CITY OF NEWARK
DELAWARE

PLANNING COMMISSION
MEETING

December 6, 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 Edgar Johnson Kass Sheedy
Commissioners Absent:	Peggy Brown
Staff Present:	Roy H. Lopata, Planning and Development Director Maureen Feeney Roser, Assistant Planning and Development Director Jerry Clifton, Councilman, District 2

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

Mr. Lopata: Some of you may have noticed the wine on the table. That is a little farewell gift from me to the members of the Planning Commission for the holiday season and also since this will be my last holiday season as Planning and Development Director and I wanted to say goodbye and note the occasion with a little present. More importantly, since you do this without any payment and you get little or no recognition, I think every once in a while you need to be thanked for volunteering your Tuesday evening once a month and all the extra time you put in to do this. You all take this very, very seriously. Every Commissioner I have ever had here took this job serious and you do it on a totally voluntary basis. This is my way of saying thank you and wishing all of you the best

Mr. Bowman: Roy, on behalf of me and the rest of the Commission, we would like to thank you for your service. Councilman Clifton reminded me last week that I have been on this Commission 20 or 21 years. It has been a tremendous experience working with folks in the City and the other many members who have come through this Commission. It has been a pleasure for me. So, best of luck in retirement and enjoy the holiday season.

1. THE MINUTES OF THE NOVEMBER 1, 2011 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECOND BY BEGLEITER THE NOVEMBER 1, 2011 PLANNING COMMISSION MINUTES WERE APPROVED AS RECEIVED.

VOTE: 6-0
AYE: BEGLEITER, BOWMAN, BRILL, DRESSEL, JOHNSON, SHEEDY
NAY: NONE
ABSENT: BROWN

MOTION PASSED UNANIMOUSLY

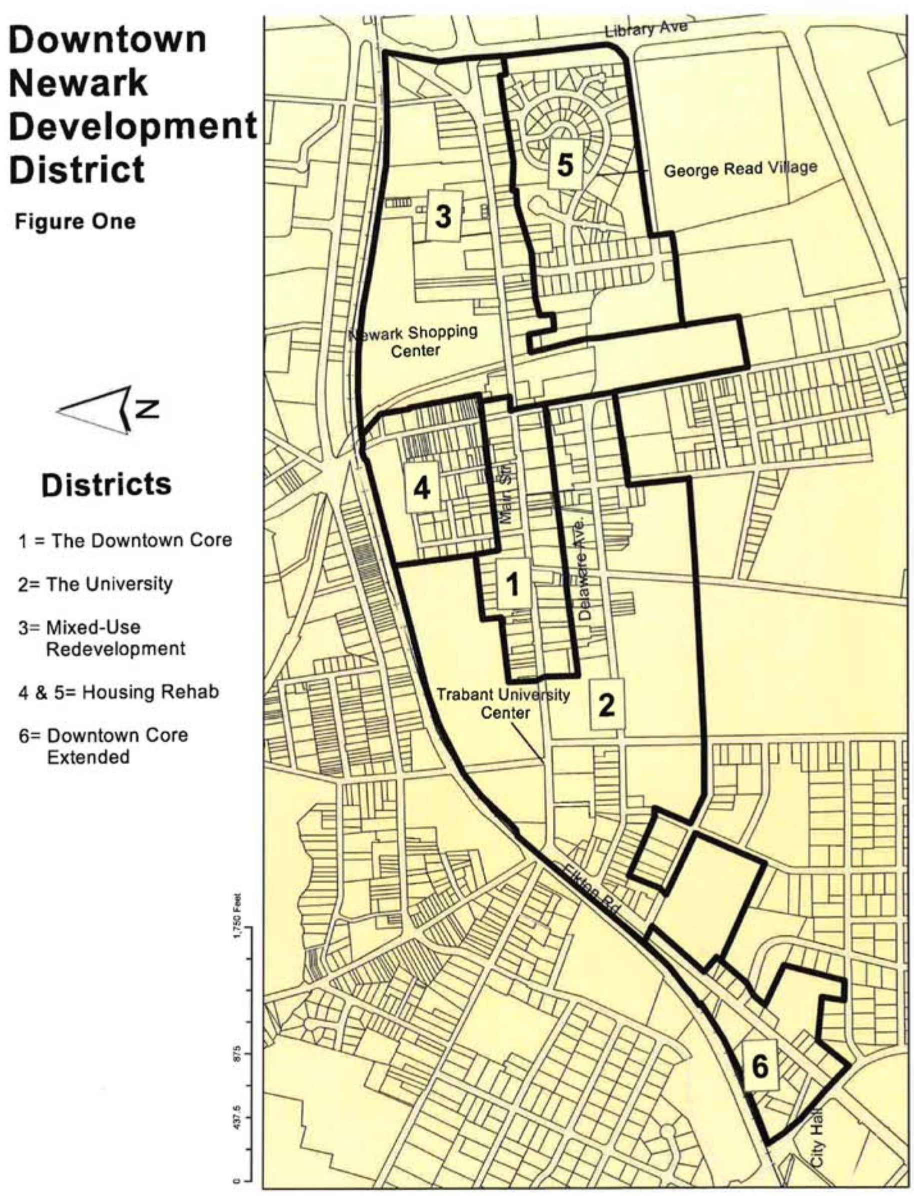
2. THE REVIEW AND CONSIDERATION OF AMENDMENTS TO THE <u>ZONING CODE</u> CONCERNING APARTMENTS IN THE BB DISTRICT.

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

"At its August 22, 2011 Public Workshop, City Council reviewed a presentation by the Planning and Development Department concerning rental housing – primarily focused on apartments downtown. Subsequently, at its September 26th regularly scheduled meeting, Council publically reviewed the downtown apartments issue and received comments from local developers concerning this use. In any case and as a result, Council has requested that the Department prepare for the Planning Commission's review and consideration a report regarding reducing the permitted rental apartment density while, at the same time, providing density bonuses for owner occupant multi-family housing in the BB zoning district – our downtown zone. The Department's report, in this regard, including much of the material reviewed at the August 22nd Council Workshop, follows:

<u>Comprehensive Development Plan IV</u>

The <u>Comprehensive Development Plan IV</u>, adopted by City Council in October, 2008, includes language regarding planning for apartments downtown within the "Downtown Development District" portion of the <u>Plan</u>. Excerpts from this part of the <u>Plan</u> are included below. Please see Figure 1 for the boundaries of the "Districts" within our Downtown Development District referred to in the text. Particularly relevant language concerning apartment development density is noted in bold.



"District One-Downtown Core District

"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 this District for residential projects."** [Page 25]

District Three-Mixed Use Redevelopment District

"This area encompasses the northeast corner of the Downtown Development Framework, plus the old and now replaced "Delchapel" Brownfield site. This is a prime location for mixed use redevelopment integrating convenience retail, services, offices and residential uses (both student and non-student housing affordable and market rate housing). **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 this District for residential projects."** [Page 25]

Districts Four and Five-Housing Rehab Districts

"Housing rehabilitation and affordable housing redevelopment should be concentrated in these downtown districts, located in the north central and southeastern portion of the Downtown Development Framework. Efforts to encourage affordable and market rate family owner-occupant type projects should be emphasized and expanded. The City may also consider reducing the permitted downtown density in this District for residential projects." [Pages 25-26]

Summary

"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 for 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 on 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 **one of the best zoning tools to promote affordable owner occupant housing is to significantly 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.**" [Page 26]

Newark Apartment Zoning/Development Regulatory Tools

The City Council, after in most instances considering the advice of the Planning Commission, has several available tools for regulating apartments in the City and, more particularly, apartments downtown. These are listed below:

- Rezonings to RM (Multi-family Dwellings-Garden Apts.), RA (Multi-family Dwellings – High Rise Apts.), AC (Adult Communities) or to BB (Central Business District).
- Subdivision approval for all apartment projects; Major Subdivision for projects of six units or larger.
- Council Special Use Permit approval for all BB zoned apartment projects.
- Parking Waivers authorized in BB zone to meet two or three spaces per unit zoning requirement [see below]:
- Zoning Code Amendments.

As explained at the Workshop regarding the Special Use Permit approval process, the current Zoning Code Section 32-78(a) Special Use Permit language requires that, ". . . the applicant has demonstrated that the conditional use will not . . . ," have negative impacts on public welfare or be injurious to property, etc. In other words, the current special use permit language that applies to all multi-family dwellings in the BB zone is intended to ensure that the burden of "proof," is on an applicant rather than on the City to indicate the proposed apartments do not have negative local impacts and, therefore, should be approved.

BB Zone Parking Waiver System

The Zoning Code [Section 32-45(b) (2)] specifications and requirements for parking waivers in our downtown zoning district – BB – are as follows:

" . . . the BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;

B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;

C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;

D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;

E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;

F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval or disapproval upon the recommendation of a Council member, the Planning and Development Director and/or the City Manager.

The BB parking waiver system [Zoning Code Section 32-45(b) (9)] also includes required payments in lieu of spaces as follows:

"Required parking waiver in lieu of spaces payments. Applicants receiving off-street parking standard reductions shall be required to pay to the city a fee in lieu of the required spaces subject to the following:

a. Payments shall be assessed for a percentage of the cost of construction of off-street surface level spaces required for each use category based on the following fee schedule:

FEE SCHEDULE FOR REQUIRED NON-RESIDENTIAL SPACES

Parking Space Standard Reduction	Cost of Construction
First five spaces	Five percent
Six to 25 spaces	Up to 50 percent
Each space over 25	Up to 100 percent

FEE SCHEDULE FOR REQUIRED RESIDENTIAL SPACES

Parking Space Standard Reduction	Cost of Construction
First five spaces	25 percent
Six to 25 spaces	Up to 75 percent
Each space over 25	Up to 100 percent

b. The cost of surface level parking spaces shall be computed by the planning and development department, with the assistance of the public works department, through the off-street parking standard waiver process, and included in the planning and development department report to the planning commission concerning the parking standard reduction. In developing such costs, the planning and development department may also include in its report to the planning commission, applicant's in-kind services, land donations, granting of easements or rights-of-way, or similar parking improvement activities that the commission may consider in assessing the payments required in this Section."

Permitted Apartment Densities in University Cities

In order to put the density issue in some context, the Planning and Development Department gathered information regarding permitted densities in randomly selected university communities across the nation. Note, in this regard, that because it is somewhat difficult to ascertain permitted densities based on codes available on-line, we contacted these communities directly to be sure that we fully understood their regulations. In any case, the densities permitted in the downtowns of the university communities we surveyed are included below. In addition, we have also, of course, noted the densities permitted in Newark in our downtown apartment zoning district, as well as throughout the community.

Municipality	College/University	Density- Units/Acre
Newark – RM Zone	Delaware	16
Newark – RA Zone	Delaware	36
Newark – AC Zone	Delaware	50
Newark – BB Zone	Delaware	145
Ames, Iowa	Iowa State	38.56
Athens, Georgia	Georgia	200 (Bedrooms/Acre)
Blacksburg, Virginia	Virginia Tech	27 (Bedrooms/Acre)
Bloomington, Indiana	Indiana	60
Bowling Green, Ohio	Bowling Green	43
Charlottesville, Virginia	Virginia	240
Gainesville, Florida	Florida	100
Kirksville, Missouri	Truman State	36.3
Las Cruces, New Mexico	New Mexico State	40
Madison, Wisconsin	Wisconsin	60
New Brunswick, New Jersey	Rutgers	100
Norman, Oklahoma	Oklahoma	43
Portland, Maine	Southern Maine	100.13
Prescott, Arizona	Prescott College/ Embry-Riddle	58

Examples of Apartment Residential Densities in Newark

To provide a local context regarding the downtown density matter, we have provided below the number of units per gross acre for typical apartment projects in the City. Projects in the BB zone are indicated in bold.

Development	Units/Acres
Amstel Square	**17.17**
Campus Edge	**28.24**
Christina Mills	8.69
Colonial Gardens	36.7
Continental Court	17.25
119 Elkton Road	**21.13**
Fountainview (Apts.)	24.65
102 E. Main St.	**20.83**
108 E. Main St.	**14.7**
129 E. Main St.	**34.68**
Main St. Court	**23.96**
Main Towers	**49.39**
Pine Brook Apts.	14.64
Park Place	29.68
Regency Square	15.51
Town Court (Studio Green)	17.74
University Courtyard	12.23
Washington House	**36.1**
Whitechapel Village (Apts./Nursing)	52.65

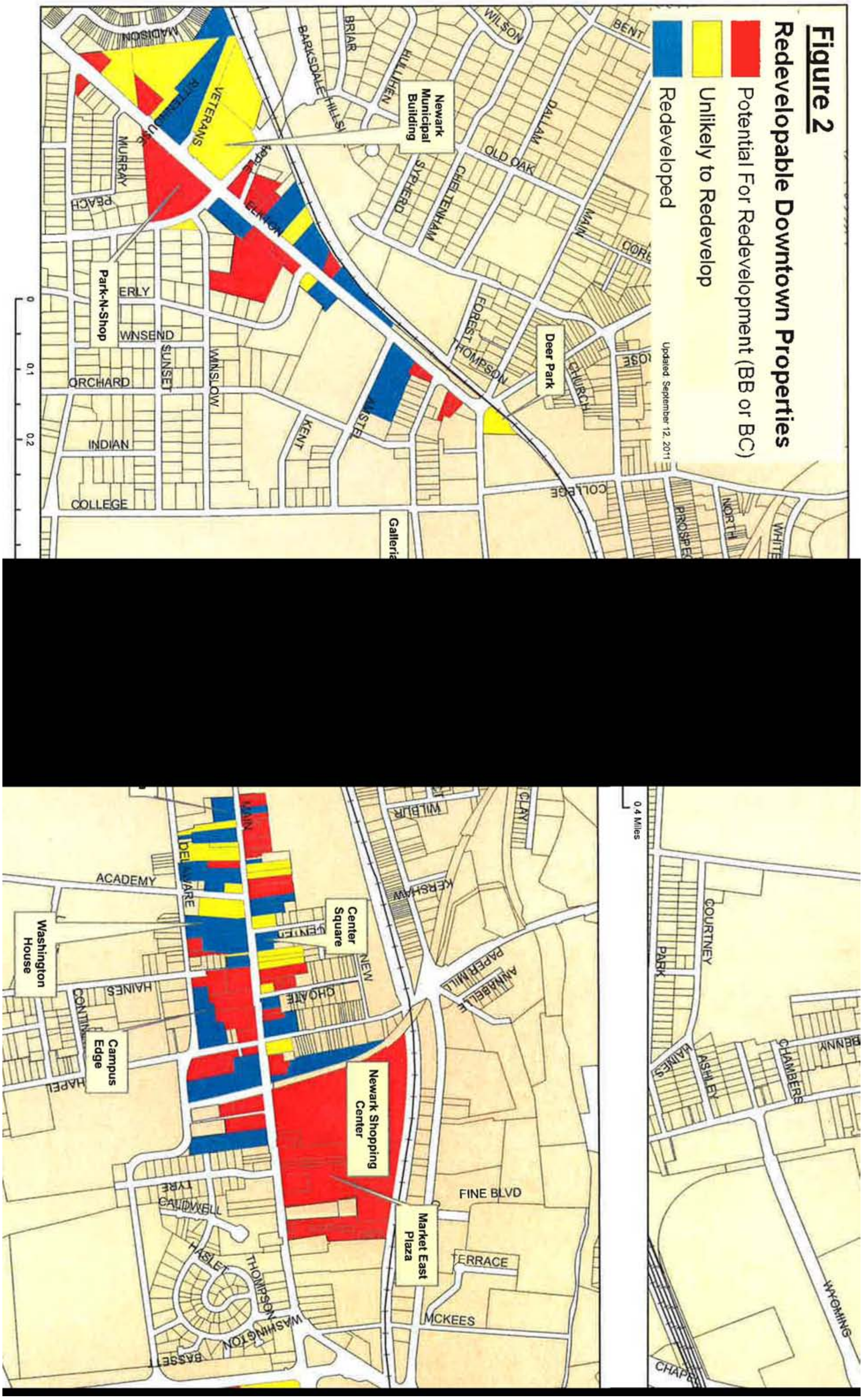
Land Development and Zoning Acreage Patterns

In examining the issue of apartments in the BB district, the Planning and Development Department also believes it is important to take into account the total amount of acreage in the various zoning categories in the City. As a result, we have provided the chart that we keep current showing all the City's zoning categories available for development, including the amount of land developed and undeveloped within each category, as well as the percent of the grand total of developable acres within City limits by category. Land owned by the University of Delaware, which is of course outside our purview, as well as floodplain and park land zoning is not included.

	UNDEV	DEVELOPED	TOTAL ACRES IN ZONE	% of GRAND TOTAL
MI	480.52	481.7291	962.2491	22.82%
MOR	41.3578	65.9813	107.3391	2.55%
		Industrial	1069.59	**25.36%**
BC	40.3966	185.2905	225.6871	5.35%
BB	9.18	105.3446	114.5246	**2.72%**
BN	2.329	7.4519	9.7809	0.23%
BLR	1.002	17.8995	18.9015	0.45%
BL	14.5714	31.8616	46.433	1.10%
		Business	415.327	**9.85%**
RH	120.127	159.4089	279.5359	6.63%
RT	16.53	387.3186	403.8486	9.58%
RS	67.659	1122.3064	1189.965	28.22%
RD	26.794	334.2286	361.0226	8.56%
RM	5.741	328.9488	334.6898	7.94%
RR	21.433	44.0902	65.5232	1.55%
AC	24.52	48.9905	73.5105	1.74%
RA	0	24.1247	24.1247	0.57%
		Residential	2732.22	**64.79%**
TOTALS	872.1608	3344.9752	4217.136	

As you can see from this chart, a relatively small percentage of the City is currently zoned BB (2.72%). On the other hand, of course, rezonings can always occur so any new regulation impacting the BB zone would apply to rezoned property as well.

To illustrate the impact of any change to the BB zoning regulations for apartments, we have attached a map (see Figure 2) showing land zoned BB that might be available for redevelopment; in other words, BB zoned property that has been approved and/or developed for mixed use is not shown on the map. In addition, BC zoned properties in the downtown area that might be rezoned to BB and redeveloped are also indicated.



Other Zoning Regulatory Tools

As noted above, in addition to the existing tools currently available to the Planning Commission and Council to regulate apartments downtown, the City can consider <u>Zoning Code</u> amendments that could help foster the type of living arrangements that are suitable for the graduate students, young couples, older singles, and others interested in downtown living. Moreover, these amendments would coincide with Comprehensive Development Plan IV's recommendations for downtown residential uses. In addition to the obvious change of reducing the permitted BB apartment density, these amendments might include, for example, density bonuses for restrictions that promote owner occupancy and similar bonuses for smaller apartment units – that is, those with one or two bedrooms – more suitable to non-student off campus living. Finally, to foster increased density for the desired residential mix, height restrictions can be modified and parking impact fees imposed.

Commentary

Based on the Council August 22nd Workshop and Council September 26th meeting discussion, and subsequent suggestions from local downtown apartment developers, and the related background material in this report, the Planning and Development Department has provided below proposed Zoning Code amendment language that would accomplish the following goals:

- Significantly reduce the permitted density for standard apartment dwellings in the BB district [from 145 to a maximum of 24 units per acre].

- Provide density bonuses for smaller apartments in the BB zone [a maximum of 60 units per acre]. Smaller apartments defined as studio, one and two bedroom units with a maximum of four unrelated tenants, intended for graduate students and upperclassmen and women, young couples, older adults without children, etc.

- Provide substantial density bonuses for owner occupant multi-family dwellings and/ or smaller apartments in the BB zone [a maximum of 90 units per acre]. Such units, if rented, to be limited to families and to no more than two tenants per unit – the legally permissible zoning tool to limit the numbers of occupants in a rental dwelling and, thereby, encourage owner occupancy. This is the same mechanism we have used at other locations throughout the City, including at the downtown Washington House Condominiums. This approach is also referenced in the Comprehensive Development Plan IV language provided above.

- Provide a building height bonus for apartments with the majority (more than half) of their units in the second and third categories above – buildings consisting of a majority of their units with two or less bedrooms or intended as owner occupant units, which would allow heights of up to six stories or 90 feet for such facilities.

- Revise the parking waiver system for apartments by replacing the parking waiver with a required parking "impact fee" that would use the current formulas to stipulate a payment fee to the City for downtown multi-family use (apartments or condominiums) with less than four bedrooms, with the funds to continue to be used for downtown parking improvements. The intent here is to make it abundantly clear that smaller unit and owner/occupant downtown residential developments would not require on-site parking; instead an impact fee would be assessed.

Recommendation

Following the Planning Commission's review of this report and its consideration of public comment, to accomplish the goals noted above, the Planning and Development Department suggests that the Commission make the following recommendations regarding downtown density to City Council:

Amendment One:

Delete BB Zoning Code Section 32-18(b)(13)a., which reads as follows [Please note that the placement of the apartment use in the Code here continues to mean that a special use permit is required regardless of the number or type of units proposed]:

> "a. Minimum lot area shall be sufficient to provide 300 square feet for each dwelling unit." [This is the section that regulates the permitted density in the BB zone].

And replace it with the following:

> "a. Maximum number of such dwelling units shall be as follows:
>
> 1. 24 units per gross acre for apartments with three or more bedrooms each;
> 2. 60 units per gross acre for apartments with a maximum of two bedrooms and limited to occupancy by one family or up to four unrelated tenants each;
> 3. 90 units per gross acre for owner occupant dwelling units, defined as fee simple or condominium dwelling units limited to occupancy by one family or up to two unrelated tenants each.
> 4. For apartment buildings consisting of various combinations of dwelling unit categories in subsections 1, 2, and 3 above, the maximum number of dwelling units shall be calculated by using the following formula:
>
> Number of units in subsection 1 multiplied by 24, plus
> Number of units in subsection 2 multiplied by 60, plus
> Number of units in subsection 3 multiplied by 90, divided by
> The total number of units, multiplied by gross acreage =
> Total number of units permitted at site."

Amendment Two

Add the following language to BB Zoning Code Section 32-18(d)(4) *Height of Buildings*, the following additional phrase to the first sentence:

> "; and except as noted herein in subsection c. below."

And add subsection c. as follows:

> "Within the minimum required setback up to three additional floors may be added, provided that the height of such a building hereafter erected or altered shall not exceed 90 feet, and further provided that except for the ground floor, to qualify for additional floors as specified herein, such buildings shall consist of more than one-half of their apartment dwelling units with a maximum of two bedrooms and occupancy by one family or up to four unrelated tenants each;

Amendment Three

Revise Zoning Code Section 32-45(b)(1) by inserting the words, "non-residential (apartments or condominiums)," after the words, "any permitted," so that it reads as follows:

> "The off-street parking standards in Section 32-45(a) may be reduced or waived for any permitted non-residential (apartments or condominiums) use in BB, Section 32-18, requiring a certificate of occupancy, with the approval of the planning commission."

And add a subsection (10) as follows:

> "*BB District Residential Parking Impact Fee*. All residential (apartment or condominium) uses in BB, including such uses combined with other BB permitted uses, shall be required to pay to the city a parking impact in lieu of the required spaces, based on the requirements and formula in subsection (9) herein, except for such uses with more than three bedrooms each which shall, in addition to any fee in lieu of required spaces, shall also provide a minimum of two spaces dwelling unit."

Mr. Lopata: I will be happy to answer any questions and try to clarify this first before we go forward.

Ms. Dressel: On page 10 where it says, "and add subsection c as follows:" and you get down to the 90 feet, "and further provided that except for the ground floor, to qualify for two additional floors?

Mr. Lopata: It should be for additional floors – delete the word "two." And, again, this, "such building shall consist of more than one half of their apartment dwelling units with a maximum of two bedrooms and occupancy by one family or up to four unrelated tenants each."

Mr. Bowman: In the last paragraph, Roy, it says "Add a new subsection 10," I think you left out the word fee in the third line where it says, "to the city an annual parking impact," shouldn't the word fee be in there? ". . . in lieu of the required spaces,"

Mr. Lopata: Yes, "fee."

Ms. Dressel: Also, in that paragraph at the very last line, should it also say, ". . . shall also provide a minimum of two spaces per dwelling unit."

Mr. Lopata: Yes.

Ms. Sheedy: You have two bedrooms at the top, ". . . a maximum of two bedrooms."

Mr. Lopata: Where are you looking?

Ms. Sheedy: Same page. In the first paragraph we talk about a maximum of two bedrooms and then down below – and I realize one is talking about height and the other is parking – do we actually mean three bedrooms for the parking because the parking requirement doesn't come in to play unless you have a four bedroom apartment.

Mr. Lopata: It is two different sets of standards.

Ms. Sheedy: Is that what we mean?

Mr. Lopata: Yes, that is what I meant. More than three bedrooms is Campus Edge, the standard, and some of the other projects that have been approved. Not a lot of them, but some of them.

Ms. Sheedy: I just wanted to make sure we weren't going for a kind of across the board change.

Mr. Lopata: The problem is, if you look at the Code, which you don't have in front of you, and you see where these fit, they fit in where they belong and the language makes more sense.

Mr. Begleiter: Sticking to page 10, Roy, for just a minute in that first paragraph, your first phrase, "for buildings with apartments." Does this mean only for buildings with apartments?

Mr. Lopata: That is why I added that last phrase, "In addition, such buildings may have BB permitted uses other than apartments." That is exactly why I tried to do this. I wanted to make sure that it must have apartments.

Mr. Begleiter: This is what I am getting at.

Mr. Lopata: Is there a better way to word it?

Mr. Begleiter: I don't know. That is what I am trying to get at. And, your additional phrase at the end is, ". . . other BB uses on the first and second floors." But, you just mentioned Washington House that built a parking space on the first floor.

Mr. Lopata: Those are other than BB uses. That is permitted. That is a BB use.

Mr. Begleiter: But, if they use the first level for parking spaces, then do they get two levels above it for other BB uses?

Mr. Lopata: Actually, they do under the current <u>Code</u>. That has nothing to do with this. That is a different height waiver.

Mr. Begleiter: I am trying to figure out whether this contradicts that or not, or whether we need somehow to incorporate that other language.

Mr. Lopata: This is next to the other language. This subsection c follows that. It is in a section where you have all the height waivers for BB.

Mr. Begleiter: So, if more than one half of the building is apartment dwelling units, then under this provision you could have the first floor be parking, the second floor be parking, and then the third and fourth floors be commercial and then the fifth and sixth floors only would be apartments.

Mr. Lopata: Yes, and that is actually true now.

Mr. Begleiter: Would that constitute a building containing more than half of the building being apartments if only two of the six floors are apartments.

Mr. Lopata: It is more than of their apartment dwelling units. They must have some apartment units that are small. It has nothing to do with whether its half apartments or half offices.

Mr. Begleiter: So, playing devil's advocate then, if I were a developer of the next Washington House, I would put a couple of really fantastic pent houses on the sixth floor and I would have three floors of commercial and two floors of parking under it and it would be okay under this.

Mr. Lopata: Interestingly, you could do that now, though. That is what I was trying to say. We already provide for extra floors for parking. So, this is to provide a waiver for more than half a building being units with two or less bedrooms. That is all that this is supposed to do, but also, if you have other uses in it not penalizing you.

Mr. Begleiter: For more than half a building being small units.

Mr. Lopata: Yes, you would be able to go up to six stories. Now, that may be too much.

Mr. Begleiter: But, if you have less than half a building with small units you are already allowed six stories if you have parking on the first two.

Mr. Lopata: That is where we are going to get confused. Forget the parking for the time being because you still get that now.

Mr. Begleiter: Forget the parking because you are talking about things happening on the first and second floors, in your language.

Mr. Lopata: I added that to make sure it was clear that you could put other uses on the first and second floor, that you weren't restricted to apartments. After all, that is one of the concerns people have. We want to have mixed uses downtown.

Mr. Begleiter: I like the idea of mixed uses. I'm trying to figure out what we are ending up doing here. I'm trying to figure out what is a building going to look like that meets this paragraph's requirements and I think it would look like or at least could look like with two floors of parking, two floors of commercial above and two floors of small unit apartments. If that is okay, if that is what you intend, I'm not sure that it meets what the goal is.

Mr. Lopata: What I am not making clear is that is already permitted because we already have extra floors for parking in the building. So, this is to have extra floors for another use. The other use being smaller units. I guess what the point of all of this is, we are looking for another tool to encourage smaller units or condos and not building parking garages.

Mr. Begleiter: What would be the incentive for a developer if they can already do the kind of building I just spoke about?

Mr. Lopata: A parking garage doesn't give you much revenue. That is the incentive.

Mr. Begleiter: But, two floors of commercial does.

Mr. Lopata: It sure does.

Mr. Begleiter: And two floors above that of student rentals does. And, you said we are allowed to do that now, so what is the incentive?

Mr. Lopata: I didn't say you were allowed to do that now. Two floors of parking you are allowed to do now. That is not what this is. This is two floors of commercial and two floors of small apartments. Right now you can't do that and get four stories. You are stuck with three. You can't do it. You cannot come in and do that today.

Mr. Begleiter: I understand what you are saying. I understand the point you are making there, but the purpose of doing this is to provide an incentive for developers to do small apartments. And, if they can already build a six story building without small apartments in it under the Code we already have, why would they bother to do this?

Mr. Lopata: Because garages do not produce the kind of revenue that two floors of commercial would. That is really the point I am making. We want to say, hey, there is another way of doing this. Garages are expensive. They have to maintain them. We want to discourage them in affect because it brings cars downtown. It's all the things parking waivers are not supposed to do. So, the thought process here is there is a way of incentivizing building a building downtown that might have two floors of commercial and some apartments above it and have no parking. There is a way of doing it and that is what this language is supposed to do.

Mr. Begleiter: I don't get it, but I will drop it anyway.

Mr. Lopata: We already have language that incentivizes the parking. That is really what I was getting at. The Washington House is the best example.

Mr. Begleiter: Maybe we will have some testimony from a developer who would explain to me why they would want to build a building under this provision. If it does what you think it should do, that's fine.

Mr. Lopata: As I say, many times we will find out. Sometimes we adapt regulations and nothing happens, and sometime we have unintended consequences, then we change the Code.

Mr. Begleiter: Let's switch to page 8 for a minute. In the first two paragraphs, the one that reduces density to 24 units for standard apartments and reduces it to 64 smaller apartments. It seems to me that those two paragraphs might result in zero residential developments under those kinds of provisions. Why would developers want to propose to meet those standards? I am not sure I understand the incentives there to the developer.

Mr. Lopata: You have to start with the first dot. We are totally changing the approach. We are significantly reducing the currently permitted density. The premise is you go from 145 units per acre to 24, which is very significant. We mean business. We want to really reduce density. However, we want to then go back a bit, in certain categories we will give you significantly higher density than 24. That is what dot 2 and 3 do. Let's just stick with 2, for example. In the case of 2, you want 24 units per acre or a combination. This doesn't stop anyone from mixing them. We have a provision to cover that because typically the units don't all match up. If you start with the first dot, if that is put in place we could just stop right there and that would change the economics downtown substantially. It wouldn't correspond to the Comprehensive Plan. It would just simply say no more standard apartments downtown.

Mr. Begleiter: It would be a zero apartment development.

Mr. Lopata: This way, we are saying it is really reducing it drastically. We have had projects with smaller numbers of units. Not a lot of them, but it is what we have talked about with destination housing. In fact, the speech that Jeff Lang made at the last meeting. That is what he was talking about. If you really mean it, we will let you put in 60 units per acre, in a world that doesn't exist at the moment, a world limited to 24 units per acre. And that is what you have to wrap your head around. It is going to be a whole different way of looking at downtown Newark. We are going to have a very restrictive base number, which I called a standard apartment dwelling number. But, then, we are going to tinker with it a little bit at the same time.

Mr. Begleiter: My question is about when we impose that will we in affect be saying, never mind, we are not interested in any further development downtown because there won't be any economic incentive to do that.

Mr. Lopata: As you might have guessed, I didn't just do this out of the blue. We had some discussions with all the area apartment developers and there certainly was some grumbling and some differences of opinion but the consensus was that this might work.

Mr. Begleiter: In dot #3 I have a question about the third line which says, ". . . if rented to be limited to families and to no more than two tenants per unit."

Mr. Lopata: It should be and/or, really. This is, again, descriptive. It is not the ordinance.

Mr. Begleiter: I know, but I am just trying to understand it.

Mr. Lopata: It is and/or. It is not both. You are absolutely right.

Mr. Begleiter: It just shows you how confused I am by what we are doing. The last dot on the page, the one that starts, "Revise the parking waiver system . . ." I realize that this is just your commentary. This is not a proposed change in the Zoning Code, but I would like to at least raise the question, the impact fee that you are discussing in that bullet, it seems to me is very similar to, if not identical to, the utility impact fee that you proposed and the Council rejected a couple of years ago to incentivize the enhancement of the utility appearances in the City. So, my question is, if we really are trying to impose incentives on developers to build units that are occupied by families and by graduate students and not by undergraduate students, then why do we see the impact as being a onetime thing that happens only when the building is built and the developer pays the fee, parking waiver or whatever you call it, they pay a penalty and they pay whatever it is - $1,000 or $5,000 or $100,000 – but then it is over. The developer can amortize that $20,000 parking waiver fee or impact fee into the rent of the first year's apartment rentals and kiss it off and say, well that is the cost of doing business for the first but we are going to rake it in from year's two through 20 or whatever the life of the building is. I am raising the possibility or idea that really the impact is ongoing, the parking is forever lost. The density is forever increased when there are four or five kids in an apartment. It is not something that goes away after a year. So, why do we think of the fee as something that goes away after a year. Could you discuss for a minute the impact, value or lack of value of deciding that this isn't a onetime fee. It is an ongoing fee. If you don't want to have a parking space today or you want to have four kids per apartment today, they are going to be there tomorrow and for the next ten years. So, you have to pay the fee every year that that impact occurs.

Mr. Lopata: Ralph, it is a good question. The best way to answer that is the impact fee replaces the parking that isn't provided, one time.

Mr. Begleiter: And after that next year, it doesn't replace it any more.

Mr. Lopata: You only have to have the parking there once. In other words, you come in, you apply, you have your 15 spaces you don't pay the fee. That is the logic.

Mr. Begleiter: But, the impact of that goes on and on forever.

Mr. Lopata: In light of your question – you were kind enough to tip me off ahead of time – I mentioned it briefly to the Solicitor today and he is going to look into it because what you are probably talking about is more of a tax than a fee. The question is, is it legal for us to do that because, theoretically, you are right. You could argue that it is an ongoing impact so, therefore, the fee should be imposed at some level over and over again. So, I asked Bruce to look into that, which he will. The background is simply, it was always one time. We have a Parks and Recreation impact fee, we have sewer treatment plant fee, we have a whole series of them. They are only once, but the impact always goes on for years. I hate to say it is the state of the art or it is the way of doing business. It doesn't make it right.

Mr. Begleiter: I just wanted to raise the issue. I am glad to know that you are considering it further.

Mr. Lopata: It is worth exploring.

Mr. Begleiter: I don't want anybody to think that I am naive enough to know that politicians don't like to impose anything that is called a tax. We have that situation in this city with our energy tax. We pay an electric tax every month but we don't call it a tax. We call it something else. We call it an electricity charge. And, I can understand that the Council may not want to call it a tax, but there would be other ways to characterize this.

Mr. Lopata: It may not be legal for us to impose that tax. That is a different issue. That is the question I asked Bruce to look at. Could we turn the impact fee into a tax under our Charter?

Mr. Begleiter: Or into a recurring fee. Even one that has, perhaps, some expiration date or some shelf life or half life or something like that. As a building ages, of course, its likelihood of being redeveloped increases and so it is entirely reasonable to think about this building becoming a 20 year building or a 30 year building.

Mr. Lopata: Or, the other way of doing that is to tinker with the fee itself. As I mentioned, there are two different categories. You could simply raise the residential fee at the outset and make it much higher. We would have the money up front and we could bank it. But, you are right. It could be done in numerous ways.

Mr. Begleiter: That leads me to another question that I wanted to raise. You answered me earlier but I want to raise it for the record. The parking fees that we raise that the City imposes are designated on page 4. I understand this is just your review of the background history of the parking waiver. At the bottom of page 4, the payments are referred to as replacing the cost of off-street surface level spaces. I understand what that means. We only have surface level spaces in the City right now. We have multiple level ones at the University, but not in the City inventory. But, my question is, if we are planning for the future, and if we a planning for a future that includes families and other kinds of residents in our downtown area, why couldn't we or shouldn't we at least think about the fee being tied, not the cost merely of replacing a single parking space at the surface level but the cost of doing what we know we are going to have to do and we are already talking about doing, which is building multi-level parking and establish some kind of measure by which what does it cost to put up a second level or a third level and then amortize the cost of that or divide the cost of that up and say here's the fee that would be required to replace parking in today's life, which is no longer surface level? It is multi-level structured parking.

Mr. Lopata: This language is from the Code. It is simply explaining where we get the number from and the number could be changed. You are right. There is no science to it. It was just what we used in 1986. That is old language, how we would decide we would calculate the fee.

Mr. Begleiter: That is what I am saying, basically. It is time to come into the real world, which is, we are not building surface level parking any more. We have a couple little spaces here. We have a few spaces behind the bookstore.

Mr. Lopata: The thing we have to be careful about, to use the bookstore as an example, the current formula resulted in a parking waiver fee of over $1 million for the bookstore.

Mr. Begleiter: This would be not enough to build a structured parking garage, but might have been if we had thought of it.

Mr. Lopata: It was enough to serve the bookstore. You can't charge them more than for the use that they are generating.

Mr. Begleiter: That's right you can't, but cumulatively you can. You can project what are the needs just like you now do for the surface lots that are not behind every building. If there were a change in the Opera House building that you mentioned earlier, you would be charging them a parking waiver fee that isn't for replacing a surface spot on their lot. It is a surface spot on somebody else's lot someplace else.

Mr. Lopata: That is something that needs to be looked at going forward. It is not part of what is before us this evening, but as we continue to deal with the downtown parking issue. Maureen and I had two separate meetings today discussing garages. Believe me, it is ongoing and we need to deal with that problem.

Mr. Begleiter: I am raising it not because I think that the Council is going to vote on it as a result of this, but I think that the Council ought to be thinking about these kinds of things in the same way.

The last question, Mr. Chairman, if I may and this is just an informational thing. On pages 5 and 6 where you have the list of other college towns, and university towns, do you know whether any of these others have the geographical challenges that this city has being hemmed in by two railroad tracks. I am thinking of Princeton which, I think, is a good analogy to Newark. In Princeton they have the same Main Street situation, very intense, dense Main Street area, but you are able to walk two blocks off Main Street and you are in really nice single family residential low density apartments. We couldn't do that here. Two blocks from Main Street you are sitting on the railroad track. Two block in the other direction you are in the middle of the University property. Is there a way to kind of look at another university town or two that is similar to Newark.

Mr. Lopata: Princeton I looked at when I got your email. They use a totally different system to calculate density. Remember, I was trying to come up with a list of densities, not even similar cities. I was looking at the densities they used. Some use floor area ratio. It is a totally different formula, so it isn't even comparable. West Lafayette, IN where Purdue is that has railroad problems. I know that from previous issues, but whether that has anything to do with density, I can't say. This was picked simply because they are university towns, but not exclusively. New Brunswick, Gainesville, certainly Charlottesville which is probably the most closely comparable to Newark, although their main street is set away from ours. It is comparable but Newark is part of megalopolis so we a little bit different. I think of us as somewhat similar to New Brunswick because, although we are a separate city, we are also part of the eastern seaboard I-95 corridor. We have that impact that is very different than Norman, Oklahoma.

Mr. Begleiter: I do think it has to do with density, though. I don't think it is irrelevant to the density issue because in our situation to imagine the idea of a single family home along Delaware Avenue, hypothetically. It is a nice thought to have, but it is not very likely to happen.

Mr. Lopata: Remember, we did think the New Center Village approach was that we were going to have single family type living. They weren't going to be brownstones – sort of our dream. If that ever happens, that would work. The railroad, especially CSX, is a significant barrier. It is an interesting question. I'm not sure how much it is related to this.

Mr. Begleiter: I just wondered if they figured out how to do this density requirement in a situation similar to ours. That's all.

Mr. Lopata: I have never seen anything in the literature where people tied railroads together with it. Although, it is an interesting way to look at it.

Mr. Johnson: First, of all, I want to say it is confusing to me and I don't fully understand it, Roy, but I am sure that's just me. I have a question about the definition of the word waiver. In my mind a waiver is when someone reads that you need a parking waiver, you come before some appointed body, whether it is a Commission or Council, make a case and get an exception to the current regulations. When you say an impact fee that gives me the idea that a developer could simply compute what they owe the City, pay the fee and not come before any regulatory body for approval.

Mr. Lopata: They wouldn't have to come for the parking part of it. That is correct. That is the difference. They would come before us for the special use permit, for the subdivision, a rezoning if necessary, but not the parking aspect of it. They simply have to pay the fee. You are right. For someone who didn't understand it, you understood it perfectly. The idea was from now on in these circumstances you are going to pay that fee regardless. If you get special use permit, you get subdivision, you get a rezoning, this fee whether you waive it or not waive it is no longer a waiver unless you're a standard apartment, then you pay the fee and you provide the spaces. But, again, you don't get approval for it, as you said.

Mr. Johnson: Then I submit whatever the fee is, it is too little because I agree with Ralph. The impact is going to be ongoing forever and the fee should take that into consideration.

The second thing is, on page 10, did I hear you say that subsection c. was "provide a waiver for more than one half of the building to be small units?"

Mr. Lopata: Right.

Mr. Johnson: Why will we need a waiver for smaller units? I just can't wrap my mind around that. Shouldn't we have a waiver for larger units?

Mr. Lopata: We want to allow it.

Mr. Johnson: You want to encourage smaller units so you are asking (inaudible)

Mr. Lopata: It is not a waiver. It is saying if you want to build above three stories, it is a bonus. If I used the term waiver in the case of that subsection c., that is not the right term. That is a height bonus for building smaller units. The waiver is to do something you don't have to do otherwise. If I said waiver, I certainly should not have said that. The first paragraph on page 10 is a bonus. It gets back to what Ralph was asking about the parking garages, too. That's a bonus. You get extra height for a parking garage. So, what we are saying here is, if you build smaller units, we will let build a taller building, and we will also let you have more of them. Remember, because if you go back to the other page, you can do 60 units per acre, maybe 90, which kind of goes with height because you can't very well do 60 units or 90 units on a three story building. So, the two things fit together like a seamless web. They are really complicated to explain, but they do make sense. They are internally consistent.

Mr. Johnson: As long as someone in Newark understands it, I'm sure it is fine.

Mr. Lopata: I will still be in Newark and my consulting fee will be posted after I leave. I'm kidding – sort of.

Ms. Dressel: When I read the impact fee I thought of that as an ongoing fee that they would be charged. That is how I read it.

Mr. Lopata: Amendment Three came about through further thinking and chit chat. Amendments One or Two are what really grew out of the workshop. If the Planning Commission has significant angst over revising the parking waiver fee or changing it to an automatic impact fee rather than a waiver, I'm not going to have any heartburn over it. I want you to understand that Amendments One and Two are what grew out of the workshop. Amendment Three came about through subsequent discussions, and the thought was let's just make it an impact fee rather than a waiver system. That is a change. Edgar has hit the nail right on the head. That takes the power away from the Commission to approve it or disapprove it. You may, therefore, put in that light.

Mr. Begleiter: Any decisions we don't have to make those are good things.

Mr. Lopata: That is one way of looking at it. I don't disagree with that necessarily. It's one less thing to fight about.

Mr. Bowman: Remember, all of our decisions are advisory in nature. Just a comment might help to clarify it a little bit. Generally, in what I see as an impact fee is, an impact fee is a one-time fee to offset construction of such things as utilities, roadways, sidewalks, parking spaces, if you will. That builds it. That gets it done if you elect to use that money for it. Usually those are designated, putting water mains in the ground and putting fire hydrants on those mains. Then what comes after that is the use fee and that is what we pay monthly when we get the water and sewer bills. That in turn is paying for the gallons of water you use and it also has something added to it to keep those utilities or those facilities maintained.

Mr. Lopata: Mr. Chairman, you explained it better than I did.

Mr. Bowman: So, I think we get a little lost as to why this impact fee ought to be an ongoing fee. The impact fee is really a construction fee that's leveled against the builder saying, you want to build this, we are not going to go ask the taxpayer to provide the streets and the roads and the undergrounds, you are going to do that. And, we are going to take that money from you and we are going to put it in the bank to ensure that it gets done. Most of the time those monies are escrowed are they not?

Mr. Lopata: They are all escrowed.

Mr. Bowman: Then after it is all built you get your monthly bill to keep your streets and everything going.

Mr. Lopata: Mr. Chairman, you just reminded me that what many cities do – getting to what Ralph said – is they have business improvement districts and they assess an ongoing fee. That is really what you are talking about.

Mr. Begleiter: That is what I am getting at because, I agree with you Mr. Chairman. I understand how impact fees have been used in the past, but what I am trying to say here is that I think it is an inappropriate use of that phrase here. We have been doing it for many years, obviously, so that is okay. It has worked for whatever it has been worth. You are quite right, afterwards somebody has to maintain that sewer pipe, make sure the water pumps keep pumping the water through the pipes. And, that is the problem with the parking impact fee. The impact of the cars and the traffic in and out of the buildings being built and so on is not something that goes away when you build a surface level parking space.

Mr. Lopata: And, interestingly, the Downtown Newark Partnership has several times made stabs at increasing fees downtown in this map area for businesses in the downtown districts for that very purpose. We haven't gotten very far because, as you might guess, the businesses rebel. But, it is something we may need to revisit. I think this whole discussion, all of which will be in the minutes, Council will see that. Jim hit the nail on the head, that is what an impact fee is supposed to be the way you described it. A business improvement district fee or an area wide impact fee or the other kind of terms that are used are something we have talked about. Especially as we go forward with downtown garages that is the kind of thing future Planning Directors and Planning Commissions and staff will need to look at.

Ms. Sheedy: Roy, I apologize, will you refresh my memory. What is the current maximum height.

Mr. Lopata: Actually it is three stories.

Ms. Sheedy: In footage.

Mr. Lopata: Three stories, 35 feet.

Ms. Sheedy: What is Washington House?

Mr. Lopata: I think it is over 60 feet. They went for variances. The tower at Barnes and Noble is, I think, about 76 feet high. Main Towers is seven stories. No one notices it because it is set back. One of our Code problems that we have is the space between floors is too narrow. 35 feet causes issues. We are not talking about changing that here, but is something we may have to look at because it gets more and more difficult to put the kind of mechanical equipment you need that we don't want people to see. We want to put it in the ceilings.

Ms. Sheedy: Also, people are wanting higher ceilings.

Mr. Lopata: The 90 feet, we came up with that because people have higher ceilinged apartments. That is part of what is going on here all in the name of creating the kind of downtown living in addition to student housing that we think we are trying to create.

Ms. Sheedy: So, for scale we are looking at something possibly another 20 feet give or take five feet higher than the tower of the bookstore, if you want to have a mental picture.

Mr. Lopata: A mental picture would be, I'd say, about 30 feet higher than the Washington House. Once you get that high, I'm not sure you can tell the difference. The Washington House looked gigantic to me when it was built but now I am used to it. I thought it was totally out of scale.

Mr. Johnson: How tall is the Opera House?

Mr. Lopata: The Opera House is four stories. I don't know the height. That is also because of the mansard roof.

Mr. Begleiter: The other thing to remember is that the University is also going to be building higher than it has in the past, and, so, pedestrians, for example, on Academy Street starting very soon are going to walk past that ISE Lab that is considerably higher. And then they will come to the Bookstore that is higher and that is the way that is going, for whatever it is worth.

Mr. Lopata: Certainly the University and the Planning and Development Department, we have been trying to avoid sprawl and build up.

Ms. Sheedy: I am not objecting to the height.

Mr. Lopata: I know, just trying to visualize it.

Mr. Bowman: We will take comments from the public at this time.

Mr. Joe Charma: 711 Harvard Lane. Wearing my other hat as the Chair of the DNP Design Review Committee, I have an interesting commentary about building height and all the issues you are wrestling with. The Design Review Committee currently is reviewing the Design Guidelines which don't seem to fit the recent construction that has been occurring on Main Street and the surrounding areas. So, we are aware of the issue and what we are doing now with the Guidelines is we want to stay ahead of development, not chase it. So, we are looking out into the future and hopefully we will have something that will eventually come to the Planning Commission as Design Guidelines that you are aware of now that will become a tool that you can use to look at some of these height issues and massing. We are coming up with a different way of looking at it so it is more generic and our goal is to make it so it can almost apply citywide as the City grows. We are trying to do some planning, if you will.

I have one question and a couple of comments. With the six story, 90 foot height, the setbacks would current BB setbacks (the 20 ft. front yard, 8 ft. side yards and 15 ft. rear yards) still apply to that building?

Mr. Lopata: Yes.

Mr. Charma: Okay, thank you. I think we have to keep in mind what is trying to be accomplished here. We are trying to encourage a market that has yet to start up. As Roy mentioned, we had the New Center Village Code changes and that sits at 30 units per acre and no one has done that yet because of the two unrelated individuals restriction. Right now that density could go to 60 units per acre. You are doubling the occupants which would allow developers, if they chose to rent, the economics could be equalized. If you start looking at occupants, if you built 30 units per acre and you only had two unrelated individuals, that is 60 people, and you are trying to charge $2,000 a month per apartment, that is $1,000 a month per person. Well, if you have more people, going up another story or two doesn't add a whole lot to the cost once you get a building going. I think the economics are going to be there and I think you will see people taking a look at it. I know developers are going to look at it. They are going to look at it carefully. So, from an economic perspective I think these density changes are going to create some equivalent economic incentives to look at it. Roy hit on a real important point, smart growth principles – smaller footprint, build up, reduce sprawl. Densify downtown. Densify where you want population. You already have all the infrastructure. It is here. If we ever want mass transit to work, we have to get people living downtown. All the cities struggle with that.

Just a thought about the parking waiver vs. the impact fee. Again, I think the parking waiver has been something that has been somewhat of a contentious term. In the discussions Roy mentioned I think one of the things that was brought up is, why not just call it an impact fee and that is the price you pay to develop. Jim had an excellent analogy, those fees are going to be put in place and they will be appropriate fees. Ralph, you mentioned how much does it cost to build a structured parking space. Right now the going rate is about $25,000 per space. You can figure that out and create an impact fee that is going to work. The Parking Division will use that money to create these new parking structures and the people who use them will pay for the ongoing maintenance of these structures. They are the people who are coming to the businesses that are located in these new buildings. So, they are user fees. It makes a lot of sense to me. Roy mentioned a "BID," that is an excellent thing and I think that is something that the Partnership, again, will look at as we move forward to try to make some of these things economically feasible and equal for the businesses downtown. Because we have a small business and you are paying a big fee, it doesn't make sense to the guy who has a huge business paying the same fee. That will all be worked out somewhere in the mix.

There are similar conditions in New Castle County. Developers in New Castle County, outside Newark, are used to paying sewer impact fees, public safety, public service. There are a whole slew of impact fees and it is a calculated thing, it is published, it is adjusted annually to take consideration of economic conditions. So, I think that could all work.

Mr. Begleiter: We don't have that, though.

Mr. Lopata: We change our base fee, Ralph. It is $5833 a space based on the actual cost. We go out and get the number. For every project I go to the Public Works Department and ask what the cost is now. We adjust it. You just don't see that.

Mr. Begleiter: There is no space to build another surface level parking space. So, it is a hypothetical fee based on surface lot construction.

Mr. Lopata: It is not that we don't change the fee, though. We do.

Mr. Charma: I don't know if the fee is hypothetical.

Mr. Begleiter. The fee is not, the concept of it which is to build a surface level parking space is a fiction. We don't build any surface level parking spaces in this city.

Mr. Charma: Right now the City is entertaining one lot, one structure on the books now to do and there is another larger one – a multi-level parking structure – that the cost can certainly be assessed and say, if we are going to do this, it is $500 per space or whatever the number is to get there.

Mr. Begleiter: That is what I was trying to get at.

Ms. Pamela Bobbs: Washington House downtown. I just want to say a couple of things. I think everyone is in agreement that certainly Newark has done a great job of revitalizing its commerce downtown and making that a live and viable commercial endeavor. I think the City has made a good start and I have personally committed my very best to the experiment of having owner residents downtown. I have done the very best I could to help that one when I bought a place in Washington House. I think what my biggest concern is what I have heard most hear tonight which is incentivizing developers. What I would like to see happening someplace is also looking at the City and the way the City is developed and how it is developed that it also incentivized people to spend nearly a half million dollars to live downtown town because that is a sizable investment for almost anybody. Maybe not for you folks, but it is for me, believe me. So, it's not just a question of what's good for the developers and how they can make the most money. It is also a question of what kind of a town do you want to have aesthetically for people to make that kind of investment which has an ongoing reward for the City in terms of property taxes. So, I encourage the planning designers and the Commission to think about the aesthetics of the development downtown as well as the commercial advantage for the developers.

Mr. Begleiter: I would just like to say that, at least, my comments about incentivizing developers were not intended, and I certainly didn't say this, to incentivize them to make bigger profits. My concern was how we are going to incentivize developers to produce the kind of housing we want to have produced to bring in the kind of residents you are talking about. So, that is the kind of incentive that I was referring to. Obviously, it has to be a money maker for a developer to do that, but we've got to find the right magic potion in the Zoning Code to incentivize a developer to come and say, okay, now I do want to build these kinds of homes for these kinds of residents. So, it wasn't about profits for developers. It was about getting them to do what we all want to happen in the City.

Mr. Hal Prettyman: 163 Elkton Road, A11. I would like to thank all of you for your service, especially you Roy. I guess I stand here as an enabler. I grew up in Newark, went to Newark High School, lived here all my life, and will die here. I have watched Newark change. The way I look at student housing is it's a means to and end. What I mean by that is, is that we have been able to use student housing to revitalize downtown Main Street. We would never be able to do that or be named in the magazines in the last ten years to have that dramatic of a change with this economy. That is not a bad thing. We just need to embrace it in a little bit of a different way. What I am hearing from Council and what I am hearing from people now that want to live downtown is that the student housing demand is still there. We need to build and prepare to be converted when the time comes that the demand is truly there into owner occupants, young professionals and that type. I am pretty sure, although, I am not 100% sure of Jeff's buildings and how they are built, but all the buildings that we build can be gutted from front to back. All the floor plans can be changed. They can be made into two bedrooms. They can be made into four bedrooms. They can be made into six bedrooms. Most of the people that I know that are doing buildings today can do that and they are doing that because they are expecting this change to occur. I think developers are aware of that and are taking advantage of the student housing to be able to build nice places where somebody might want to live and tear down some of these old places and do something different with them.

I am a little concerned about the number of units going from 145 down to 24. 145, as a developer, I would agree with Ralph. That is a lot of units, but going all the way down to 24 units is a pretty far drop. Personally, I could see something around 30 or even at 28. It is still a tremendous drop. Right now, our business model is for a four bedroom, which at some point in time down the road could be converted to two two bedrooms, but right now, that is what it is. We provide parking for our tenants. The last project we did the comment from the Newark Police Department was, thank God we have a developer that finally put enough parking on their site. I don't have any problem with the rest of the proposal. I think it is a good solid proposal. It looks like it's good for Newark. I look at examples that were given and I think if you look down here it says, Washington House, units per acre, 36.1. You are going to go to 24 units. Now, I grant you, there are other things that come into effect there.

Mr. Lopata: That wouldn't go to 24 units.

Mr. Prettyman: I understand that there are owner occupant there and that would increase the floors and increase all of the other things, but I am looking at conversions five years off or something to that affect. Mr. Lang, are your buildings able to have floors built on top of them without tearing them all the way down?

Mr. Jeff Lang: Within reason.

Mr. Prettyman: You can take IHOP and add two floors to it and not have to take it down?

Mr. Lang: (inaudible)

Mr. Prettyman: My only concern as a developer is that it seems like sometimes people swing the pendulum a little bit too far the other way and we go from 145 down to 24. Even with 30 units, Council still has enough requirements through parking and special use permits that if they have a project that they don't like in front of them, they could change that. They have that control. The rest of it, I agree with Joe and his comments.

Mr. Lang: 13 Spring Water Way. I wanted to chime in on a couple of things Hal said. Obviously, being a developer for a longtime in our town we have seen a tremendous amount of revitalization of our downtown area. One of the things I was before you a month or so ago discussing was the change that we want to see occur. I know the Washington House people want to see it occur. We want to see it occur from a long term use reuse of our downtown area. The big key, as Hal pointed out, is when you build buildings I think the most important point and one of the points of clarification is you want to make sure that you build a building that you can convert correctly. Of all of the discussions that have been going on over the last couple of months, the most important thing, I think, that we need to focus on is the height floor to floor in structure because when we build buildings – and Hal was talking about convertibility of a building – it is not only convertibility from residential rental to residential owner occupant, but it is residential rental to potential commercial rental to long-term reuse as a residential owner occupant sometime down the road. A lot of the buildings that we have built over the recent years even though they are somewhat convertible between residential and commercial, they are not as easy. One of the things that Roy has pointed out in this 15 ft. floor to floor, 90 ft. max height for a six story building is very, very important whether it is a three story building, a four story building or five or six story building. If you don't create a floor to floor ratio that works well, you are going to end up with a lot of buildings that have commercial use and they are not going to be able to be reused on an upper floor from residential to commercial use. Hal spoke about our IHOP building, we do have a second floor commercial tenant there. We actually got a variance for that building because we needed to because of the 35 ft. We have a 42 ft. building. We actually have roughly 13 to 14 ft. per floor in that building and that does give us convertibility for that second floor back to residential and that third floor to commercial because that commercial tenant already asked us right after they moved in if we could gut that floor because we want to take that over. I told them I could not gut the floor because I had just moved the tenants in. If they would have committed to a longer term lease, we could have justify the expense. But, we could have converted that building because of the way it is built.

So, one of the most important things in this is how you guys and how we continue to develop as a community. We want to make sure we build buildings that can meet the needs not two years from now, five years from now, but 20 years from now because there is a tremendous amount of reinvestment in our town with quality products, quality design, but if your structure and your design structure doesn't meet the ongoing needs into the future, you are going to be pigeonholed in to what your use is going to be. And, that kind of where we are pledging the idea of trying to bring in different kinds of tenants for different types of use. But, the market drives those decisions more than we do. We can all sit here and talk about incentivizing the developer but the developer can only do what the market is going to allow us to do. That is the main focus of a lot of the discussion we have all the time. That is one of the important points of this whole presentation here even though it has been glossed over as 90 ft is it too tall. It is really floor to floor. In a three story building, you need more flexibility – 42 ft., 45 ft. Roy, one of questions I had really to summarize my comments is, as you made that recommendation as it talked about a maximum of six stories and 90 ft., does that give flexibility to a building design of three stories and 45 ft. or does it not give it that flexibility?

Mr. Lopata: It does if you meet the requirement of half the dwelling units. It is up to six stories.

Mr. Lang: If I did the IHOP building again, I would be able to do a 45 ft. as long as my third floor wasn't all four bedroom units.

Mr. Lopata: Exactly.

Mr. Lang: I'm sitting here trying to understand, because if you did retail, commercial, commercial, apartment, apartment what does that mean and how does the building look? Until you actually propose a project and bring it to Roy and Maureen and look at it, you aren't really sure how it fits in this box. And, Roy understands it better than everyone. That is the important part of the puzzle right now.

One of the things that Hal brought up is that we are going from 145 to 24 units. I think 24 is too restrictive in the big picture of where we are for the next 10, 15 to 20 years. 24 might be good now to refocus some of the development community on smaller units, which we are actually already doing independent of this proposal. Obviously, we came to Planning Commission and pledged to build smaller units because we think there is a demand and ongoing need for it. This does to some extent refocus developers on that need. That summarizes some of Ralph's comments. Going from 145 to 24 does not incentivize a developer. To incentivize a developer you are actually saying, okay, we will go from 145 to 60 if you do what we want. It is not really an incentive.
Mr. Lopata: It is hitting you with a 2 x 4 and then lifting you up.

Mr. Lang: There you go. Exactly. All in all, I think Mr. Lopata has done a very comprehensive review of the BB zoning and overall I think it is a proposal that can be workable in development. And, that is really what I am explaining that our position is.

Mr. Bowman: I will bring this back to the Commissioners.

Mr. Johnson: I like it because the density is going down to 24, but my question is, does Council have the right to provide a waiver when a developer comes forward and says we would like to build a project with a density of 30?

Mr. Lopata: If they want to go to 30, they would have to meet these other requirements. Can Council approve something different? No, they could go get a variance from the Board of Adjustment. That is a relief valve that always exists. If for some peculiar reason someone has a hardship that they would need 28 or 29 four bedroom units, what would the hardship be? It is hard to fathom one, but theoretically, like I mentioned with the Opera House, they went to the Board of Adjustment years ago when we didn't have the parking waiver system. But, we cannot ignore our own Zoning Code in reviewing these projects. You can't say well, never mind, its 24, we'll make it 25 for this particular project.

The language for that subsection c on page 10, we are all struggling with it, and if you recommend it, I will tell you ahead of time, I will fiddle with it a little more so it is a little clearer and make it clear that what I was trying to do is what Jeff is talking about that even a three story building that could be 15 ft. That was the intent, although, as I am sitting here reading it I can see why would be thinking of it as additional floors.

Mr. Begleiter: Do you think this is ready, Roy?

Mr. Lopata: Is it ready? Yes, because if you are in favor of the general concept, and you have some issues with any one of the amendments and you don't want to recommend one or two of the others, yes, because first of all it is not going to go to Council until January. I don't want to shock anybody but sometimes you make recommendations and the version they actually approve is slightly different. What I am saying is that in this case we may have to do slight tinkering. I am very anxious to get this in the Code because every day that goes by other plans could come in with 145 units per acre. That is my major concern. So, yes, I do think it is ready. I am asking you to recommend in favor of these changes with the proviso that we may have to do some editing, not to change any of the intent that you may express here, so it is clear that you are not recommending something that is going to look different.

Mr. Johnson: When is the earliest that this could be in the Code?

Mr. Lopata: The fourth Monday of January. There are two months yet and plans came in this week.

Mr. Begleiter: On this figure two, would the red color code be the ones to which this zoning change would apply?

Mr. Lopata: Anything can be rezoned, and that's where there is a little bit of confusion. What we tried to do is look at areas that are zoned BB that could be redeveloped like the College Square Shopping Center. The Newark Transportation Plan that we adopted calls for a road through the middle of it now, and a developer could come in and say, I'll make that a little mini Main Street and put shops and houses above. That could happen today. Then we looked at other areas that are zoned BC that could be rezoned.

Mr. Begleiter: The Newark Shopping Center is a very likely candidate for redevelopment and could end up being the experimental caldron in which this change is implemented.

Mr. Lopata: It is the poster child for why we have to do this carefully and soon. As Joe knows, things are in the works. Park "n" Shop right across the street. Hal Prettyman's project is shown here in red. We already have plans in for that.

Ms. Sheedy: Which one is that?

Mr. Lopata: It's a little hard to tell. See the Newark Municipal Building, catty corner across from that, the blue section is where the Louviers building is. Right next to that is this piece that runs to Winslow Road. That is under review is my point.

Mr. Bowman: Are there any other questions or comments from the members of the Commission. If not let's entertain a motion with respect to the amendments as proposed including Roy's comments.

Mr. Begleiter: I am going to recommend that we approve and revise amendment three with a recommendation to Council that it consider defining the parking impact fee as some kind of ongoing fee rather than a one-time fee and I want to keep it open enough so that if it turns out to be a "business impact district" fee or something with a name other than parking impact, that is okay.

Mr. Lopata: "Shall be required to pay to the City an annual parking impact fee."

Mr. Begleiter: Or how about an annual impact fee in lieu of required parking spaces or something like that. That way the fee might not be explicitly about parking. I would say make it an annual impact fee.

MOTION BY BEGLEITER, SECONDED BY DRESSEL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE <u>ZONING CODE</u> AS FOLLOWS:

<u>Amendment One:</u>

Delete BB <u>Zoning Code</u> section 32-18(b)(13)a., which reads as follows:

"a. Minimum lot area shall be sufficient to provide 300 square feet for each dwelling unit."

And replace it with the following:

"a. Maximum number of such dwelling units shall be as follows:

1. 24 units per gross acre for apartments with three or more bedrooms each;
2. 60 units per gross acre for apartments with a maximum of two bedrooms and limited to occupancy by one family or up to four unrelated tenants each;
3. 90 units per gross acre for owner occupant dwelling units, defined as fee simple or condominium dwelling units limited to occupancy by one family or up to two unrelated tenants each.
4. For apartment buildings consisting of various combinations of dwelling unit categories in subsections 1, 2, and 3 above, the maximum number of dwelling units shall be calculated by using the following formula:

   Number of units in subsection 1 multiplied by 24, plus
   Number of units in subsection 2 multiplied by 60, plus
   Number of units in subsection 3 multiplied by 90, divided by
   The total number of units, multiplied by gross acreage =
   Total number of units permitted at site."

<u>Amendment Two</u>

Add the following language to BB <u>Zoning Code</u> section 32-18(d)(4) *Height of Buildings*, the following additional phrase to the first sentence:

"; and except as noted herein in subsection c. below."

And add subsection c. as follows:

> "For buildings that consist of more than one-half of their residential units as rental dwellings with a maximum of two bedrooms and occupancy by one family or up to four unrelated tenants each or with fee simple or condominium dwelling units; within the minimum required setback, such buildings may have heights of their floors of 15 feet each provided that the total height of such a building hereafter erected or altered shall not exceed six stories or 90 feet. Such buildings may have BB permitted uses other than apartments on their upper floors.

Amendment Three

Revise Zoning Code section 32-45(b)(1) by inserting the words, "non-residential," after the words, "any permitted," so that it reads as follows:

> "The off-street parking standards in section 32-45(a) may be reduced or waived for any permitted non-residential use in BB, section 32-18, requiring a certificate of occupancy, with the approval of the planning commission."

And add a new subsection (10) as follows:

> "*BB District Residential Parking Impact Fee*. All residential (apartment or condominium) uses in BB, including such uses combined with other BB permitted uses, shall be required to pay to the city an annual parking impact fee in lieu of the required spaces, based on the requirements and formula in subsection (9) herein, except for such uses with more than three bedrooms each which shall, in addition to the annual fee in lieu of required spaces, shall also provide a minimum of two spaces per dwelling unit."

VOTE:	6-0
AYE:	BEGLEITER, BOWMAN, BRILL, DRESSEL, JOHNSON, SHEEDY
NAY:	NONE
ABSENT:	BROWN

MOTION PASSED UNANIMOUSLY

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission