

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

May 7, 2013

7:00 p.m.

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

Chairman: James Bowman

Commissioners Present: Patricia Brill
Bob Cronin
Angela Dressel
Edgar Johnson

Commissioners Absent: Peggy Brown
Andy Hegedus

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Supervisor
Bruce Herron, City Solicitor
Marge Hadden, Councilwoman, District 4

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

1. THE MINUTES OF THE APRIL 2, 2013 PLANNING COMMISSION MEETING.

The minutes of the April 2, 2013 Planning Commission were approved unanimously as received.

2. REVIEW AND CONSIDERATION OF A MINOR SUBDIVISION OF A PORTION OF THE PROPERTY LOCATED AT 276 S. COLLEGE AVENUE. THE APPLICANT IS REQUESTING MINOR SUBDIVISION IN ORDER TO INSERT A LOT LINE BETWEEN A RESIDENTIAL RENTAL PROPERTY LOCATED AT 15 INDIAN ROAD AND THE ST THOMAS CHURCH PROPERTY LOCATED AT 276 S. COLLEGE AVENUE TO CREATE TWO PARCELS. NO NEW CONSTRUCTION IS PROPOSED.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On February 27, 2013 the Planning and Development Department received an application from St. Thomas Episcopal Church for the minor subdivision of a portion of the property located at 276 S. College Avenue. The applicant is requesting minor subdivision in order to reinsert a lot line between a residential rental property located at 15 Indian Road and the Church property located at 276 S. College Avenue. The lot line between the two parcels was removed by administrative subdivision in the 1980s to allow an accessory use to the Church on the Indian Road property. No new construction is anticipated as a result of this requested action. The minor subdivision will simply create two parcels out of one, and allow the Church to sell off the residential piece, while maintaining its existing facilities and operations at 276 S. College Avenue.

Please see the attached Landmark JCM Science and Engineering minor subdivision plan, and supporting letter.

The Planning and Development Department report follows:

Property Description and Related Data

1. Location:

The parcel is located between S. College Avenue and Indian Road. Two postal addresses exist for the one lot: 15 Indian Road and 276 S. College Avenue.

2. Size:

The combined parcel totals 1.39 acres. If subdivision is approved, parcel #1 (276 S. College Avenue) will be 1.03 acres; and parcel #2 (15 Indian Road) will be .36 acres.

3. Existing Land Use:

Currently, on the 276 S. College Avenue site is the L-shaped Church building and ancillary parking areas, and on the 15 Indian Road site, there is one residential building with an accessory building in the rear.

4. Physical Condition of the Site:

In terms of topography, the site is relatively level, with frontage on both S. College Avenue and Indian Road.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) the Elsinboro-Delanco-Urban Land Complex (EuB). The Natural Resources Conservation Service indicates only slight limitations to development purposes to the site.

5. Planning and Zoning:

The St. Thomas Episcopal Church site is zoned RS. RS is a single family residential zoning that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.

- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Regarding RS zoning area specifications, on February 21, 2013, the Board of Adjustment approved variances for rear yard setback, maximum lot coverage and total maximum lot coverage for the lot to be recreated at 276 S. College Avenue. With these variances, the St. Thomas Episcopal Church minor subdivision plan meets all applicable area requirements.

Regarding adjacent and nearby properties, lands to the north of this site are zoned RS and contain a doctor's office and single family homes. To the south of the site is a currently undeveloped parcel owned by the Episcopal Diocese of Delaware. This property is also zoned RS. Across S. College Avenue are University owned properties. Likewise, the property at 15 Indian Road is surrounded by RS zoned single family homes.

Regarding comprehensive planning, the Comprehensive Development Plan IV recommends single family residential (low density) uses for the site. The Plan suggests density of 1 to 3 dwelling units per acre for this category.

Departmental Comments

The City Management, Planning and Development, and Operating Departments have reviewed the St. Thomas Episcopal Church minor subdivision plan and have the comments below:

1. The Planning and Development Department notes that 15 Indian Road has a valid rental license for 3 unrelated individuals, only 2 of which can be students. Therefore, provided this rental license is renewed annually, it remains with the property at 15 Indian Road, even if the property is sold.
2. There were no other departmental comments regarding this subdivision.

Recommendation

Because the St. Thomas Episcopal Church minor subdivision plan does not conflict with the land use recommendations in the Newark Comprehensive Development Plan IV, because no new buildings or development are proposed for the site and the existing buildings correspond to the development pattern in the community, and because with the variances granted by the Board of Adjustment the plan conforms to all applicable Zoning Code requirements, **the Planning and Development Department suggests that the Planning Commission recommend that City Council approve the St. Thomas Episcopal Church minor subdivision, as shown on the Landmark JCM Science and Engineering plan dated October 12, 2012 with revisions through February 22, 2013."**

Ms. Feeney Roser: The applicant and representatives are here and, of course, I will be happy to answer any questions you may have for me.

Mr. Bowman: Are there any initial questions for the Planning and Development Department? If there are no questions, will the applicant step to the microphone.

Mr. Joe Charma: I am with Landmark Science and Engineering. Tonight I have with me have Tom Fairchild representing the Church and Dominic Balascio is the legal counsel for the project.

Tonight's application is unique in that we are not seeking approval for any new construction or any expansion of building square footage but merely to establish this property line. The property is known as 15 Indian Road and 276 S. College Avenue, and consisted of lot numbers 12, 3, 4 and 5 respectively. The single family home and accessory buildings were constructed on lot 15 in 1946 and the Church was constructed on 276 S. College Avenue in 1950. The Church purchased the 15 Indian Road property with the main house serving as a rectory for a time and its current use is for a rental property.

In 1989 an administrative subdivision plan was filed by the Church to extinguish the lot line between lot 15 and lots 3, 4 and 5. It actually extinguished all of the lot lines so that the Church could establish a day care on the existing parcel on 15 Indian Road in the accessory building. That was necessary to do because the accessory building had to be on the same parcel as the principal use.

As the Church no longer operates the day care and they wish to sell lot 15, we are here for the resubdivision.

Please note that these parcels and structures were developed prior to the adoption of the City's Zoning Code in 1956 so several variances were necessary in order for the lots to meet the current zoning standards. Obviously, the Board of Adjustment granted all of those variances on February 21st at their hearing. Those variances are specifically noted in note #11 on the subdivision plan. That is our presentation and we would be happy to address any comments you may have.

Mr. Bowman: Are there any questions from the Commissioners for the applicant?

Ms. Dressel: I am just curious; I know that there is no building plans for 15 Indian Road. It is a very congested lot with all those buildings on it. I understand that they were built beforehand, but is there any thought that some of those buildings would come down like the accessory buildings before being sold off or would it just be sold?

Mr. Charma: The lot does comply with the coverage that is on it. It complies with the Zoning Code. The variances were really applied for the Church parcel. So, the Church does not have any intension of spending any money or tearing anything down on that property.

Mr. Bowman: Is there anyone from the public that would like to address this issue? Hearing none, we will come back to the Commission.

MOTION BY DRESSEL, SECONDED BY JOHNSON THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL APPROVE THE ST. THOMAS EPISCOPAL CHURCH MINOR SUBDIVISION, AS SHOWN ON THE LANDMARK JCM SCIENCE AND ENGINEERING PLAN DATED OCTOBER 12, 2012 WITH REVISIONS THROUGH FEBRUARY 22, 2013.

VOTE: 5-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, JOHNSON

NAY: NONE

ABSENT: BROWN, HEGEDUS

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE SUBDIVISION REGULATIONS FOR REZONING AND SUBDIVISION APPLICATION EXPIRATION AND BIKE STORAGE FACILITIES.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“Over the recent past, the Department has received suggestions for amendments to the City’s Subdivision Regulations. Specifically, we’ve discussed providing a provision for the expiration (“sunsetting”) of rezoning and subdivision applications, which have not been acted upon in a timely manner; and the need to require bike racks for smaller development projects than the Code currently mandates, as well as increasing the number of bike rack parking spaces required. As both involve amendments to Chapter 27 (Subdivision) of the City’s Municipal Code, one report has been prepared to cover both topics. We also suggest an amendment for clarification approved subdivision expiration clause, which is detailed below.

APPLICATION EXPIRATION

While reviewing a recent development proposal, it came to our attention that the City of Newark does not have an expiration or “sunsetting” regulation for rezoning and/or subdivision applications. At the present time, “sunsetting” only applies to approved subdivisions. Specifically, once a subdivision has been approved by City Council, our regulations provide that the subdivision be completed in full within five years of the approval date, or the subdivision may be expired. We suggest that this language be expanded to require expiration for subdivisions that have not yet begun construction, as the clause has traditionally be interpreted. This matter will be reviewed in more detail later in this report, but it is important to note that, regardless of language tweaking for approved subdivisions, the current Code contains no provision for sunsetting applications. For example, we recently had to review development plans under an older version of BLR (business, limited residential) zoning requirements than are currently in place. Specifically, in this case, while the application was continued at the April 2nd Planning Commission meeting, the Commission had been asked to review a development project under the BLR requirements in place at the time of application (April 10, 2009), which allowed stand alone apartments. The Code was subsequently amended, later in April of the same year, to permit apartments only in conjunction with permitted non-residential uses in the BLR district. While the development plan lay dormant since April 2009, the applicant recently decided to move forward with the approval process, and because there is no mechanism to “expire” applications, the plan had to be reviewed under previous Code provisions.

As a result of this experience, it has been suggested that the City amend its Subdivision Regulations so that rezoning and/or subdivision applications are subject to expiration, if they are not acted upon in a timely manner. Specifically, in this regard, the Department suggests that a 36 month time period from the date of submittal to move the project forward for consideration of Planning Commission is reasonable.

Therefore, we recommend the following new language be inserted as the third and fourth sentences in Code Section 27-21(b)(2)d for major subdivisions:

“If the Planning Commission does not review the subdivision plan within 36 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-21(b)(2)a. The Director of Planning and Development may grant an extension(s) for circumstances beyond the applicant’s control.”

If approved, therefore, Section 27-21(b)(2)d will read as follows:

“The Planning Commission shall review the subdivision plan and within 40 days issue a recommendation to City Council containing its recommendation concerning the subdivision plan. If the Planning Commission does not review the subdivision plan within 36 months of the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-21(b)(2)a. The Director of Planning and Development shall grant an extension(s) for circumstances beyond the applicant’s control. If approved, the City

Solicitor should prepare a subdivision agreement to be signed by the developer and the City Manager for approval by City Council.”

For minor subdivisions, for the same reasons, we would insert nearly identical language as the third and fourth sentences of 27-20(b)(4) for the complete section to read as follows:

“The Planning Commission shall review the subdivision plan and within 40 days issue a recommendation to City Council concerning the subdivision plan. If the Planning Commission does not review the subdivision plan within 36 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-20(b)(1). The Director of Planning and Development may grant an extension(s) for circumstances beyond the applicant’s control. If approved, the City Solicitor should prepare a subdivision agreement to be signed by the applicant and the City Manager upon approval by City Council.”

Likewise, for Administrative Subdivisions, we recommend inserting a new 27-19(b)(5) to read:

“If the applicant fails to secure approval within 36 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-19(a)(1). The Director of Planning and Development may grant an extension(s) for circumstances beyond the applicant’s control.”

Finally, regarding the expiration of approved subdivision plans, the Department believes that a distinct difference exists between a subdivision which has commenced construction but remains incomplete five years past the approval date; and one that has not begun construction. We believe that additional language will clarify the difference and eliminate confusion regarding the applicability of the Code provision for expiration. We suggest, therefore, applying the current Code language to incomplete approved subdivision plans, and adding language to require the expiration of subdivisions which have not moved forward to construction at all. Therefore, the Department suggests revising Sections 27-20(b)(6)b and 27-21(b)(2)j by adding the following language.

“In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with section (b) above.”

If approved, Section 27-20(b)(6)b, Minor Subdivisions, will read as follows:

“If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may require the applicant to reapply for subdivision approval beginning with Section (b) above. In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision plan shall expire and the applicant must reapply for subdivision approval beginning with Section (b) above.”

Likewise, if approved, Section 27-21(b)(2)j, Major Subdivisions, will read:

“If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may require that the applicant reapply for subdivision approval beginning with Section (b) above. In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision plan shall expire and the applicant must reapply for subdivision approval with Section (b) above.”

Recommendation

In order to add provisions for the “sunsetting” of subdivision plans and applications, the Planning and Development Department suggests that the Planning Commission consider recommending to City Council the following:

Amend Subdivision and Development Regulations Sections 27-19, 27-20 and 27-21 by adding the following italicized language to each section as follows:

Administration Subdivision – add a new Section 27-19(b)(5) to read as follows:

“If the applicant fails to secure approval within 36 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-19(a)(1). The Director of Planning and Development may grant an extension(s) for circumstances beyond the applicant’s control.”

For Minor Subdivisions, amend Section 27-20(b)(4) to read as follows:

“The Planning Commission shall review the subdivision plan and within 40 days issue a recommendation to City Council concerning the subdivision plan. If the Planning Commission does not review the subdivision plan within 36 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-20(b)(1). The Director of Planning and Development may grant an extension(s) for circumstances beyond the applicant’s control. If approved, the City Solicitor should prepare a subdivision agreement to be signed by the applicant and the City Manager upon approval by City Council.”

And amend Section 27-20(b)(6)b to read as follows:

“If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may require the applicant to reapply for subdivision approval beginning with Section (b) above. In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with Section (b) above.”

For Major Subdivisions, amend Code Section 27-21(b)(2)d to read as follows:

“The Planning Commission shall review the subdivision plan and within 40 days issue a recommendation to City Council containing its recommendation concerning the subdivision plan. If the Planning Commission does not review the subdivision plan within 36 months of the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Section 27-21(b)(2)a. The Director of Planning and Development shall grant an extension(s) for circumstances beyond the applicant’s control. If approved, the City Solicitor should prepare a subdivision agreement to be signed by the developer and the City Manager for approval by City Council.”

And amend Section 27-21(b)(2)j to read as follows:

“If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may require that the applicant reapply for subdivision approval beginning with Section (2)(a) above. “In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with Section (2)(a) above.”

Ms. Feeney Roser: I will be happy to answer any questions you may have for me.

Mr. Johnson: What are the circumstances that would have to exist that would preclude the Planning Commission not reviewing something within a 36 month time period?

[Secretary's Note: Some members of the public did not hear Mr. Johnson's question].

Ms. Feeney Roser: Your question was what kinds of circumstances would preclude the Planning Commission from reviewing a project within 36 months?

Basically, the applicant applies and then requests not to be heard, or does nothing about coming back with revised plans as necessary or does not submit the things that they had been requested to and then withdraw. This came up with a project that was on the agenda for your March meeting that had originally been submitted in 2009 for BLR zoning and never moved forward. And, then recently requested that they be able to move forward, and I told them that I didn't even have the plans. And, they said we submitted them and they were able to come with copies of the cancelled checks, plan and the application, and the City Solicitor said we don't have a provision to sunset an application. So, therefore, the plan needs to be heard under the Code as it was in 2009, which can get very confusing. So, the idea was that we could give them a reasonable time period to get to this Commission and if they do not, they have to start over again. The reason you want them to start over again is because of Code changes. Things like wetlands changes and regulations that would apply to it. We would want to make sure that they had to keep up with it.

Ms. Dressel: I have a question for clarification. That one was tabled again, right?

Ms. Feeney Roser: Yes.

Ms. Dressel: Because I was very concerned about that when it came forward that it had been so long.

I have a question about the wording. The first one is under Amendment Section 27-20(b)(6)b. It says, "If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may . . ." Should it be the Planning Commission or the Planning Department?

Ms. Feeney Roser: That is currently in the Code now.

Ms. Dressel: Planning Department?

Ms. Feeney Roser: No, Planning Commission. So, what could happen is that someone comes in and they want to start building a subdivision plan that was approved more than five years ago and we would say to them that the plan has been sunset, but actually, the way it should be interpreted is that they have the right to come to the Planning Commission and ask you to consider allowing them to move forward with it. And, I believe that if, in fact, that is what we want to do, that should only be for plans that have started some kind of construction and have for some reason not been able to complete it in the five year period. If they haven't started construction at all, it is my recommendation that we make the language clear that they are sunsetted without having to waste this Commission's time hearing it.

Ms. Dressel: Okay.

Mr. Cronin: A number of places it talks about the Director of Planning and Development may grant an extension for circumstances beyond the applicant's control, but at the bottom of page 4 the language for Section 27-21(b)(2)d, it says, ". . . Director shall grant an extension(s) . . ."

Ms. Feeney Roser: I appreciate you pointing that out. It should be "may."

Mr. Cronin: We have this 36 month time period. I would probably be more comfortable with 30 months. I don't know why we need 36. That is a pretty long time. You have to have some time, but I think folks ought to do what they say they are going to do or be subject to further review or rereview. So, I would be inclined to make a motion to change it to 30 months. I could even be talked into 24 months probably, but I think 30 is better than 36 months.

Mr. Johnson: I think three years is a long time and I would go with 24 months myself. If they can't get their act together after they have submitted their plans or request, 24 months seems like ample time to give them.

Ms. Feeney Roser: Bruce, is there any reason why we couldn't shorten that to 24 months.

Mr. Herron: No, I don't believe so. It is 24 months from the date of submittal. Based on your experience, that should be an adequate time.

Ms. Feeney Roser: Normally, if everything is moving along, it is a four to six month process from date of application to the date of getting to Council.

Ms. Dressel: If there are recommendations from the Planning and Development Department that a developer make changes and potentially dramatic changes, is it something that they usually come back with in that four month period or does it take longer than that?

Ms. Feeney Roser: In my experience, the developer is trying to get onto your agenda so they do try to accommodate them. I had a Subdivision Advisory Committee meeting this morning and I'm doing letters about all of our comments and things that we would like to see revised and I give them three weeks to respond to make the Commission agenda that they are hoping to make. I think it is reasonable. I really don't have a problem with 24 months. If something takes 24 months, it actually has been to you and tabled and sent back, generally.

Mr. Cronin: So, it is 24 months for discussion. What is to prevent somebody at 18 or 20 months withdrawing their application and a month or two later resubmitting it and starting a new 24 month period.

Ms. Dressel: Then they are under the new regulations.

Ms. Feeney Roser: A new application, new fees.

Mr. Cronin: That is what we are trying to do to position people for what part of the Code they are applying under and working within.

Ms. Dressel: So that your density numbers and things like that are current as opposed to going back to 2009. Right?

Ms. Feeney Roser: Right.

Ms. Dressel: If we had had changes in the occupancy levels of apartments or something like that, then that would be impacted if we have tightened it or loosened it one way or another.

Ms. Feeney Roser: Right, because they are required to meet the Code at the time of application.

Mr. Bowman: Just for information purposes, in my memory that might be other than your memory, we had a bite out of this apple with a project involving the Embassy Suites, as I recall. That had been applied for and dragged on and on and on and near the five year date, which was generally accepted at that time, the only thing they had done was cut a curb cut and, basically, a driveway. The City turned down the application and we wound up in a law suit and wound up losing. So, I think it behooves us to firmly

establish that guideline and five years strikes me as being a bit long. My question is to whoever makes the motion, do you wish to apply that 24 months to all the circumstances here, including having substantial construction started within two years for major subdivisions as well as minor subdivisions?

Ms. Dressel: I guess my concern is from the developer's perspective. There are hoops to go through to get things in order to get all the approvals and get your building materials, etc., and I think you are right that it may take 24 months to get the process through to Planning Commission but, I would be afraid of saying 24 months on all types of applications. I would be more comfortable with saying, if it is something large, such as a factory, it might take longer to get all the corporate and any other kind of approvals before they start. So, I would be more comfortable with the minor subdivision being 24 months and then major 36 months.

Mr. Johnson: Can you define minor and major for me?

Ms. Feeney Roser: Minor subdivisions are residential subdivisions with five or less residential lots or units, commercial or industrial buildings of less than 20,000 sq. ft., and where no new roads involved. Major subdivisions are if you have a new road or you have six or more units, or buildings of more than 20,000 sq. ft. The major subdivision is your larger project.

Mr. Bowman: We have a motion, but we didn't get a second.

Ms. Dressel: Did we make a motion?

Mr. Bowman: Bob did. So, if he wants to restate his motion.

Mr. Cronin: The 24 months applies to the period of time from when the plan is first submitted to the Planning and Development Department to when it would come on the agenda and be reviewed by the Planning Commission for minor and major. I think that is quite sufficient.

Mr. Bowman: This is 24 months before it comes to the Planning Commission. Is that what we are saying?

Mr. Cronin: That is what I am reading here. In the text that period of time was 36 months.

Mr. Bowman: Now, as to the sunset date, your motion now is only applying to coming before the Commission.

Mr. Cronin: There might be other motions along the way but I think if we do this incrementally, it might be the most efficient thing to do.

Mr. Bowman: Does everybody understand the motion? This is to apply the 24 months to the timeframe until it comes to the Commission for applications. The application must be acted taken care of within 24 months.

Mr. Cronin: If they are not acted upon then they are sunsetted by definition, unless you give an extension, which says you may – extensions. That is the next point of discussion. Right now we have extension(s) and they could want multiple extensions for circumstances beyond the applicant's control.

Ms. Feeney Roser: I think implicit in that is that the request for an extension has to be received prior to the time that it expires. So, that means you don't really need timeframe for when an extension may be granted because it has to be granted before the time expires.

Mr. Cronin: I agree, but then it says, may grant an extension with an (s), but it doesn't say how long the extension would be or whether there would be multiple extensions, based upon the first extension. It suggests there could be multiple extensions because of

the parenthetical (s), and I didn't know what all of the possibilities are if we put this in place that way.

Ms. Dressel: It sounds to me like we are trying make two different motions on the same set of wordings.

Mr. Cronin: My motion is make the 36 months 24 months.

Mr. Bowman: Is there a second?

Ms. Feeney Roser: Do we need public comment?

Mr. Bowman: They can comment on the motion, I believe, yes. If anyone wishes to comment on this proposal, please step to the microphone.

[Secretary's Note: There was no public comment].

Mr. Bowman: Does everyone understand the motion? This motion is to change the 36 month for the application to 24. It has nothing to do with any extensions being granted.

Ms. Dressel: I have a question about this.

Mr. Bowman: Let's stick with this motion and not get too confusing on the questions.

Ms. Dressel: But, that is the problem. If it is all in one section, I am trying to understand, can we separate this out right now or do we need to take the whole paragraph at one time?

Ms. Feeney Roser: I think that you can separate out this because you are amending the wording at this point. So, for administrative subdivisions instead of 36 months they have 24 months. For minor and major subdivisions, the same 24 month period would apply.

Mr. Cronin: Basically, with any application that comes to the Planning and Development Department if it doesn't get to the Planning Commission within 24 months, it would sunset and, presumably, they can reapply after a sunset. Of course, they reapply under whatever the current Code and regulations are when they reapply.

Ms. Dressel: What if it comes before Planning Commission and it fails?

Mr. Bowman: They still have the option to take it to the Council over our recommendation. Keep in mind that we are advisory. If we say we don't like this project, they can still go forward. You aren't talking about projects. Correct? Are you talking about this motion to change these numbers or are you talking about project that we turn down.

Ms. Dressel: I am talking about the wording that is in here for a project.

Mr. Bowman: They can do anything they want. We are making a recommendation.

Mr. Cronin: We are recommending to Council. They can go back to 36 months if they want.

Ms. Dressel: I know, but I am saying, in the wording here for the Administrative Subdivision, it says, "If the applicant fails to secure approval. . ."

Ms. Feeney Roser: That is because administrative subdivisions don't come to the Commission; only minor and major subdivisions and rezonings do. An administrative subdivision is adjusting a lot line, not creating any new building lots. So, that is actually done administratively through the Planning and Development Department. You apply, we notify the neighbors, and if there is not a complaint about the plan and it meets Code, then we can approve an administrative subdivision. It would go to Council if there was an objection. So, that is why the wording is different.

Ms. Dressel: Right, but I am still thinking you might not always approve it.

Ms. Feeney Roser: No, but it would have to be a subdivision that wouldn't meet Code or there would be an objection that would then have to go to Council.

Ms. Dressel: I'm concerned about if the applicant fails to secure review by the Planning and Development Department within 36 months.

Mr. Bowman: It doesn't apply to administrative subdivision, it applies to minor and major subdivision.

Ms. Feeney Roser: Angela is saying if somebody comes to the Planning and Development Department and they don't secure our review within 24 months of the date.

Mr. Bowman: Not likely.

Ms. Feeney Roser: The Subdivision Regulations require that we review it within ten days.

Ms. Dressel: I was just thinking that if someone put the application in and then stall it.

Ms. Feeney Roser: The Planning and Development Department is held to a shorter timeframe to review these things. The review procedure says that, "The Planning and Development Director shall within ten days review the proposed subdivision plan. Preliminary approval of the administrative subdivision plan shall be made by the Planning Director that the proposed subdivision will not be detrimental to health, safety and general welfare of the City or appear injurious to other property. If the Director disapproves the administrative subdivision the applicant may request that Planning Commission and Council review the proposal." So, the chances of them not getting a review are not good, but they may not secure approval in that timeframe.

MOTION BY CRONIN, SECONDED BY JOHNSON, TO AMEND MOTION TO READ, "IF THE APPLICANT FAILS TO SECURE APPROVAL WITHIN 24 MONTHS FROM THE DATE OF SUBMITTAL . . ."

VOTE: 4-1

AYE: BOWMAN, BRILL, CRONIN, JOHNSON

NAY: DRESSEL

ABSENT: BROWN, HEGEDUS

MOTION PASSED

Mr. Bowman: The rest of that paragraph. Bob, do you have anything further? Does anybody else have anything else further on the issues there?

Mr. Cronin: I guess I'm still curious about every place the extension shows up. Duration of the extension for one – 6 months extension, 12 months extension, two year extension. I think we need to put some parameters on that in some fashion and maybe something about multiple extensions or one extension after the other without coming to the Planning Commission without a concurrence of a recommendation from the Planning Department.

Ms. Feeney Roser: I am open to suggestions for how the Commission would like to handle that. Bruce, is there any reason why we can't make that one extension and give it a time period?

Mr. Herron: My only hesitation there would be the phrase, ". . . for circumstances beyond the applicant's control." I think it might be a better idea if we are going to keep that phrase in there, and there is good reason for it, that there not be a limit on the extension because if there truly are circumstances beyond the applicant's control, it would be a problem if we say just one extension. We don't care if it is beyond your control or not. We run into a potential issue there.

Mr. Johnson: Can I ask this question? Because the (s) is there, that means that you had in mind some definitive length of time the extension would be good for. What was that length of time where they would have to come back and get a second extension? So, you had to have something in mind to put the (s) there. Otherwise the extension is open-ended.

Ms. Feeney Roser: We could do six month extensions. Does that seem reasonable?

Ms. Dressel: Or can we just put may grant a six month extension for circumstances beyond the applicant's control. So, that is only one.

Ms. Feeney Roser: As Bruce just said, it is beyond their control so we may have to grant more than one extension.

Mr. Cronin: Why don't we say something like, the Planning Commission may grant an extension based upon the recommendation from the Planning Department, and that way whatever these circumstances are, they will be evaluated at the time rather than try to have wording in there that covers everything that is so broad and unforeseen.

Ms. Dressel: Will you give an example of something that would be beyond the applicant's control?

Mr. Bowman: Temporary cancellation of financing.

Ms. Feeney Roser: That could happen.

Ms. Dressel: That would be from the developer's perspective.

Mr. Bowman: That would certainly be a circumstance beyond his control where the bank says I'm going to hold up your loan.

Mr. Cronin: It is and it isn't. It depends upon what he did or didn't do to tank his credit ability with the bank during that period of time.

Mr. Bowman: But, then again, it may not be in his control.

Mr. Cronin: But, there are circumstances such as if somebody has an accident or a death in the family and they get right up to the 24 month period with something unforeseen like that. That could be a plausible scenario.

Ms. Dressel: That is not likely going to be for a minor subdivision or a major subdivision, though, do you think?

Mr. Cronin: Developers have things go wrong in their lives.

Ms. Dressel: I know but there are usually multiple people working with them.

Mr. Cronin: Usually.

Mr. Bowman: We can "what if" this thing to death. Let's try to focus in. Either let it alone or make a recommendation that we change it.

Mr. Cronin: I think what we need to consider is do we want to have extensions granted by the Planning and Development Department or a recommendation for an extension to come before the Commission and we evaluate circumstances at the time and grant one for whatever seems to be appropriate be it six months, twelve months, etc.

Ms. Dressel: I wouldn't want it to come before the Planning Commission to determine that. I think the Planning and Development Department should be able to make that decision.

Mr. Johnson: But, how often are they going to make that decision. The (s) is on extensions. Are they going to make it ten times?

Ms. Dressel: We can take the (s) off.

Mr. Johnson: So, grant one extension and Maureen can decide what the length of that extension will be.

Ms. Feeney Roser: Do we need to take off for circumstances beyond the applicant's control, Bruce, to make one extension a possibility?

Mr. Herron: I think the idea of this wording was to give the Planning and Development Department some flexibility, and the intention is if there are no circumstances beyond the applicant's control then the extension cannot be granted. Those are the only circumstances under this language under which an extension can be granted.

Mr. Johnson: But, the mere fact, in my mind, that the (s) is in existence there, is it sends a message to the applicant that they can get multiple extensions. And, how long do you carry this out? In other words, you are creating a non-sunset provision when you are trying to create a sunset provision.

Mr. Herron: I wouldn't have a problem with the deletion of the (s).

Ms. Dressel: What about circumstances beyond the applicant's control at the discretion of the Director of Planning and Development, they may grant an extension of six months?

Mr. Herron: Either one would be fine.

Mr. Cronin: I think I would like to make a motion.

MOTION BY CRONIN, SECONDED BY JOHNSON TO AMEND THE RECOMMENDATION BY TAKING OUT EXTENTION WITH THE (S) AND SAY, MAY GRANT A REASONABLE EXTENSION FOR CIRCUMSTANCES BEYOND THE APPLICANTS CONTROL WITH NO MENTION OF DURATION OF THE EXTENTION. THE DURATION OF THE EXTENTION TO BE DETERMINED BY THE PLANNING AND DEVELOPMENT DIRECTOR AT THE TIME.

Ms. Dressel: I think putting reasonable in there opens us up for any kind of an extension and if you were trying to get us down from 36 months to 24 months, I think you just eliminated that.

Mr. Cronin: It's reasonable not determined by the applicant. It's reasonable determined by the Planning and Development Director. If they think three months is sufficient based on the circumstances, it could be three months, it could be six, and it could be ten. And, it would get reported to us anyway.

Ms. Dressel: Right, but then every applicant who has a reasonable situation would come and could potentially have a different amount of time. I would think that puts the City into an inconsistency.

Mr. Cronin: Mr. Herron, do you think it is inconsistent in this application of that?

Mr. Herron: I don't see that as a problem because every situation is not going to be the same. I think it would be understandable if exercising the Director's discretion, she decides that an extension of one length is reasonable in one case and might not be reasonable in another. I don't have a problem.

Mr. Joseph Word: I am the owner of 55 Church Street. I think it is definitive. I believe you are opening up yourself to a can of worms leaving it at the discretion of one person. I think you give a timeframe and if you use the timeframe, you use the timeframe.

Mr. Cronin: Do you think we should say a reasonable extension not to exceed a length of time?

Mr. Bowman: You have a motion on the floor. You either have to amend it or you have to vote it down unless someone wants to amend the motion which we could vote on the amendment then go back and vote on the original motion.

VOTE: 2-3

AYE: CRONIN, JOHNSON

NAY: BOWMAN, BRILL, DRESSEL

ABSENT: BROWN, HEGEDUS

MOTION FAILS

Ms. Feeney Roser: Do you need the word reasonable?

Mr. Cronin: You wouldn't need reasonable. Just say an extension not to exceed six months duration.

Ms. Dressel: Does that eliminate, for circumstances beyond the applicant's control?

Mr. Cronin: No, that is still in there.

Mr. Johnson: What was the answer to that question?

Mr. Bowman: It still leaves it at the discretion of the Director as to what is reasonable to grant an extension that is now limited to six months. An extension up to six months.

Mr. Johnson: It is up to the Director whether the word reasonable is there or not.

Mr. Cronin: With, not to exceed six months, you can take out the word reasonable.

Mr. Johnson: I agree.

Mr. Bowman: Reasonable is there now. Your motion has not been seconded. Do you want to restate it?

MOTION BY CRONIN, SECONDED BY JOHNSON, TO AMEND THE RECOMMENDATION BY TAKING OUT EXTENTION WITH THE (S) AND SAY, MAY GRANT AN EXTENSION NOT TO EXCEED SIX MONTHS FOR CIRCUMSTANCES BEYOND THE APPLICANTS CONTROL.

VOTE: 4-1

AYE: BOWMAN, BRILL, CRONIN, JOHNSON

NAY: DRESSEL

ABSENT: BROWN, HEGEDUS

MOTION PASSED

Ms. Feeney Roser: Now we have to move to the subdivision plan sunseting language.

Mr. Bowman: This next one would be minor and major subdivisions for sunsettings. Correct?

Ms. Feeney Roser: Yes. The way the Code reads now, it says, "If, however, the subdivision plan is not completed in full within five years from the date of approval by City Council, the Planning Commission may require the applicant to reapply for subdivision approval beginning with Section (b) above."

What we would like to add is, *“In cases where no building construction has begun within five years from the date of approval by City Council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with Section (b) above.”* For both minor and major subdivisions. It is not applicable to administrative subdivisions.

Mr. Bowman: Currently that is a five year issue as it currently stands. Correct?

Ms. Feeney Roser: It just says “may.” It has always been interpreted that if there was no construction, it sunsetted and the Commission never saw it and that is the way it has been applied. I just think the way it is written is a little confusing and that those subdivision plans that have already started and, perhaps, there are one or two units left to be built and haven’t been within the 5 year timeframe, that the Commission could consider extending that time period for them instead of expiring the subdivision. So, they would have to come before you and request an extension in that case. If they haven’t started construction, this amendment makes it clear they start all over again.

Mr. Cronin: How about that example with the Embassy Suites with the curb cut. So, that is where construction has begun within five years. It isn’t completed, and what kind of limbo are we in then.

Ms. Feeney Roser: What we would consider as the Construction Improvement Plan would have to be filed and approved and a building permit issued. That would be construction beginning.

Mr. Cronin: But once it is begun, it means you turn the first spade of dirt or put the first pour of concrete in, you have begun it. But, then the economy tanks and you stop what you are doing.

Ms. Feeney Roser: Right, so, in five years, it would either expire or if they wanted to, they could come here and explain their circumstances and ask the Commission not to expire the subdivision and then you would hear the individual circumstances and determine whether or not you wanted to sunset it or not.

Mr. Cronin: I guess I am confused.

Ms. Feeney Roser: Really, all this is trying to do is to make it clear that if you have done nothing you expire.

Mr. Cronin: I think that is already self-evident with the original language. If it is not completed, your range of activity is from zero to 99 or 100%. So, I think the previous director is probably correct. If it is zero, it’s not completed and it hasn’t started. And, I think to add the italicized words actually detracts from the clarity, in my mind, rather than add to it.

Ms. Dressel: If it’s not completed, it’s not the same thing as no building construction has begun.

Mr. Cronin: I know that, but either one, they must apply. So, if you have zero percent construction or one percent or ten percent. Zero percent is no construction has begun and that is pretty self-evident that it is not completed.

Ms. Feeney Roser: So, what we are trying to do is avoid that developer being able to come back and ask you for an extension. It would just automatically expire. If they had done some work and there may be circumstance that this Board would say, yes, we shouldn’t expire your subdivision and give them a timeframe to complete it. That is what I was thinking. I think there is a distinct difference between the two circumstances. If you haven’t done anything at all then we shouldn’t have to continue to allow you to build something that five years later codes may have changed and things of that sort.

Mr. Cronin: But, that is what is already there, is it not?

Ms. Feeney Roser: No, it says “may”. It doesn’t say “shall”, it says “may”. But, if the Commission feels that the language is adequate now, I am good with that. I just thought it was a way to make it a little clearer for the process.

Ms. Dressel: I think it is important to add the “shall expire” and I think that divides the two sections pretty explicitly. If it is not completed within the five years, it could potentially have to reapply or we could change it to say, the Planning Commission will require the applicant to reapply for subdivision approval beginning . . ., if you want to make it more severe which I don’t think we are looking for, but I think that adding in cases where no building construction has begun within five years from the date, I think that is a very important aspect to add.

Mr. Bowman: Are you going to put that in the form of a motion?

Ms. Dressel: Yes.

Mr. Bowman: That is to leave the five years in place, not to shorten that issue.

Ms. Dressel: I don’t think there is a reason to shorten that issue. Let me ask the Director. I think five years is reasonable.

Ms. Feeney Roser: I’m comfortable with five years for the build out. Sometimes the Construction Improvement Plan can take quite some time and sometimes the financing is slow getting in place. If they’ve started construction, then we can extend that time period. If they haven’t in five years, I think that is reasonable.

MOTION BY DRESSEL, SECONDED BY JOHNSON, TO AMEND SECTION 27-20(B)(6)B AND SECTION 27-21(B)(2)J AS STATED IN THE PLANNING AND DEVELOPMENT REPORT OF APRIL 26, 2013.

Mr. Bowman: Are there any comments from the public?

Mr. Cronin: I have a question, if I may. The part that says, where the Planning Commission may require the applicant to reapply, that would come to our attention presumably as a recommendation from the Planning Department? We aren’t going to think of it on our own, I don’t think.

Ms. Feeney Roser: Pardon me.

Mr. Cronin: We are not going to track that and think of it on our own.

Ms. Feeney Roser: No, what would happen is if something has not been completely built out within five years, we notify the developer that the sunset is upon them and then they would contact us and request that you would consider extending the time limit, and then it would be placed on the next Commission agenda and you would get a report and a recommendation.

Mr. Bowman: Does that clarify things, Bob?

Mr. Cronin: Yes, it does.

VOTE: 5-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, JOHNSON

NAY: NONE

ABSENT: BROWN, HEGEDUS

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser summarized the second part of her report to the Planning Commission, which reads as follows:

“REQUIRED BICYCLE STORAGE FACILITIES

During conversations with the Newark Bicycle Committee, WILMAPCO, the Downtown Newark Partnership and through the Newark Bicycle Plan and Comprehensive Development Plan update processes, we’ve received suggestions for increasing bicycle parking facilities in Newark. In response, we’ve reviewed the Subdivision Regulations of our community and others, and have the following suggestions:

Regarding required bicycle storage facilities, our current regulations only require bike storage facilities to be installed if a multi-family residential or commercial major subdivision reaches a threshold of 50 required parking spaces. Specifically, Subdivision Appendix II(c) requires the following:

“All multi-family residential and commercial major subdivisions with 50 or more parking spaces as defined and required in Chapter 32, Zoning, Article XIV, of this Code, shall meet the following requirements for bicycle rack or similar bicycle.

- 1. One bicycle rack parking space (opening or slot) shall be provided for every 10 required off-street parking spaces.
- 2. No more than 20 bicycle rack parking spaces shall be required for each subdivision.
- 3. Bicycle racks shall be located in areas visible from adjoining or nearby streets or sidewalks.
- 4. Bicycle racks shall be separated from automobile parking areas by curb barriers or located on sidewalks. Sidewalk installation shall be permitted only for sidewalks not located within public rights-of-way.
- 5. Bicycle racks shall be secured and stationary and shall be designed for the lockage of bicycle frames and wheels. Bicycle lockers or similar storage facilities may be substituted for bicycle racks.
- 6. Multi-family and commercial subdivisions in existence as of the date of the adoption of this subsection, with 50 or more parking spaces, shall install bicycle racks meeting these bicycle facility requirements no later than September 1, 1997. Existing on-site bicycle facilities may count toward meeting these requirements.
- 7. Bicycle racks shall conform to all other applicable municipal code requirements.
- 8. The public works department shall review construction improvements plans to determine conformity with this subsection and shall inspect and enforce the requirement for the installation of bicycle facilities for existing subdivisions.”

Research

To properly consider amending this requirement, staff reviewed Bicycle Parking Guidelines issued by the Association of Pedestrian and Bicycle Professionals, as well as other Zoning Codes, as they relate to bicycle storage facilities of the following communities:

Austin, TX	Eugene, OR
Boulder, CO	Gainesville, FL
Cleveland, OH	La Mesa, CA
Culver City, CA	Madison, WI
Davis, CA	Middletown, DE
Dover, DE	New Castle County, DE

Please note, most of these communities (outside of Delaware) were identified through internet search engines using key words, not through issue based referrals. In addition, please note that other communities were also reviewed which do not have bicycle storage facility requirements for new construction, and therefore, have not been included in this report.

The information review revealed a wide range of approaches to the issue of required bike facilities, with some jurisdictions using percentages of residential units proposed and/or square footage of proposed commercial space to determine need required bicycle facilities; while others rely on bedroom counts and short and long-term usage estimates to determine need; and still others, like ourselves, base bicycle storage requirements on parking requirements, which, in turn, are based on the number of units and commercial square footage proposed. After review, we've determined that our bike facilities requirements model is a reasonable approach to calculating the applicability of needed bike storage facilities.

We also found that, regarding the number of spaces required per development, our formula calculates to be "average" amongst Zoning Codes reviewed. Therefore, in an effort to increase the number of bicycle racks available in our community, only minor changes to the subdivision regulations are necessary to significantly increase the number of storage spaces available, while not creating an undue burden on developers.

Our recommended changes, therefore, are as follows:

1. Delete the 50 space parking threshold for multi-family and commercial major subdivisions entirely, thereby requiring every multi-family or commercial major subdivision to comply with bike storage facility regulations.
2. Increase the number of bicycle rack parking spaces (opening or slot) from one for every 10 required parking spaces to one bicycle rack parking space for every five required parking spaces.
3. Delete the maximum number that can be required for each subdivision, but add a discretionary clause for the Director of Public Works and Water Resources to reduce requirements in circumstances for which the requirements are deemed excessive or an alternative facility or approach can meet the need.

We recommend leaving all other requirements of Subdivision Appendix II (c) in place, with the exception of (c)6 which required retrofitting of subdivisions in existence prior to the adoption of the original bike rack requirements and the associated enforcement clause in (c)8, as existing subdivision should already comply with the existing Code and, as with all other zoning requirements, the new requirements should only apply to developments approved after the date of adoption.

Recommendation

To increase the required number of bike parking facilities for multi-family and commercial subdivisions in our community, the Planning and Development Department suggests that the Planning Commission recommend that Subdivision Regulations Appendix II(c) Bicycle Facilities, be amended to read as follows:

Bicycle facilities. All multi-family residential and commercial major subdivisions shall meet the following requirements for bicycle racks or similar bicycle storage facilities:

1. One bicycle rack parking space (opening or slot) shall be provided for every 5 required off-street parking spaces.

2. Bicycle racks shall be located in areas visible from adjoining or nearby streets or sidewalks.
3. Bicycle racks shall be separated from automobile parking areas by curb barriers or located on sidewalks. Sidewalk installation shall be permitted only for sidewalks not located within public rights-of-way.
4. Bicycle racks shall be secured and stationary and shall be designed for the lockage of bicycle frames and wheels. Bicycle lockers or similar storage facilities may be substituted for bicycle racks.
5. Bicycle racks shall conform to all other applicable municipal code requirements.
6. The Public Works and Water Resources Department shall review construction improvements plans to determine conformity with this subsection, *and shall possess the discretion and authority to consider alternative facilities and/or approaches to meet bicycle parking needs for a particular major subdivision.*

Ms. Feeney Roser: I will be happy to try to answer any questions you may have.

Mr. Johnson: Why the change from 1 per 10 parking spaces to 1 to 5?

Ms. Feeney Roser: To increase the number of spaces that are required.

Ms. Dressel: I have just driven through a couple of neighborhoods where there is a lot of student housing and there are bikes that are chained up everywhere because there aren't enough spaces.

Mr. Johnson: I agree and we have bike racks on Main Street in Newark that aren't used but the handrails for steps by IHOP is where they attach their bikes though there is a bike rack two feet away, they don't attach their bike to the bike rack. My sense is that we could put these bike racks all over but the kids are still going to attach them wherever the heck they want.

Ms. Dressel: And the places that I saw all of the bike racks were full and the next place to put them were the light poles or something that was stationary.

Mr. Johnson: So, in the major complexes we need more bike racks essentially. Does this apply to them or only to new construction?

Ms. Feeney Roser: This would only be for new construction and from here on out.

Mr. Johnson: So, we are not solving the problem of what Angela saw.

Ms. Feeney Roser: Unless you wanted to add a requirement to retrofit existing.

Mr. Johnson: I'm not a retrofitter myself.

Mr. Cronin: But, we could retrofit the things that were just approved in March that have not started yet, like at the Shopping Center and at the Home Depot area. I would think you could consider that.

Mr. Johnson: That is a good point.

Mr. Bowman: That is the question I was going to ask, how would this apply to someone like Home Depot?

Ms. Feeney Roser: The way it is proposed to you, it would not, but we can certainly add back the language that is existing in the Code now that would say that . . .

Mr. Cronin: Are we allowed to do that, Bruce?

Ms. Feeney Roser: Apparently you did in 1997 when you first adopted a bike rack requirement. We have a provision that says, “. . . multi-family commercial subdivisions in existence at the date of the adoption of this section . . .” of course, that applied to 50 or more parking spaces, “. . . shall install bike racks meeting these bicycle facility requirements no later than . . .” and there was a date installed, “Existing onsite bicycle facilities may count towards meeting these requirements.” My intention when drafting the amendment was just to require it from now forward, but certainly the Commission can consider . . .

Mr. Bowman: Maybe Bob’s concern is the same as mine with 400 parking spaces at a place like Home Depot. I can’t imagine having 80 bike racks.

Ms. Feeney Roser: These aren’t bike racks. These are bike slots.

Mr. Johnson: Even that is ridiculous. Suppose we build another Home Depot. Are we going to have to have 80 bike slots for Home Depot if they have 400 parking spaces in their lot? It doesn’t make sense to me. How many people ride a bike to Home Depot to bring a 2 X 4 home?

Ms. Feeney Roser: As it is they would require 40.

Mr. Johnson: Because it is a double slot. So what, but still it is the lot, isn’t. It just doesn’t make sense to me.

Mr. Bowman: I think that is one spot where we do have to be a little bit careful and at least allow some discretion to say this is the type of property where it is ridiculous to enforce this.

Ms. Dressel: Isn’t that what #6 does? “The Public Works and Water Resources Department shall review construction improvements plans to determine conformity with this subsection, *and shall possess the discretion and authority to consider alternative facilities and/or approaches to meet bicycle parking needs for a particular major subdivision.*”

Mr. Johnson: But, when you say 1 per every 100 spots, you have already have labeled out 80 for Home Depot or the Acme.

Ms. Dressel: But, this has discretion. This is where they can determine – Home Depot may only need 10.

Mr. Johnson: Then why don’t we just give them the discretion to determine what is necessary rather than saying 1 for every 5 off-street parking spots.

Ms. Feeney Roser: The intent of this amendment was to increase the requirement. Right now, it is 1 per 10, we were doubling it based on comments that we have received.

Ms. Dressel: Would it be better to have it just for things zoned as multi-family residential instead of having the commercial in there?

Ms. Feeney Roser: Or you could put back in the maximum not to exceed a certain number. We took that out. That was one of our recommendations because 20 bike slots for something like the Newark Shopping Center residential piece didn’t seem enough, but maybe we don’t want go over a certain number anyway. Maybe you want to put in a max.

Mr. Bowman: Is there some way you could be able to look at a facility and use some common sense and say that there is nobody that is going to ride a bike for this. Maybe one or two people in a lifetime are going to ride a bike over here then you put in half dozen bicycle racks at the front door, but I don’t think you want to lock a situation in

where you have to put 50 in and all they are are pieces of pipe that are going to sit and rust for the next 30 years. I think we have a legitimate situation here where we can say yes for these types of things this is the number we ought to be putting in based on experience, but also based on that same experience there might be places that don't need more than two. I'm not sure how to solve your problem, Maureen, but 80 bikes at Home Depot when half of their parking lot isn't even used is a little silly.

Ms. Feeney Roser: You can either vote it down or amend it or we can go back to the drawing board and try to come up with another version of this that you would like to see.

Ms. Dressel: Maybe we could keep the other section and then have our recommendation be for multi-family residential. Does that include subdivisions like where the bowling alley is?

Ms. Feeney Roser: Yes.

Ms. Dressel: So, have all multi-family residential subdivisions with 50 or more spaces and then take out the commercial major subdivisions.

Ms. Feeney Roser: You wouldn't have a requirement for them?

Ms. Dressel: Just so that we could get as many as we want and then leave the old section for commercial major subdivision where it is 1 for every 10, and no more than 20 spaces required for a commercial.

Mr. Bowman: Here, again, I think you have to be a little bit careful. I think Edgar made a good point. At some places like the IHOP on Main Street, the bike racks get used because people ride their bikes there. It makes sense. That is a commercial establishment, but a Home Depot where it is located or a Lowes or places like that that are highly unlikely for somebody to go in there on a bicycle so you don't need one bike rack for bike parking space for 5 car spaces. So, I think somehow you have to deal with that and I'm not sure just granting the Public Works discretion to do that makes sense. I'm not quite sure how to solve your problem, Maureen.

Ms. Brill: Actually, 1 bike slot now for 10 cars or even one bike slot for 5 cars, I can't imagine bike racks all over the place.

Ms. Dressel: Then we would be like Holland and it would be beautiful. So, I don't think this would be a problem.

Mr. Cronin: But, if the racks are not going to be used at Home Depot and the Acme, why have the requirement?

Ms. Dressel: I would think they would be used at Acme. The kids are always walking with their backpacks.

Mr. Cronin: That is the problem. They are not riding their bikes.

Ms. Dressel: They might not have a place to keep it. So, they would rather walk.

Ms. Feeney Roser: Would you consider putting back the maximum number? We were requiring a maximum of 20 so it must not have caused an issue with anyone since the Home Depot had to put in 20. We could put back in a requirement that each major subdivision could not exceed so many spaces so it wouldn't seem so onerous, if you like. Mike and I debated that. Mike actually works with the Bicycle Committee. Mike, do you have anything that you want to add?

Mr. Mike Fortner: I did do some research on what different communities are doing and I think you are right. It doesn't always make sense to have bicycles in some areas like at Home Depot. Probably not a lot of people would bicycle to that. They use common sense with that; they have the ability to waive the requirement, either the Planning and Development Director or the Public Works Director or you can make another mechanism

in the Planning Commission process. Okay, you are right, it doesn't make sense to have 80 bicycle racks here, just waive it or waive a portion of it. You can set the controls during the Planning Commission process, but you make that requirement there and you can always reduce.

Mr. Bowman: If that is the case, and that can indeed apply common sense, then that is fine. But, what I don't want to see and, I think, others don't want to see it as an absolute lock in that tells somebody like a Home Depot that you are going to build 80 bike spaces come hell or high water, they are going to look at you like you are crazy.

Mr. Fortner: Absolutely, you don't want that. That is why you put this kind of flexibility in. It is a guideline. We aren't going to expect that kind of bicycle demand and we reduce the requirement. It can be a Planning Department recommendation to have a reduction and we recommend to the Planning Commission that they allow the reduction and then you say okay or you say no, we think there are going to be a lot of people with bikes in there.

Ms. Feeney Roser: Do you think that adding another number here that says that the amount can be reduced by the Planning Commission during discussion. Would that make you more comfortable?

Mr. Fortner: It wouldn't be an absolute thing. It would be more of a guideline. This is what we want and you would make a case that you need a reduction. It wouldn't be as formal as a parking waiver. It would be a recommendation to Council and Council could agree with you or say no.

Mr. Cronin: It seems to me, this is a provision for the Public Works and Water Resources Department. Their review, ". . . shall possess the discretion and authority to consider alternative facilities and/or approaches to meet bicycle parking needs for a particular major subdivision."

Mr. Bowman: As long as they can take that number to zero.

Mr. Cronin: It doesn't say that they can't.

Ms. Dressel: I don't think anyone will take it to zero.

Mr. Bowman: I can probably dream up a case where you wouldn't need any bicycle racks at all, but as long as they have the discretion.

Mr. Johnson: How many bike racks do we have here for City Hall?

Mr. Fortner: We have a bike rack out front. I don't know how many slots but there might be 8 or 9 and then some people bring their bikes inside. The University has that kind of policy as well. We talked about how the existing buildings wouldn't be retroactive. We are trying to slowly build up bicycle parking making public amenities like we have. I see the bike racks well used. You may very well have seen bikes chained to a post and then the bicycle racks right next to it, but there might have been a full bicycle rack when that person parked there and that was what was left. The IHOP needs more bicycle parking no doubt and they are all just loading up on the few bicycle racks we have there. We are slowing putting more there and we will probably purchase more bike racks with the strategy we are using.

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

THAT THE PLANNING COMMISSION RECOMMEND THAT SUBDIVISION REGULATIONS APPENDIX II(C) BICYCLE FACILITIES, BE AMENDED TO READ AS FOLLOWS:

BICYCLE FACILITIES. ALL MULTI-FAMILY RESIDENTIAL AND COMMERCIAL MAJOR SUBDIVISIONS SHALL MEET THE FOLLOWING REQUIREMENTS FOR BICYCLE RACKS OR SIMILAR BICYCLE STORAGE FACILITIES:

- 1. ONE BICYCLE RACK PARKING SPACE (OPENING OR SLOT) SHALL BE PROVIDED FOR EVERY 5 REQUIRED OFF-STREET PARKING SPACES.
- 2. BICYCLE RACKS SHALL BE LOCATED IN AREAS VISIBLE FROM ADJOINING OR NEARBY STREETS OR SIDEWALKS.
- 3. BICYCLE RACKS SHALL BE SEPARATED FROM AUTOMOBILE PARKING AREAS BY CURB BARRIERS OR LOCATED ON SIDEWALKS. SIDEWALK INSTALLATION SHALL BE PERMITTED ONLY FOR SIDEWALKS NOT LOCATED WITHIN PUBLIC RIGHTS-OF-WAY.
- 4. BICYCLE RACKS SHALL BE SECURED AND STATIONARY AND SHALL BE DESIGNED FOR THE LOCKAGE OF BICYCLE FRAMES AND WHEELS. BICYCLE LOCKERS OR SIMILAR STORAGE FACILITIES MAY BE SUBSTITUTED FOR BICYCLE RACKS.
- 5. BICYCLE RACKS SHALL CONFORM TO ALL OTHER APPLICABLE MUNICIPAL CODE REQUIREMENTS.
- 6. THE PUBLIC WORKS AND WATER RESOURCES DEPARTMENT SHALL REVIEW CONSTRUCTION IMPROVEMENTS PLANS TO DETERMINE CONFORMITY WITH THIS SUBSECTION, *AND SHALL POSSESS THE DISCRETION AND AUTHORITY TO CONSIDER ALTERNATIVE FACILITIES AND/OR APPROACHES TO MEET BICYCLE PARKING NEEDS FOR A PARTICULAR MAJOR SUBDIVISION.*

Mr. Bowman: Let me give the public a chance to comment. If there is anyone from the public who wishes to comment, please step to the microphone and state your name and address.

Ms. Carol McKelvey: I had a thought, while you were talking, about park benches and the concept of, perhaps, you might have a substitutable situation where if you don't want lots of bicycle provisions like in an over 55 community, you might want to substitute the concept of the bike racks for some park benches because I think park benches are also a positive amenity.

Mr. Bowman: We appreciate the comment.

VOTE: 5-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, JOHNSON
NAY: NONE
ABSENT: BROWN, HEGEDUS

MOTION PASSED UNANIMOUSLY

Mr. Cronin: We jumped into the bicycle thing and I wasn't sure – back to the earlier subject – at the bottom of page 4 where we had that “shall” to “may”, whether it was corrected.

Mr. Bowman: It was corrected.

Ms. Feeney Roser: It was part of the record that it was corrected and we will correct it before it goes to Council.

Mr. Cronin: We voted on the minor subdivision. Did we also vote on the language in the major subdivisions?

Ms. Brill: We did.

Mr. Cronin: Which was similar to the minor subdivision.

Ms. Feeney Roser: It is practically the same language.

4. COMPREHENSIVE DEVELOPMENT PLAN UPDATE DISCUSSION.

Mr. Fortner: I am handing out three things. The first one is the New London Community Workshop, this will be held on Wednesday, May 15th (7:00 p.m.). There is a lot of interest in the community and neighborhood in general to have some specific analysis of this neighborhood and give it some specific study for the Comprehensive Development Plan. The workshop, of course, covers the characteristics, history, design, strength and weaknesses, opportunities, traffic, changing character of the neighborhood, some of the strategies issues that they are dealing with, as well as land use and density. My intent in the meeting and for the report is to go over where has this community been, in terms of its history where is this community now, what is going on in this community right now. If things continue the way they are continuing there, where will this community be in five years and ten years, and where does it want to go in five years and ten years and how is that different. And, finally, how does that community get to where it wants to go and what kind of strategies would need to be implemented. That is the kind of assessment I would like to get in for the Comprehensive Development Plan in this workshop. There are a lot of complicated issues there. I think and hope there will be a good dialogue and constructive conversation.

The next handout is for Environmental Quality and Natural Resources neighborhood Workshop. It is on May 21st, Council Chamber (7:00 p.m.). This workshop will start out with a presentation with me going through some of the things that have come out in previous workshops about environmental protection. We are going to go over the Newark Residents Survey and some of the results from that. There will be a presentation by Parks and Recreation outlining the programs it has and where it thinks it is going in the next five to ten years. It will also address how we work on issues like wild life habitats, urban trees programs, and how the Parks and Recreation addresses those goals, and a general strategy we have with that. Public Works will also give a presentation on potable water – quantity and quality, stormwater runoff, the protection of streams, floodplains, air quality, and also energy conservation, recycling and other kinds of environmentally positive programs.

On June 11th, there will be a workshop on land use and density. The highlight of that, I hope, will be the DelDOT's Department of Transportation's Planning Division giving a 3D model showing how densities effect land use and transportation and different types of land uses. They have a 3D modeling system that enables them to show this and illustrate it on the screen. It helps explain the relationship with that. I am meeting with them on Thursday to discuss how the presentation will happen and finalize the date, which I anticipate will be on June 11th. Also at that meeting, we will have some of the preliminary maps. I am working with Steven Thorp. He is a graduate student with the University of Delaware's Institute of Public Administration.

We are going to have maps that show the proposed land uses. We have Planning sections that are being changed a little bit. Our City is a big City and we divide it into sections so we can look at it better. The different colors represent different planning sections. So you have this green section in the center. We are calling it the Newark Core. I like to come up with names for all the sections. That is Section A. I kind of see this as a planning district. You have Section B which is your western Newark. Section C, at the bottom below the railroad tracks composed of the STAR Campus and where the stadiums are. Then you have Section D, which is the northern community. Section E is in the Elkton Road area with some of the residential, industrial and auto-commercial. Then, finally, we have Section F, which is the very southern section. These replace the sections we had before. Then we have an overlay district (red striped line). I am not sure

if it is going to go into the College Square. Our Downtown Newark Partnership boundary does not extend that far. I don't know why they did that. I don't know if I mistakenly put it in there. It probably shouldn't be. These are some rough sections and these can change. This is a first draft of trying to sketch out how we will portray the town. Each of these things have its own type of character and I tried to tie the relationships together. That is one thing that Steven is working on. Each Section will show its designated land uses an up-to-date of what our current plan has. The workshop will look at those closely and identify any changes that are needed and identify where they might be.

One thing we hope to do is to simplify our categories more in terms of having broad categories – residential, industrial, commercial, mixed use – getting away from the subsections of residential. We have four or five subsections of residential and it gets kind of complicated when something comes in that is a little more dense than what is in the subsection. The State advises that we don't really need it that complicated and they recommended that we simplify that. So, we are experimenting with that as well. We will show you examples of how this is and if you agree or if you want some more nuance in we can add the nuance in where you think it is appropriate. But, that is the recommendation from the Office of State Planning.

The other change will be to our adjacent areas land use plan. It won't be as spelled out as it has been. It will be a broad whole area and that will be what we call our area of concern. It will have the same type of function as our Adjacent Area Land Use. What the State wants to know is what we plan on annexing in the next five years. So, we will have to give some serious thought about what we think we might annex in the next five years. When we show this broader adjacent areas land use, it makes it look like we could annex any of this. And, a lot of things we probably wouldn't annex, but we have an area of concern. We want to know what is going to happen there and we are concerned about the future of it. So, that will be something that will be fleshed out at the June 11th workshop.

Finally, probably close to the last Tuesday of the month (June 25th) will be a workshop of all of the components and how they fit together and how this fits into the entire scope of our Plan; and by the July meeting, I hope to have a draft of the Comprehensive Plan that we will be able to go through and really pick the elements you want and go through and revise it. I expect that to take some time. Hopefully, by the fall we will have your final recommendation to Council if all goes well.

Mr. Johnson: I have a question about annexation. The State wants to know what the City is thinking about annexing. It is my understanding that we can't annex anything unless the area that is to be annexed requests annexation. Is that true?

Mr. Fortner: That is correct. They do have to request it. I don't know if that is city policy or if that is State law, but that is the way we do it. They have to request it, we don't force annex.

Mr. Johnson: How can you answer the question of what we might annex?

Mr. Fortner: It is what might come down in terms of what we might annex. It doesn't mean we will, it just means that this is in the realm of possibilities. A lot of that will involve little gaps and holes in the City, for example, or little areas just outside the area that aren't developed yet. Those are places that we could annex and if someone comes to develop it, we would have a very strong interest in annexing. If the land is undeveloped, we would have a strong interest in annexing and the developer probably would want to annex and, so, by designating it as our growth area then we wouldn't have to do an amendment to our Plan because we have it designated already. Otherwise, we would have to do an amendment if we didn't designate it.

Mr. Cronin: The overlay, the downtown district, you mentioned College Square. Should we also not include George Read Village and the residential part of Tyre Avenue and maybe Center Street, Choate Street and New Street, the cemetery back there? It seems to me that if they are zoned residential and used residential just like you did with that strip

along S. Main Street, perhaps you would want to delete them from the downtown district overlay.

Mr. Fortner: Downtown doesn't mean it has to be mixed use or commercial. It can be a mix of uses. In the Plan we break that down even more. We will have a diagram, basically, of the Downtown Newark Partnership District. The reason we included it all is because you don't want to get too puzzly excluding little things. Actually, we have an interest in all of Delaware Avenue and how that develops and we have an interest in all of Main Street and how that develops and as it goes back to the railroad track, which is a natural boundary. It doesn't mean it is all going to be mixed use downtown. Some of it may be designated for single family homes and home ownership the same as any other neighborhood, but it is still in our downtown. That is why it is not likely to change the cemetery, but it still is under downtown and it is appropriate in our downtown. Rather than trying to do some piecemeal things and trying to parcel by parcel it, you just have a Swiss cheese thing trying to cut things out. It doesn't mean anything other than this is an area we want to focus on.

Mr. Fortner: Also, May 14th is Bike to Work Day.

Mr. Bowman: Thank you Mike.

Ms. Feeney Roser: May 14th is also the Planning Commission Workshop with Roy Lopata at 6:00 p.m. in the City Manager's Conference Room.

Mr. Bowman: Before we adjourn, just a quick comment under what we would call, "for the good of the organization." On April 24th a number of us participated in a workshop on parliamentary procedure and practice, which I thought was very well presented by Mr. Michael Swift, who is a registered parliamentarian. I believe these books were sent out to the members of the Commission. I don't know whether you have had a chance to look at it, but I would strongly recommend that you take the time to go through it and, maybe, after Roy's presentation, for a few minutes, we might have the opportunity to spend maybe ten or fifteen minutes to discuss this. I don't want to interrupt Roy, but thinking about what Roy is going to say, it might be a good time to see how this fits in with managing our duties as the Planning Commission. Personally, I have had a fair amount of experience with parliamentary procedure, but it got rusty over time. We do things here by precedent in many ways. The order of business is sort of a precedent but I think there are some things that we can do to speed up the process if we stick a little closer to parliamentary order. You notice tonight, I didn't ask for a motion to approve minutes. It isn't required nor is it necessary. Those are the types of things we can do and be a little more precise with our motions, etc.

With that, meeting is adjourned.

As there was no further business, the Planning Commission meeting adjourned at 8:42 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning and Development