to discuss that with them.

Mr. Begleiter: Is that still an open question, in other words?

Mr. Lang: Yes.

Mr. Bowman: At this point we will open the discussion for public comment.

Mr. John Hornor: 113 E. Main Street otherwise known as Washington House. I will start with a statement.

“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 graduates, retirees and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence.”

I didn't make up this statement. This statement is from page 26 of the City's Comprehensive Plan IV, approved in 2008. This is the vision that the City's approval of Washington House began to establish and the vision that the residents of Washington House have bought into. My wife and I and most of the other Washington House residents would prefer the Planning Commission stick to this plan. We understand that the current economic environment is not attractive to developers such as Mr. Lang, for owner occupied housing. However, this does not preclude the fact that one solution is not to develop every property at present, but rather wait until the economy improves.

The businesses of Main Street and the Central district would benefit by having a diverse demographic. There are already many apartments available up and down Main Street. I don't know the exact figure; I would bet that these are 95% occupied by undergraduate students. Many of these student rentals are unoccupied during the summer and winter session, which although make the City quieter during those times, does not

help the business community, especially the stores during that quiet period. They would benefit by year round ownership that would be around to shop all year long. As an example, I am sure Walgreen's appreciates all the business that our residents bring as many of us use the store as our convenience store.

To his credit, Mr. Lang has had multiple discussions with Washington House residents and has continued to alter his building project to reduce the number of apartments and the size. However, unless the Planning Commission is able to successfully and legally deed restrict the property to discourage undergraduate students, we don't envision how this wouldn't become another student housing (inaudible). Deed restricting in some way may actually encourage graduate students, professional, families, retirees and others to be able to have an apartment downtown. This would help to diversify the downtown population. However, it will not prevent another property off the books for future owner occupied development. We realize that an apartment could be converted to owner occupied housing in the future but this is not an easy thing to do and not something that can be counted on.

In summary, we would just like the Planning Commission to honor the vision of the Comprehensive Plan to encourage more owner occupant housing. Therefore, we would like for you to vote no for this project.

Mr. Jim Baeurle: I own the Stone Balloon Winehouse at 115 E. Main Street. I am also a partner in the Washington House Partners who built the Washington House project.

If I may, I have a handout for the committee. It reviews the parking waiver history of the property. Essentially, what we are trying to demonstrate with this handout is the life of this property and the 128 waivers that are being discussed if these new waivers were now added to the mix. What I am trying to grapple with is a fairness issue on two levels. First, the parking waiver issue as it relates to our property and the development of the former Stone Balloon site. We were offered zero parking waivers. We were told we are no longer doing them in Newark. That is what we were told. Over the 13 year history of this property right next door to us, you are contemplating 128 waivers. Even with the 19 waivers that are being contemplated tonight, the property will still be based on the town's current Code under its parking requirement. That is one issue I would hope I would like to hear as people vote tonight. If they do want to allow for additional waivers, I would like to hear why and how that differs from what we presented a very short time ago.

Secondly, the fairness in terms of owner occupancy and the vision of the Comprehensive Development Plan. As owner occupants and the people who have essentially, become pioneers for the City of Newark to contemplate a property not two blocks away, not three blocks away, but next door to this property and to say this isn't going to be the same under the guise of how the Comprehensive Development Plan looked at this area. I would like to hear individually as people vote tonight how they can make that difference.

Mr. Lopata: Mr. Chairman, if I can just interject. I was kind enough not to get into a debate with Mr. Baeurle at the last meeting. I am not going to be that kind this time because I don't think it is appropriate to keep misstating the history of his project. My recollection, which isn't always perfect, but I think in this case is accurate -- Mr. Baeurle came in originally with an 80 plus unit building. This Commission, although I am not sure any of you were on it, maybe you were Mr. Bowman -- was involved when the Commission tabled the project and then the Commission's reconsideration of a series of changes. Parking waivers were not part of the equation. The applicant came in with a Code compliant plan in terms of parking. In fact, that was one of the selling points that he made about the plan; one of the selling points he uses to market the property. It is a perfectly reasonable selling point. It makes a lot of sense. We certainly didn't object to not requesting a parking waiver.

So, I think it needs to be understood by those of you who live in the Washington House and the members of Planning Commission that irrespective of Mr. Baeurle's feelings about this project, that is not, in fact, not the way I recall the sequence of events

involving the Washington House project.

Mr. Baeurle: I think we both may be right. Parking waivers were actually recommended by your office as part of this review. Once we got to the Council level, it became clear to us that if we requested parking waivers, we weren't going to be approved. I just wanted to state that, if that is clearer.

Mr. Bruce Chase: 113 E. Main Street, apartment 404. As admirable as it is to suggest that this is convertible with one parking spot per unit, I don't know anybody who is going to touch it as a resident owner. We have enough problems right now where we have two full units and there are still parking issues that go on amongst the residents. The convertible part of it, I don't think is really feasible down the road. Following up on that, I don't know who is going to come in as the first one into a resident owner situation with students next door. Then, just following up on John Hornor's point of view, it seems like when I look at it we are sort of turning Main Street into a strip mall for the students.

Mr. Lopata: Do you mean students "next door" within the property itself?

Mr. Chase: This building is going to be student housing. At least that is my perspective on it. If they are talking about converting down the road, if you are going to do a step conversion and start to move units over to resident owners, it is going to take a brave resident owner who is going to come in and live on the same hall.

Mr. Lopata: A very tolerant resident.

Mr. Chase: So, it is just re-emphasizing this point. Yes, the University is part of Newark and a big part of it, but it seems like we are converting Main Street to something that is basically catering entirely to the students.

Mr. Chang: Washington House resident, #417. First of all, in 2008 we were at the Washington House in the sales office and we bump into the Mayor, Mr. Funk, and we asked him what was going to happen to the parking lot. Is it going to be built up? He said never. My wife was there, the sales person was there and he said never. Of course, I shouldn't take his word, but anyway we got one space in the parking lot.

My purpose for coming here is to say how much I appreciate American democracy. First of all, I appreciate that Mr. Lang is so even tempered to present his case. I am also grateful for our Council person, Jerry, for being so caring about our community affairs. Part of the reason I decided to come to the Washington House was because my daughter graduated from the University of Delaware and she got a terrific education and has a good paying job with Nike. We have a house in Hockessin. We haven't moved into the Washington House yet. We are in the process. Our properties have increased by 30% to 40% within the last three years. I just wish that the City of Newark would stick to its plan for the development of downtown, but I know at the end of the day that the people sitting over there, you are going to make the decision and I am not in the position to overturn your decision. I just said the most important and appreciate that we have all the hearings here.

Mr. Bowman: Let me make one point of clarification just to remind the body of folks that are sitting out there that do not understand the roll of Planning Commission. The role of the Planning Commission is advisory only. We can recommend, but the final decision rests with City Council. Just to make this clear, this is a non-paid, non-elected appointed body that reviews things based on the codes and the standards that are in place and we can make recommendations to accept or reject a project to City Council.

Ms. Susan Swann: Washing House resident, unit 419. God bless you for your labor of love. I appreciate it.

I do want to say at the beginning that all of the residents do support Jeff Lang as a local business owner and a member of the community, and we hope that he continues to prosper – we absolutely do. Nevertheless, no amount of downsizing of this particular proposal really changes the fact that, as others have stated, in real terms and real practices

is going to be student rental housing. That is the sole focus of my concern and many others in Washington House that Delaware Avenue does not become a corridor for student housing. This is not an in my back yard complaint against students at all. It is not in any way an anti-development kind of argument, but it is an argument for having balance among all the elements that contribute to a really thriving city.

We don't have very far to look to figure out where that balance could come from because it is in the City's Comprehensive Plan, which I was glad to be able to see. It is well researched. It has been publicly vetted and community approved. I think the plan is quite clear about the need for owner occupied housing in the mix of our downtown; and as people have said tonight, there are many good reasons for that – economic stability and public safety. And, I think, also just for the creation of a fully invested local population that will really be the long-term caretakers of this City's civic life. So, I wonder, why have a plan if we continue to nullify it over and over with a death of a thousand cuts type of thing that seems innocent on the face of it. Each particular project has its merits, but in sum, that is what happens. If this were Philadelphia, we could probably absorb a thousand cuts, but in our little urban enclave here the opportunities to shape the future of the City really don't come along all that often. We really don't have that many.

So, I do think the burden in the discussion should be on Mr. Lang as a developer to show why the City should depart from the plan that is in place. I would suggest this as a standard for the discussion. Would this structure add so much value to the downtown that it would compensate for what we lose by sacrificing another piece of property in this very small downtown to create a project that doesn't, as far as I can see, support any of the major goals for creating a really vibrant urban core to Newark? I have yet to hear anyone articulate what that value would be to the City. I think that is what we are here to consider. I think that value, if we are going to make that trade off, should be quite significant. We don't get many chances to actually carry out the Comprehensive Plan. So, how many of those changes will we take advantage of; how many will we waive away because every time we do it is an opportunity cost that is lost for generations. So, we would ask that the Commission honor the really good work that went into that plan and adhere to the vision of it.

I hope it is perfectly respectful to ask this. I certainly mean it respectfully, but it would be really great before a vote is conducted I would really like to hear the individual members reasoning whichever way you are leaning on this because I think it would be a contribution to all of us in articulating a vision to the City and in delivering the message to the City Council – whatever that is – to have this be a really transparent discussion and very standard spaced. If you could let us know what your criteria are, it would help us all to understand the process. I appreciate your time.

Ms. Sheila Anderson: Sypherd Drive, Newark. I want to pick up where she left off because I think it is really imperative that maybe the Planning Commission should focus there for a minute. I think she was right on the money. Picture this little place we are talking about now becoming like everything else we are seeing around town with right angles and flat fronts and not too much charm. What is it next to? If we go down Delaware Avenue, we have the Planned Parenthood building, which is not exactly the most aesthetic in town. We turn the corner and go down Haines. We've got four more little ones there. Two are, I think, legal buildings now and one is the old skate shop painted bright blue. You can't miss it. The other one is Dr. Hart's old office that is now sitting with broken windows. I would hate to see this building start to set a precedent that we now are going to round off full circle with student housing because we know that's what happened with Jimmy's Diner. Do we want to become a board and room town for the University of Delaware? That is what is happening. The University missed its cue a bit on building the big dormitories you see down by Clayton Hall. They were a little late. So, a lot of those rooms aren't filled.

What has happened now, we have now what I see a pending glut of privately owned student housing. The big picture of what is going on in the country right now and you hear about students with all these huge loans they have and you start to wonder and you start to think, big loan, degree, no job, maybe I will cut that four year thing they have talked about so much. What happens to all the student housing we have here. I think we

may need to think a little broader than just this project no matter how many ways we fix it. We are going away from our Comprehensive Plan which you just stated we have a code and standard in place. I am not sure that we are honoring that by bringing this plan to fruition.

Mr. Bowman: If anyone has anything substantially different to add at this time, you are welcome to come to the microphone. I think we have pretty well covered the blanket on the issues around the Comprehensive Plan.

Mr. Lopata: Mr. Chairman, if I could add one item on that matter, if you don't mind.

This discussion exemplifies the pitfalls of comprehensive planning. We have had four plans. Three of them were during my tenure, which means I wrote most of the language and then it was vetted, as someone said, thoroughly. This Planning Commission reviewed the current document, I think, six times and it was reviewed by City Council several times. But, having said that, what happens when you have a document of that length is that someone can pick a paragraph or section and read it over and over again and start talking about that particular part of the Plan as "the Plan" for a specific area. Well, there is another paragraph that is in my report to the Commission. Actually, it is the paragraph that appears in the text of my report just above the one that everyone is reading. I would like to read it so we understand that the "vision" is a little muddled in this case. It is not crystal clear. It is not as straight forward as I think some of us think.

This is the "District One, Core District" language that is specified for this location.

"This is the center of Newark 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; the 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 any potential significant negative impacts on nearby established businesses and residential neighborhoods."

Let me stop and repeat that phrase because I think that it underscores what several of you are saying and I think that is the most important issue that is before us tonight.

". . . the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and any potential significant negative impacts on nearby established businesses and residential neighborhoods."

And finally the text continues with:

"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."

So, you have this language, and by-the-way, there is other language that repeats some of these same things. My sense of what the Plan is calling for here is to encourage owner occupancy downtown, which is what we have tried to do with our New Center Village overlay district, that this Commission recommended and Council adopted; and with our review of a sequence of development plans downtown. In the latter case, this Commission and the Council has uniformly proposed reductions in density as a way of trying to either encourage owner occupancy or to limit the negative impact of apartments.

So, my point here is it is not a simple question of either or. There is a balancing

act and I think that the young lady who just spoke used that phrase and I want to emphasize that. And of course, this is what makes this decision so difficult. And that is why the Commissioners' salaries are woefully inadequate for the task at hand.

Mr. Lang: There are a couple of significant points that we brought up and we tried to discuss at length with the Washington House owners when we met with them. They seem to indicate that there is a direction for our town to increase owner occupancy. I think it is a great idea. I am an advocate for it. We have actually designed our building to create an opportunity for owner occupancy, but there is not an opportunity to develop, build and sell owner occupancy. If the intent of our entire municipality is to not improve any projects unless they are owner occupant, we will not have one single project that exists in the next number of years. So, might as well just not have a Planning Commission meeting for the next couple of years because there is not going to be a project to review. We went to great lengths to design our building around a possible conversion. Yes, convertibility is difficult, but it doesn't happen the way you guys talked about it. Typically any University related lease starts in June or September and ends in May. Well, if you know you are going to convert it a year from now, you have a whole year during your tenancy to ramp your sales up, get your selling going, and if you sell enough units, you can convert. You aren't going to convert Maureen's unit and in Ralph's unit there is going to be three 20 year olds and you are going to move in with your husband. It is not going to work like that. It is going to convert all at the same time. That is how projects get converted. They get converted because someone sees an opportunity in the marketplace and says I am going to implement it. There is financing involved, there are market conditions involved.

Regarding parking, it is great to have two parking places. If the price point is correct, you are going to sell it with no spaces, one space, two spaces, ten spaces, but it is all a factor of the market conditions. So, we have spent a great deal of time speaking with the residents, redesigning our building, creating units that can work today and can work in the future. We build projects not just for today. We build them for five years from now, ten years from now, twenty years from now. Hopefully, I will still be around to deal with them. You want to build buildings that will be the fabric of your community in the future.

One thing I wanted to point out, this is an aerial of the Washington House and I showed it to the Washington House residents when I met with them. If we want to build buildings that are conforming to parking requirements of downtown, you are going to end up with this down your whole street no matter what you build there because if I build an office building downtown, I'm going to have a ten story building. I am going to have four floors of parking. Ralph brought it up at the last meeting. We talked about the pros and cons of whether we think we need support parking downtown. We don't think you need more parking downtown. We think that is a function of the municipality. That is why Maureen's group, Roy's group and other people in the City are going to build parking garages. You don't want individual property owners building parking. You don't want it to happen. The University doesn't do it. The University built a garage. They wouldn't knock down the Green and put parking in there because there is a bunch of kids living on the Green. It just doesn't make sense. We want to create less parking not more parking.

The other thing that I wanted to talk about is that the variety of units are going to determine whose going to occupy it. If we built four bedroom units – we talked about this last month – and occupy them in six or seven kids like other projects around town, you are going to have a building that is occupied by all younger undergraduates. We talked about the need for smaller units, for seniors, graduate students, potentially young professionals that even work in and around Newark. That is the type of units we are creating here. That is why we have 14 units in a building. We have seven units on a floor. There are 1,000 sq. ft. or less. They are not big units. You are not going to put a tremendous amount of people in them. Just by function, you can't. We created balconies because we wanted them to appeal to the people that are going to utilize balconies productively and in a proper manner. You are not going to have 60 people out on a balcony having a party. The balcony is not that big. It is 5 ft. X 12 ft. It is going to have a couple of chairs where you can go out there and relax, come home from work or class.

I explained this to the Washington House residents.

As my own kids age, I understand their housing needs. I have a son in New York City in law school. He lives with one other buddy of his. He is looking for a one bedroom or to live with two people. I have a daughter that just graduated. She is looking to live by herself or with one person. There are not very many, if any, units downtown that produce that type of opportunity. I could propose eight four bedroom units. How can this impact be so detrimental to the community? I think we are actually creating a smaller building than we could have proposed before and, in reality, we could come back with a three-story garage and 50 owner occupied units that would block every bit of sunshine this building has. I don't think that is exactly what they want, but they will complain about that when I propose that if we are not successful here.

This is our project; this is Planned Parenthood to your right, parking lot, and then another project on Delaware Avenue three properties away. Somehow that group walked in with support of the Washington House and talked about how it was such a great project, 24 units with 140 residents. And, they supported it three properties away from our property. So, they are saying that this is not related to the fact that it is directly adjacent to them. It is totally related to the fact that it is directly adjacent to them.

We have addressed every concern I think we can address without leaving the two houses. We have turned a large project into a small project. We pulled it off the front of the street, we have reduced its size, and we have created the type of units that they would like to see that we would like to see that we would like to see. We think they are going to be good for not today but five years from now, ten years from now, or thirty years from now. It has an elevator, it has storage on the first floor, it's got a parking space, it has small units and it has balconies. It has everything that you could ever want in a project, but you can't build what they want. There is no way you can build that today. If you could build it, I would be trying to do it because that is what I do. If there was a market there, we would be here telling you that's what we want to do because that is what the market is. This building is the best you can do in today's economy. If you guys want to see development, great.

Mr. Bowman: We will now bring it back to the members of the Commission.

Ms. Brown: Roy, from our previous meeting you said the annual net revenue to the City would be about \$6,900. Is that still the figure?

Mr. Lopata: It would be about half that. We didn't recalculate it because projects of this size we tend not to do the Fiscal Impact Model. They are so small it is hardly worth talking about. So, this is not a revenue generator. It is just too small.

Ms. Sheedy: Roy, in the Planning Department's report from the last submission last month there was a list of the permitted uses under BL zoning. Is that list comprehensive and inclusive.

Mr. Lopata: It includes everything. Yes.

Ms. Sheedy: In that case, I do have a comment. A couple of people have asked the members of the Commission to speak individually about the project. If we go back to the wording from the Comprehensive Plan we talk about apartments and offices on upper floors, specialty and traditional retail shops, recreation and entertainment, destination, City and so on. Well, if you look at the BL zoning permitted uses – and remember, the applicant is asking to rezone from BL to BB: “churches, schools, parks and playgrounds, municipal utilities, public transportation, bus or transit stops, social clubs and various other civic organizations, accessory uses, hospitals, residences limited to one apartment provided in conjunction with any one non-residential use, professional offices, finance institutions, undertakers, barber shops, beauty parlors, medical clinics, and bed and breakfasts.” Now I submit to you that that list of the currently permitted uses for the property does not call to mind a vibrant exciting downtown community. A bed and breakfast in town would be nice, but undertakers, utility offices, private social clubs and hospitals are not the kind of things that you think of when you think of “New Urbanism”

and a vibrant small town or large town community. The BB zoning allows for, “retail and specialty stores, food stores, restaurants, bakeries, delicatessens, banks, offices, personal services establishments, studios for arts, designers, photographers, musicians and sculptors, repair and servicing and related indoor storage facilities, accessory uses, parking, social clubs, photo developing and finishing. It seems to me, that putting aside for a moment what the applicant wants to do with the property, the zoning change is much more compatible with what the Comprehensive Plan lays out for this area. If you think about those kinds of uses – artists’ studios, photography studios, restaurants – that to me speaks of a vibrant, exciting downtown area as opposed to undertakers and hospitals.

The other point is, this is the first time that I have seen a request for the downtown area that is anything but four bedroom apartments. People have talked about University encroachment because of student housing on Main Street and I totally understand that. I went to the University of Delaware for graduate school. Neither of my children went here. I don’t live here because of the University. I live here because I like the town. This is the first time that I can remember that we have seen something that is not destined necessarily forever to be student housing. Some of you who come frequently may remember that one of my constant questions to developers is what about owner occupancy, what if I decide to sell my house because I am one person in an eight room house. Where am I going to live? They all say, well, we can’t build something like that right now. This is, at least, an attempt to do something different. It may be difficult to convert. The economics may never happen, but there is at least a potential for conversion. There is a potential that if Maureen and her husband decide to sell their house and move downtown that they would rent a two bedroom apartment. This is the first time we have seen that. This is sort of like the opposite of a foot in the door. It is like a foot out of the door. It is a foot in another direction. In a direction that I think should be encouraged. And, that is my response to individual Commission members justifying themselves.

Mr. Begleiter: I am going to conclude my remarks with a recommendation for approval of this project because I think that to expect the Main Street/Delaware Avenue Corridor in Newark to be anything less than closely connected economically to the University’s faculty, staff and students is unrealistic, actually a fiction. It is what the Delaware Avenue/Main Street corridor is today and what it will be as long as the University exists in this town. My recollection is the Census Bureau counts something like 35,000 or 36,000 residents of Newark. Of those, only about 10,000 are actual fulltime year round residents and not students. From that perspective, to pretend that the City of Newark is anything other than connected to the University is almost silly.

Washington House residents who are here tonight seem to want to have nothing to be built on that property. One of the residents actually testified to that effect that that is what he expected when the Mayor allegedly made that comment. To expect a property in this kind of prime location to be completely undeveloped is simply unrealistic and I don’t think it is in the best interest of the community or the City economically, politically, socially, culturally. I think Kass stated it very very well. The commercial properties at the bottom of this building are going to be in a place and of a designation that should add to not detract from the nature of the creative and vibrant nature of the community.

Washington House itself, although I was not on the Commission at the time, was highly controversial when it was proposed and built. Its residents today are the beneficiaries of that debate. Thankfully, that project turned out the way it turned out. And before turning to the specific proposal, I just wanted to say that I think this Commission has amply demonstrated on this project both its commitment to holding developers’ feet to the fire and its commitment to all the citizens of Newark as counted by the Census Bureau. I would like to note for the developer that I think you have done an incredible about face in a month. You obviously took your discussions with the community and your neighbors and with the Planning Commission last month to heart, have made very substantial changes in this proposal, meeting the recommendations that were made by the Planning Director last month for an overall reduction in the number of units proposed, limiting the number of bedrooms per unit, reducing the unit per acre count and very dramatically reducing the request for a parking waiver. I like the design of the project, although, that is not really our specific concern here. I really like the open

space that you have left between Washington House and this project. That will be a nice relief from the height of Washington House on the skyline and for those walking between Main Street and Delaware Avenue toward the new commercial area that will burgeon on Delaware Avenue between this project and the one that you made reference to earlier a few spaces east on Delaware Avenue.

I would like to suggest in my recommendation of approval that in addition to the recommendations made by the Planning and Development Director that you also work very hard over the next few months as you proceed with this project to work on the consolidation of driveways issue. It may be unsolvable, maybe one of those things that can't be done, but it is a great opportunity there to do something that will avoid having two inbound and two outbound lanes of traffic separated by a pedestrian walkway in the middle.

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

- A. RECOMMEND THAT CITY COUNCIL APPROVE THE REZONING OF THE PORTION OF THE 132 E. DELAWARE AVENUE PROPERTY CURRENTLY ZONED BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS DISTRICT), AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED OCTOBER 5, 2011;
- B. RECOMMEND THAT CITY COUNCIL APPROVE THE 132 E. DELAWARE AVENUE MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN, AS SHOWN ON THE LANDMARK JCM REVISED PLAN DATED JULY 22, 2011, WITH THE SUBDIVISION ADVISORY COMMITTEE RECOMMENDED CONDITIONS; WITH THE ADDITIONAL CONDITION THAT THE APPLICANT ATTEMPT TO ARRANGE FOR THE CONSOLIDATION OF THE DRIVEWAYS AT THE WASHINGTON HOUSE SITE AND THE 132 E. DELAWARE AVENUE PROJECT.
- C. APPROVE THE REQUESTED 19 SPACE PARKING WAIVER FOR THE 132 E. DELAWARE AVENUE REDEVELOPMENT PROJECT.

VOTE: 3-2

AYE: BEGLEITER, BOWMAN, SHEEDY

NAY: BROWN, JOHNSON

ABSENT: BRILL, DRESSEL

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission