

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

June 4, 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
Andy Hegedus
Edgar Johnson

Commissioners Absent: Peggy Brown

Staff Present: Maureen Feeney Roser
Planning and Development Director

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

1. THE MINUTES OF THE MAY 7, 2013 PLANNING COMMISSION MEETING.

The minutes of the May 7, 2013 Planning Commission meeting were approved as submitted.

2. REVIEW AND CONSIDERATION OF A REZONING AND MAJOR SUBDIVISION FOR .457 +/- ACRES AT 63 W. CLEVELAND AVENUE AND 60 NEW LONDON ROAD. THE APPLICANTS ARE REQUESTING REZONING FROM BN (BUSINESS NEIGHBORHOOD) FOR THE WEST CLEVELAND AVENUE PARCEL AND RM (RESIDENTIAL MULTI-FAMILY) FOR THE NEW LONDON AVENUE PARCEL TO BLR (BUSINESS, LIMITED RESIDENTIAL), AND SUBDIVISION APPROVAL TO CREATE ONE TAX PARCEL TO CONSTRUCT SIX (6) TOWNHOUSE STYLE APARTMENTS WITH ASSOCIATED PARKING AND ACCESS WAYS. A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT IS ALSO REQUESTED TO ACCOMMODATE THE PROPOSED DEVELOPMENT.

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

“On April 10, 2009, the Planning and Development Department received an application from Cleveland Holdings, LLC for rezoning and major subdivision approval for .457 +/- acres at 63 W. Cleveland Avenue and 60 New London Avenue. The applicants are requesting rezoning from BN (business neighborhood) for the West Cleveland Avenue parcel and RM (residential multi-family) for the New London Avenue parcel to BLR (business, limited residential), and subdivision approval to create one tax parcel out of the two parcels to construct six (6) townhouse style apartments with associated parking and access ways. A Comprehensive Development Plan amendment is also requested to accommodate the proposed development.

The plan was originally submitted in 2009, prior to a Code change to the BLR zoning district, which now allows apartments only in conjunction with a non-residential use permitted in the district. The original plan was submitted prior to this change, but never acted upon. Therefore, as the City does not have a requirement for sunseting subdivision applications (only for approved subdivision plans), the City Solicitor has opined that the plan has to be reviewed under the previous Zoning Code provisions, which allowed residential uses without a non-residential use on the property.

The Planning and Development Department's report on Campus Village follows:

Property Description and Related Data

1. Location:

The properties are located on the south side of Cleveland Avenue and the east side of New London Road at 63 W. Cleveland Avenue and 60 New London Road respectively. These parcels are adjacent in the rear of both properties. 63 W. Cleveland Avenue is located approximately 240 ft. east of the intersection of New London Road and Cleveland Avenue and 60 New London Avenue is located approximately 220 ft. south of that same intersection.

2. Size:

.457 acres

3. Existing Land Use

63 W. Cleveland Avenue site is a vacant lot currently being used for parking. 60 New London Road is also a vacant lot between two RM zoned single family rental units.

4. Physical Condition of the Site:

63 W. Cleveland Avenue is a partially paved open lot, with some gravel and bumper blocks, which is used for parking. This parcel has a chain link fence along the Elks Club property which is adjacent to the east, and along Cleveland Avenue. 60 New London Road is a single family lot which fronts on New London Road and backs up to the 63 W. Cleveland Avenue parcel. The parcels are relatively level with a slight slope from north to south. Several large trees grow along the southern and western property line of the 63 W. Cleveland Avenue property.

Regarding soils, according to the subdivision plan and the United States Department of Agriculture's Natural Resources Conservation Service, the site consists of Matapeake-Urban Land Complex soil. No development limitations for these soils are proposed or indicated.

5. Planning and Zoning:

The Campus Village sites are zoned BN (63 W. Cleveland Avenue) and RM (60 New London Road). BN zoning is a neighborhood shopping commercial zone that permits the following:

- A. Parking spaces, off-street.
- B. Public transportation facilities, including bus or transit stops, stations, and depots.
- C. Street right-of-way.
- D. Utility transmission and distribution lines.

- E. Water tower, water reservoir, water storage tanks, pumping station, and sewer.
- F. Social club, fraternal, social service, union, and civic organization.
- G. Community recreation center, for nonprofit use only.
- H. Studio for artists, designers, photographers, musicians, and sculptors. The maximum floor area for any one establishment shall be 5,000 square feet.
- I. Instructional, business, or trade schools. The maximum floor area for any one establishment shall be 5,000 square feet.
- J. Offices for professional services and administrative activities. Finance institutions, banks, loan companies.
- K. Retail stores, which shall be limited to the sale of gifts, antiques, flowers, jewelry, newspapers, books, hobbies, stationery, art supplies, radio or television, hardware, variety, clothing, drugstores, beverages, or liquors. The maximum floor area of any one establishment shall be 5,000 square feet.
- L. Personal service establishments, limited to a maximum floor area of 5,000 square feet.
- M. Laundromats.
- N. Restaurants, excluding fast-food and drive-in restaurants.
- O. Retail food stores such as bakeries, bakery-restaurants, candy, convenience grocery, meat markets, delicatessens, and excluding the preparation of goods for sale off the premises.
- P. Neighborhood shopping center.
- Q. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district, excluding the storage of highly combustible or explosive products or materials which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions, or products and materials which involve highly corrosive, toxic, or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or corrosive gases.
- R. Accessory uses and accessory buildings, excluding semi-trailers and similar vehicles, for storage of property.
- S. Repair and servicing, indoor on-site and off-site, of any article for sale which is permitted in this district. A 20 foot setback is required with no vehicular parking permitted in the required front yard area.
- T. Photo developing and finishing.

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

- A. Police and fire station.
- B. Substation, electric and gas, and telephone central office.
- C. Church, or other place of worship, seminary or convent, parish house, or Sunday school building.
- D. Library, museum, art gallery.
- E. Drive-in and curbside service for other than eating establishments, with a minimum setback from all street lines of 65 feet.
- F. Restaurants, with alcoholic beverages, except as otherwise regulated in this chapter.

RM zoning is our residential multi-family zone that permits the following:

- A. Garden apartments, subject to special requirements.
- B. One family, semidetached dwelling.
- C. Boarding house, rooming house, lodging house, but excluding all forms of fraternities and/or sororities, provided that: The minimum lot area for each eight, or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
- D. Nursing home, rest home or home for the aged; subject to special requirements.
- E. Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage, excluding semi-trailers and similar vehicles for storage of property.
- F. Cluster or neo-traditional types of developments, included uses that many not be permitted in this district, as provided in Article XXVII, Site Plan Approval.
- G. One-family detached dwelling.
- H. The taking of nontransient boarders or roomers in a one-family dwelling by a family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than three boarders or roomers in any one-family dwelling.
- I. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- J. Public and private elementary, junior, and senior high schools.
- K. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- L. Municipal utilities, street rights of way. treatment plant.
- M. Temporary building, temporary real estate or construction office.
- N. Utility transmission and distribution lines.
- O. Public transportation bus or transit stops for the loading and unloading of passengers.
- P. One-family town or rowhouse subject to the requirements of Sections 32-13()(1) and 32-13(c)(1).
- Q. Student Homes, with special requirements

RM zoning also permits with a Council granted Special Use Permit the following:

- A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the neighborhood, subject to special requirements.
- B. Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- C. Physicians' and dentists' offices, subject to special requirements.
- D. If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- E. Police and fire stations, library, museum, and art gallery.
- F. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- G. Professional offices in residential dwellings for the resident-owner of single-family dwellings permitted subject to special requirements.
- H. Customary Home occupations with special requirements.
- I. Public Transit Facilities.

- J. Private (nonprofit) swimming clubs.
- K. Day Care Centers with special requirements.

The applicants are requesting rezoning of .354 acres of BN zoning to BLR and .103 acres of RM zoning to BLR (limited business residential). BLR is a business and residential zone that currently allows the following:

- A. Churches or places of worship
- B. Schools
- C. Parks and Playgrounds
- D. Municipal utilities uses
- E. Public transportation bus or transit stops
- F. Social club, fraternal, social service, union and civic organizations
- G. Accessory uses
- H. Hospitals
- I. Apartments in conjunction with any nonresidential uses permitted in the district.
- J. Offices for professional services and administrative activities
- K. Undertakers
- L. Barber shops and beauty parlors
- M. Personal service establishments
- N. Specialty retail stores with a maximum floor area limited to 5,000 square feet [non-food]
- O. Finance Institutions, banks, loan companies
- P. Six apartment units in any single detached or semi-detached residential building
- Q. Bed and breakfast, with special requirements

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

- A. Police and fire stations, library, museum and art gallery
- B. Golf courses and country clubs
- C. Electrical and gas substations
- D. Day care centers
- E. Drive-in or curbside service for other than eating establishments

As previously mentioned, however, it is important to note that at the time that this application was submitted for rezoning and subdivision approval, the BLR zoning requirements allowed for stand-alone residential uses; and therefore, this project must be reviewed under the previous BLR Code category, which was less stringent in terms of uses than today's Code. Specifically, on April 27, 2009, City Council amended Zoning Code Section 32-16.1 (BLR), which allowed "six apartment units in any single detached or semi-detached residential building" by limiting the permitted uses section to allow apartments only in conjunction with a permitted non-residential use in the district. Therefore, at the time of original plan submittal, the six proposed townhouse apartments in BLR, without an associated business use, were allowable by Code.

Regarding area requirements in the BLR district, please be advised that on December 20, 2012 the Board of Adjustment granted the Campus Village project a .043 acre variance for minimum lot area, a 3% variance for maximum lot coverage and a five foot variance for building height. With these variances, the Campus Village plan meets the Code's BLR area requirements.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for light commercial (local shopping) for the 63 W. Cleveland Avenue parcel and single family residential (medium density) for the 60 New London Road location. Light commercial (local shopping) is defined in the

Comprehensive Development Plan as “administrative and professional offices, personal services and retail stores, restaurants and similar kinds of neighborhood shopping uses that may be found in limited business, business-residential or neighborhood shopping districts.” Single family residential (medium density) are areas designated for dwellings with overall densities of 4-10 dwelling units per acre.

The requested Comp Plan amendment calls for “multi-family residential (medium to high density)” uses at the site, which are defined as “areas designated for dwellings designed for and occupied for more than one family, living independently of each other in apartments, condominiums, townhouses, with a density from 11 to 36 dwelling units per acre.”

Regarding this amendment, please note that Comprehensive Development Plan IV indicates, regarding “residential” uses that “ . . . professional, administrative and commercial offices, churches, schools, nursing homes, funeral parlors, community centers, daycare centers, police and fire stations, bed and breakfasts, office research facilities, and similar industrial uses, and various residential use types may be accommodated very satisfactorily within areas not necessarily designated for such uses, depending upon the specific use involved, site design considerations, proposed site amenities, and the availability of adequate services and facilities.”

Further, please note that the purpose and plan design section of the Plan, indicates that the Comprehensive Plan is “Not proposed as a warranty against alternative decision making when public needs or experience change – which, of course, may require Plan amendments – but, rather, it is intended as an officially adopted, legally required public document designated to establish strategies and policies to “guide” our community’s growth over approximately the next five to ten years.” As you know, we are currently in the process of updating the Comprehensive Development Plan IV, which was adopted in 2008.

Regarding adjacent and nearby properties, to the north across Cleveland Avenue from the 63 W. Cleveland Avenue parcel is a single family type dwelling owned by ARC of Delaware on the corner of Rose Street and zoned RM, and further east across Cleveland Avenue are vacant lands owned by the University of Delaware. Immediately adjacent to the W. Cleveland Avenue parcel, on either side, are BC zoned parcels containing the Elks Club to the east and to the west, a triangular shaped vacant parcel. To the south are RD zoned homes along Church Street. Regarding the New London Road parcel, on either side immediately adjacent are RM zoned rental units fronting on New London Road. Across New London Road are also RM parcels containing single family homes, which are a combination of rentals and owner occupied units, and the Prayer Temple Ministry Church.

Regarding density, the Campus Village proposes 13.13 units per acre. This density conforms, in general, to the average density per acre (12.5 units per acre) in the area.

Based on recent discussions at both Planning Commission and Council meetings, the following density calculations are also provided. In terms of bedrooms per acre, the 26 proposed bedrooms associated with the Campus Village project calculate to 57 bedrooms per acre. While the same bedroom information for the immediate area is not readily available for comparison purposes, recent Council approved developments’ bedroom densities calculate as follows:

Rupp Farm (Chambers and Benny Streets):	88
South Main Commons:	61
Campus Walk:	77

Based on Council imposed restrictions on residency in these projects, bedroom counts translate into the following number of unrelated individuals permitted to reside in them:

Rupp Farm:	48
South Main Commons:	78
Campus Walk:	72

Status of Site Design

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

Be that as it may, the Campus Village rezoning and major subdivision plan calls for a one-way access roadway to the site through the property on New London Road. The plan also calls for a row of six three-story buildings with the first story being reserved for parking with two-story apartments above. The developer proposes four-bedroom units for four of the six townhouses, and two of the units to be five bedrooms each at the site. The plan also shows 25 associated parking stalls, which exceeds the parking requirement for 6 townhome apartments with more than three bedrooms (18 spaces) by seven spaces.

Fiscal Impact Study

The Planning and Development Department has evaluated the Campus Village rezoning and major subdivision plan on Newark’s finances. The estimates generated on net return are based on the Planning and Development Department’s Fiscal Impact Model. The Model projects that the Campus Village fiscal impact – that is, total anticipated municipal revenues generated, less total cost of municipal services provided. The Planning and Development Department’s estimate of net annual revenue for the project is \$7,193. Please note there is no difference projected between the first year revenues and those beyond for this development as there will be no impact in the first year’s revenue from the City’s transfer tax, because the development proposed is already owned by the applicants.

Traffic

Because Cleveland Avenue and New London Road are both State owned and maintained roadways, the Planning and Development Department requested DeIDOT’s review of the Campus Village rezoning and major subdivision plan. The Department indicates that the proposed development does not meet the warrants for a Traffic Impact Study (TIS). Having said that, however, DeIDOT had comments which will need to be incorporated into the plan as follows:

- A combination of right-of-way and permanent easement totaling 40 feet from the center line of Cleveland Avenue, and 40 ft. of combined right-of-way and permanent easement from the center line of New London Road are necessary;
- Site triangles for the New London Road entrance needs to be shown on the plan, and a larger easement east of the entrance may be necessary;
- The parking space at the entrance may need to be adjusted;
- The plan should show continuous sidewalks across both entrances, with standard concrete driveway aprons; and,
- Bicycle parking facilities should be installed onsite.

Subdivision Advisory Committee Comments

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed Campus Village development plan and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee's comments are as follows:

1. Electric Department indicates:

- Service is available onsite.
- Suitable locations for pad transformers must be provided, and approved by the Department.
- The developer is required to pay to supply and install all conduit needed for underground high voltage cables, and supply and install all low voltage conduits and cables to the buildings.
- The developer is required to pay all costs associated with onsite electric distribution and meters. The costs will be determined once final building locations are approved.
- The department must approve meter locations and all switch gear.
- The developer must pay all costs associated if any existing electric distribution facilities need to be relocated.
- The developer must pay \$2,000 towards transformers and meters.

2. The Public Works and Water Resources Department indicates that:

- Entrance plan approvals from DeIDOT will be required for Cleveland Avenue and New London road entrances.
- A Letter of No Objection from DeIDOT will also be required. Owner assumes any and all risks for proceeding without this documentation from DeIDOT.
- Water line tie-in should come off a 12" water main on Cleveland Avenue, with a new fire hydrant at the entrance.
- Existing water services on New London Road and Cleveland Avenue shall be terminated at the main pipe tie-in. Existing sewer laterals shall be terminated at rear of curb.
- Each water meter location shall have easy access for meter installer. The developer shall pay for the cost of the meters. STP fees will be due at CO.
- An access easement to enter the property to turn off water valves will be necessary.
- The plans should show all existing and proposed sewer lines.
- Existing lines will need to be cameraed to confirm potential for reuse.
- The Department will have additional comments during the CIP process.

3. The Parks and Recreation Department indicates they have no concerns with the landscape plan. Additional comments may be provided during the CIP process.

4. The Newark Police Department indicates that:
 - They have a concern regarding cut-through traffic from New London to Cleveland.
 - The access drive must have adequate lighting.
 - The access road will also increase noise from, pedestrians and vehicles on the property.
5. The Planning and Development Department's Code Enforcement Division indicates:
 - The buildings must meet 2012 ICC Codes.
 - Separate 2" fire service lines to each unit will be required.
 - ¾" separate domestic water service to each unit must be shown on plan.
6. The Planning and Development Department indicates:
 - The architectural design of the proposed facades should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - Lighting should be designed to limit impact on adjoining and nearby properties.
 - Buildings should be designed to allow for future conversion to condominium, should market conditions change.
7. The Planning and Development Department notes that because the name of the proposed development "Campus Village" is very similar to Campus Edge, CampusSide, Campus Walk and others, the developer should work with the Newark Police Department to determine a 911 appropriate subdivision and street name for the development.
8. The Planning and Development Department indicates that 6 townhome apartments at the currently vacant site will significantly increase density in the area. Therefore, to minimize the overall impact of the development, the Department believes the applicants should voluntarily deed restrict the property to a total maximum number of unrelated tenants permitted to reside in the development to a multiple of the number of units approved.
9. The Planning and Development Department indicates that since the requested zoning allows commercial uses, but the intended use is residential, the applicants should voluntarily deed restrict the property to prohibit the following BLR permitted uses:
 - Offices for professional services
 - Undertakers
 - Barbershops, beauty salons
 - Personal service establishments
 - Specialty retail stores
 - Finance institutions, banks, loan companies
10. The Planning and Development Department indicates that the Comprehensive Development Plan amendment from light commercial to residential multi-family is appropriate for the area and conforms to the development pattern and zoning of parcels in the area. The Department also indicates that rezoning the Cleveland Avenue parcel from BN (neighborhood shopping) to BLR with the suggested permitted use deed restrictions, is more suitable for the location, considering the residential uses in the immediate area.

Recommendation

Because with the proposed Comprehensive Development Plan amendment, the 63 W. Cleveland Avenue and 60 New London Road rezoning will conform to the requirements of Comprehensive Development Plan IV, and because the rezoning and major subdivision plan, with the Subdivision Advisory Committee recommended conditions, should not have a negative impact on adjacent and nearby properties, and because, with the Board of Adjustment granted variances, the proposal meets all applicable Code requirements, and because the proposed use does not conflict with the development pattern in the nearby area, and if following the Planning Commission's review of this report and consideration of the applicant's presentation and public comment, the Commission determines that the project is compatible with the surrounding area in terms of use and intensity of development; the Planning and Development Department suggests that **the Planning Commission takes the following actions:**

- A. Recommend that City Council revise the existing Comprehensive Development Plan IV land use guidelines for this location from "light commercial (local shopping)" "single family residential (medium density)" to "multi-family residential (medium to high density);" and,**
- B. Recommend that City Council approve the rezoning of .354 acres from the current BC (general business) zoning to BLR (business limited residential) and the rezoning of .103 acres from RM (garden apartment) to BLR (business limited residential) zoning as shown on the attached Planning and Development Department Exhibit A, dated April 2, 2013; and,**
- C. Recommend that City Council approve the 63 W. Cleveland Avenue and 60 New London Road major subdivision plan as shown on the McBride and Ziegler, Inc. plan, dated April 9, 2009 with revisions through February 27, 2013, with the Subdivision Advisory Committee conditions."**

Ms. Feeney Roser: That concludes the report. I will be happy to answer any questions that you may have.

Ms. Dressel: Were there any changes made to this plan since it was pulled from the last agenda?

Ms. Feeney Roser: No.

Mr. Bowman: If there are no other questions from the Commission, the applicant is here. Please state your name and address.

Ms. Lisa Goodman: Here on behalf of Cleveland Holdings, LLC. Here with me tonight is Mr. Kevin Heitzenroder, the applicant. Mr. Mark Ziegler is the project engineer and he is handing out printouts of the PowerPoint that we are going to have. Mr. Chris Williams with Mc Mann Associates who is our consulting traffic engineer.

As you heard from Ms. Feeney Roser's very complete report, we are here seeking a recommendation on the plan that you have in front of you which is a rezoning, along with a Comp Plan amendment and a major subdivision plan to permit two vacant parcels to be rezoned from BN and RM to BLR, to permit construction of the project that you see in front of you which is six townhouse apartments.

Let me ask up front, if I might Mr. Chairman, I know we have some folks who are going to want to speak during public comment. So, if I might just ask that after public comment if we might have the privilege, if necessary, of coming up and responding to the public comment, that would be great.

Mr. Bowman: If need be.

Ms. Goodman: Thank you.

[Secretary's Note: Ms. Goodman, Commissioners and the public referred to a PowerPoint presentation that the applicant brought for their presentation to the Planning Commission].

Ms. Goodman: This is the overall rendering of what the project will look like. And this is simply the project from another angle. So, you can get a pretty good sense from these 3-D renderings of what the project is going to look like. It is six units.

Let me give you a little background. As Maureen indicated, the property is located on West Cleveland Avenue next to the existing Elks Lodge. It consists of a total of .457 acres – almost a half acre. The BN zoned lot on Cleveland, the one next to the Elks Lodge is vacant. It is currently used for parking. This is a map that shows you the location. You can see where it is labeled "site" in the center left of Cleveland Avenue. The RM zoned lot backs up to that lot on Cleveland and will provide one way access to the site from New London Road.

These are exactly the same as the slides you have in front of you, Members of the Planning Commission. For the public, they don't have anything different than you are seeing on the screen.

As you can see, the upper right-hand corner gives us the orientation of the angle of the shot. So, this is the side of the Elks Lodge. This is looking toward one of the residential lots to the side of the property.

This is looking at the other side.

This is looking out onto Cleveland Avenue and down the street.

Directly across the street.

To the rear corner, again, into the residential properties there.

Again, into another one of the residential properties.

This is a front on picture of the actual property itself. You can see the yellow development sign. And, you can see that the property has been fenced off and that is the Elks Lodge to the left.

This is a shot to the side of the property.

These are some of the other projects that Mr. Heitzenroder has done, and I know members of this Commission either were sitting on this Commission or certainly aware. This is Campus Edge on Delaware Avenue, Amstel Square – almost across the street from where we are sitting, Amstel Avenue Townhomes behind Amstel Square, in front of that the rebuilt Baptist Student Ministry which was previously in a house, 119 Elkton Road, you can see the quality of these, 111 Elkton Road. They are all different, they are all high quality and these are all built. We are using the renderings because, frankly, it is easier to see them with the renderings because you can't sometimes get photographs that show as well.

This is the site plan for the current proposal. It is proposed to be six townhouses, 25 parking spaces. 18 spaces are required so there will be some extra spaces for guests or residents who might have an additional car with the permission of the landlord. This includes two internal parking spaces for each unit. So, each unit will have two inside garage spaces.

There is two way access and fire lane access off of Cleveland, and there is one way in from New London Road. Relating to the concern expressed by the Police Department regarding cut-through traffic, the street is private. So, it can certainly be signed as such. It is no different than a gas station that fits on the corner and somebody wants to avoid the light and they go to cut through, the police can ticket them. It is trespassing. I don't think that is really going to be an issue. It is not like a subdivision street that might actually be a public street, even though the neighborhood uses it as their street. This is actually a private property.

As Maureen noted, the density is 13.13 dwelling units per acre, which is very much in line with the average of 12.5. 26 total bedrooms and we are comfortable meeting with the department's recommendation regarding a deed restriction and the one has sort of been developed and used for properties of this size is a numbers of bedrooms plus two. So, it is six units with a total of 26 bedrooms then plus two per bedroom. That comes out to a total of 38 occupants and we are comfortable deed restricting it to that. Just to give you a sense – and this is in the Department Report – the Rupp Farm has approved 48 total occupants. South Main Commons is 78 and Campus Walk is 72. We are at 38 and again those are 48, 78 and 72. If you do the calculations of bedroom per acre, which isn't actually in the Code, but it is a useful measure, we come out at 57 bedrooms per acre and those three projects are 88, 61 and 77. So, we are very well under the density.

Let me talk a little bit about the legal standard of this. First of all, as Maureen indicated, the current Comp Plan calls for light commercial on the BN part and single family medium density on the RM part. This would require a Comp Plan amendment which is not unusual. That would take it to multi-family residential. That is 11 to 36 dwelling units per acre. Again, we are proposing 13.1. So, we are very much on the low end of that revised Comp Plan.

I want to show you something for comparison purposes. This property on Cleveland Avenue is currently zoned BN, which is a commercial zone. My client has owned this property for quite sometime. It is a vacant property. We are in the position that it is time for them to move forward with this property. This shows you what the current zoning provides for this property. The current zoning suggests that this plan which is totally Code compliant, at least all major ways – density, parking, setbacks, all of that – would provide for 3,854 sq. ft. convenience store, for a lack of a better term. Essentially, something like a 7-Eleven or a Wawa with no gas pumps. 15 parking stalls. The same general configuration for access. This is what the Code says right now they should build on this property. What we are seeking to build is townhouse apartments, which we think is much more consistent with the neighborhood and I think the Department agrees with us and also makes better sense from a neighborhood perspective. So, what I would like to do is ask Chris McMann who is our traffic engineer to come up. We have prepared a comparison of traffic for a by-right use – what they could do right now with site plan approval essentially or subdivision plan approval vs. what we are proposing here tonight so you folks can see what the difference is because ultimately you are the ones who are being asked to make a recommendation on, should this property stay BN or should it be rezoned to permit residential.

Mr. Christopher J. Williams: McMann Associates, transportation engineers and planners, located at 840 Springdale Drive, Exton, Pennsylvania.

As Lisa said, we have been asked to look at the traffic that will be generated by the use or uses under a couple different scenarios. We focused in on three time periods – week day morning commuter rush hour, the week day evening commuter rush hour, week day daily 24 hour period. Under a by-right use or under a convenience market scenario, as Lisa has indicated, you can see that during the morning rush hour this use would generate 258 peak hour trips, in the evening it is 202 peak hour trips, and over the course of a day, it is 2,884

trips. Those are ins and outs. Those estimates are based on the Institute of Transportation engineers. They have a publication entitled "Trip Generation." We are up to the ninth edition and that is a very reliable industry standard and the basis by which a lot of traffic engineers estimate traffic generation. As you can see, this is clearly a higher traffic generating use for this property.

We also then considered the traffic that would be generated by the proposed six townhouse apartments. In this case, we looked at the traffic generation estimates during the same three periods – week day morning rush hours, the week day evening rush hour and then over the course of the week day daily scenario. These estimates are actually based on local study of a comparable use. So, it is a very reliable source and it is local. It is real data. I should also point out that these trip generation rates have been reviewed and approved by DelDOT on another similar project. So, these have been reviewed and have been accepted. So, there is further evidence to support these estimates.

As you can see, the proposed six townhouse apartment units would generate during the morning rush hour 1 trip, during the evening rush hour 5 trips and over the course of a week day daily it is 56 trips. Now, it is not to say that these units do not generate traffic. They do generate traffic, but it is not the same type of traffic as a convenience market. A residential use is generating traffic at a much lower rate. So, it is a lower generating use with much less traffic and it is also generating traffic more distributed over the course of the day. But, over the course of a day it is an estimate of 56 trips.

Finally, and to simply wrap up, we then compare the two uses. So, for the same three periods – your week day morning rush hour, your week day evening rush hour, and over the course of a week day daily – you can see under a convenience store scenario compared to the six townhouse apartments a much different picture in terms of the traffic that would be generated by the two uses.

Ms. Goodman: We looked at the convenience store because this property was actually for lease for quite a while and the interest was a convenience store. Certainly BN permits some other uses, but as a practical matter I think we feel pretty confident that if this remains commercial that is likely that type of tenant is going to be interested in that property at that type of intersection. So, we really think that this use is much better suited to the area, and this is really the second legal standard, which is that it is consistent with the surrounding property.

This is a slide that shows surrounding uses. The red property is the site itself. Blue is residential rentals. So, that gives you a sense of not only what is residential, but of the rentals in the area. Yellow is the University and it is actually pretty instructive to see where the University has acquired its property and how it has grouped it. Then purple is institutional uses – churches, etc. Really, we have an institutional use next to us. The Elks Lodge is also probably institutional. We didn't color that in, but you can see that it is noted that it is BN zoned next to us. The Elks Lodge is now for sale. Just FYI, you all have probably seen the signs. We believe that this slide really shows that even though this is zoned commercial that residential makes more sense for the neighborhood, not just from a traffic perspective but from a use perspective as well.

Finally, it is consistent with a larger area. This really is the larger area. This local area has changed over time. There certainly has been some redevelopment in the area to more modern buildings than were there before. It is more compliant with building codes. They are sprinklered and there is stormwater management, etc. Neighborhoods change and that is inevitable. We think that this is consistent with where this neighborhood is and certainly where it is headed. We really think that the parcel is going to be developed somehow and the question here is, for you folks is, how are you going to recommend to Council that it be developed? Are you going to recommend that it is going to be

developed pursuant to its current zoning or pursuant to the zoning that we are suggesting with the restrictions on occupancy for residential use. We submit that it is better to have high quality residential consistent with the existing development plan than commercial in this location.

We will be happy to answer any questions.

Mr. Bowman: Are there any questions from the members of the Commission on anything that the applicant has presented so far?

Mr. Hegedus: I have a question for the traffic engineer to help educate me a little bit. You talked about trips for the convenience store and generation of trips.

Mr. Williams: Yes.

Mr. Hegedus: In terms of generation, do traffic engineers consider that an increase in volume or is that just simply counting ins and outs?

Mr. Williams: In this case, the numbers that you see before you are the ins and outs. So, in the case of the morning peak hour there are 258 convenience store trips. In the morning peak hour, you add the ins and the outs over the course of that 60 minutes you are going to get 258 trips.

Mr. Hegedus: It is not necessarily more cars on Cleveland Avenue. It could be the same cars zipping in and zipping back out again.

Mr. Williams: And that is the case with the convenience store. The convenience store is a retail use and a portion of the traffic is what we call pass by traffic. So, that is traffic that is already using Cleveland Avenue that is going to stop in and use the convenience store, but a portion of the convenience store traffic is absolutely estimated as new trips as well. You will have far more new trips with the convenience market than you would with six townhouse apartments.

Mr. Hegedus: You said you used actual to get the townhouse apartment traffic counts. Was that a Newark based place you studied?

Mr. Williams: Yes, it is, and just further, we did compare those estimates with the same ITE trip generation data and it matched up very well.

Mr. Hegedus: Lisa, you were talking about the police concern over safety and cut through. The Newark Police Department knows that it is a private property lane, too, right, and they still have a concern. Is there anything else that is being considered in terms of traffic calming or other things to put in there to make it more difficult for somebody to want to cut through or you are just doing it as a private road and that is the end of it?

Ms. Goodman: I think the big thing that works the best is signage. I'm sure we could look at other things. The statistics generally show that things like speed bumps and other things don't tend to discourage people. What discourages people is a sign that says private property, if necessary, more explicit than that that it is illegal to cut through and having a Newark Police Officer sitting there on occasion is really good for discouraging. The best prevention on occasion is an officer sitting there.

Mr. Hegedus: It is a really tough road to have an officer sit there, especially on a Friday afternoon.

Ms. Goodman: I'm sure my clients would be very happy to allow them to sit on the private property. That is an issue anywhere you have a private development that has an in and an out. Right? You see the signage, not infrequently. My experience with clients is that it does tend to work pretty well. It does really tend

to discourage people. Are you going to get people that ignore the signage on occasion? Sure, and if it gets serious enough you start ticketing.

Mr. Hegedus: I can understand people ignoring signage on occasion, it is just that particular road. You can be sitting there 15 minutes just trying to get through that light. So, the cut-throughs increase the likelihood because of the traffic problems with the lights.

Ms. Goodman: Mr. Heitzenroder is pointing out to me that this is not going to look like a road. This is going to look like a driveway. It is only 16 feet wide. I think its appearance is going to discourage people.

Mr. Bowman: We will open this item up for public comment. Just a couple of things before we start with public comment, those of you who signed up as you came in to speak, we will call you first in the order that I received them. I would ask that you address the issues at hand, which are land use issues, that is, the zoning changes, the subdivision approvals, the Code, etc. We would ask you to keep your remarks brief. I am going to allow each person five minutes. I will stop you at the end of five minutes. If I think things are getting a little redundant, we will ask you to be brief and whether you support or not support the project; and the reasons that you do or don't. One thing the Chair will not tolerate is disrespect for the applicant or any members of this Commission, staff or between any members of the audience.

Ms. Theresa Mancari: 45 New London Road. I have been a resident there almost 23 years. As you can see, there are not a lot of residents. We are a dying breed, but this brought me out this evening. There are a lot of inherent problems with putting this size of a property in the middle of where we live. The parking issues – I don't think were adequately discussed here tonight. The traffic issues – having that kind of a dense college population off campus, and there are a lot of problems with that with foot traffic, police being called out when you have that many kids living together. There are just a lot of problems. I have a question for the Commission and that is, when do the residents become the primary concern? When do the people who actually live here have a personal say in this? When is our concern above making money and people coming in and making money? We are not naïve, people want to make money, but we also live here. We are raising our kids here. We put our kids on the bus. We cut our grass. There is enough of the rental properties all over the place, and I would like for us to be considered number one. We are the ones that live here. We are the ones who support the local businesses. This is not in our best interest at all. I just feel like the city is pushing residents out and it is becoming one big campus. We are not a campus. We are a city first that happens to have a campus within it.

Ms. Julia Clemens: 35 New London Road. I have been a resident for a little over ten years. To double up on what Theresa said, I am taking a look at parking. No matter how many spots you put in it is still going to take away from the residents because you have visitors, you have stowaways who are going to be living in those properties and not paying rent because these college students when they come in, two more come after them. This really does affect me deeply because it is a big deal, again, for a resident to be faced with something like this when we already have traffic issues, we already have parking issues, we already have speeding and partying from the rental properties that are existing. Why do we need more? This is just heartbreaking. There are 38 occupants that we are looking at, and 25 parking spaces. That is just taking into account the people who are legally allowed to live there. What happens to all the additional people who come in and say share my room with me, it is not a big deal, we will split the rent. What kind of regulation is going to come in with a property like this? Is this consistent with the neighborhood? I don't really know. I like to think not. We have Sunday dinners, we hang out with our kids together. It just isn't consistent. We are calling it Campus Village. What does that say about the property? It is not campus. This is a neighborhood and yes, we are being pushed out one-by-

one. It is very sad. So, I very unprofessionally addressed my concerns with parking. I don't have all the perfect numbers, and all the slides and everything, but I can tell you from my heart and from what I am experiencing everyday that 25 parking spaces would nowhere near be enough for the influx of the people that would be living on the property. Traffic – I would invite anyone to come stand on my front porch any time of day and take a look at traffic. You are more than welcome to. That study should be more than adequate to see what we go through on a daily basis. You can't make it up New London Road from my house to the light on quicker than three rotations. It just doesn't happen. You think you can, but you are speeding up from all the way down at the end of the block because the light is green and heading on up. It just isn't possible. So, we have two issues – traffic and speeding. Adding more people into that mix, I shudder to think of it. I could talk about the other rental properties. As Theresa said, we cut our grass, we do landscaping, and we keep our place nice. Other rental properties can't say the same unfortunately and that is a perfect opportunity. Why not have some of these existing rental properties up the ante and have them clean them up. We've already got people parking on the vacant lots. Why even bother to develop it? Put in a convenience store. I would be happy with that then I don't have to walk all the way down to the 7-Eleven. One of the words that has struck me that has been thrown around a lot is density. We are pretty dense right now. We are already pretty saturated right now and I think adding more people into that mix is a disastrous thought to me. I just think we are taking a backseat to the students and I don't think that is how people who live in the City and who work in the City and take care of the City should be treated.

Mr. Morris Patrick, Sr.: 57 W. Cleveland Avenue. (President of Pride of Delaware Elks Lodge). First thing, we are not for sale. We are opposed to this because putting those townhouses that close to our building will jeopardize our on and off license that helps us do our charitable things. It would hurt us for doing what we are supposed to do for the community.

Ms. Dressel: Mr. Patrick, you said you are the president of the Elks Club, there is a sign for sale in front of that building. I understand that it is not for sale but the "For Sale" sign is still there. I don't understand.

Mr. Patrick: The sign is supposed to come down. The national legal department is handling that. We are not for sale.

Mr. Joseph Word: 55 Church Street. As I have mentioned many times before, we understand about economic development and, obviously neighborhoods have to grow. However, I question some of the information that has been provided to you. I spoke with the City of Newark Police on a number of occasions, when it come to my concern about safety in the area. I have real concerns about the ability for safety equipment to enter in that area and provide safety services particularly when you have a road way that is 14 feet wide. You have parking that is allowed on both sides of the streets. In many instances you can't even get a medium sized car out of those road ways. From talking to the police, they tell me that there is an average of 12,000 vehicles a week that travel up and down New London Road. I have also been told that the average speed is 30 miles an hour. The reason for this is that many cars are trying to rush and beat the lights on Cleveland Avenue. Another issue I have is with building this development in the manner that has been proposed. You say that you are concerned about the people in the community. Well, there is a building there and you are building a roadway that literally lays upon the foundation of a building and I have concerns that, perhaps, a college student may be inebriated and may not be paying attention and could potentially run into the side of that building. It saddens me that a developer would not even consider to protect a building that is occupied.

Just one other thing that has to do with safety and conduct and increasing all this density. A lot of times the students because of their numbers and their being anonymous in a crowd, they tend to act out in manners which, trust me, you wouldn't want to know if it was your son, daughter, granddaughter acting this

way. I have made personal complaints to the police and I have questions about their ability to adequately police when you have these private type developments going up. You have University of Delaware questioning whether it is their jurisdiction. Something recently happened and I am still kind of concerned as to why a certain incident got a certain level of attention while one did not get the same level of attention and this was in front of 72 year old and an eighth grader. So, I have to put that out because it does come with part of these projects and for you not . . . (inaudible).

Mr. Bowman: I am not sure how a 72 year old and an eighth grader fit into this.

Mr. Word: I think that is an issue.

Mr. Bowman: We understand what your concern is about the safety issue.

Mr. Word: If your people are inebriated and your people are talking to me in a different way, out of mouth as though I am not a member of this neighborhood, that is a safety issue. That is a grave safety issue.

Mr. Bowman: I appreciate the concern. Mr. Word, we have a question for you.

Mr. Hegedus: You were talking about a foundation of a home or other building on the map behind you. Can you point to the location? You are talking about the Elks Lodge. Thank you.

Ms. Charlene Tucker: 43 Church Street. My concern with this situation is safety. I live on Church Street. It is miserable. Development has made it miserable for me and my family. We do not need any more traffic in this area. When I try to get out of Church Street and get around to that first light, I have to leave 45 minutes early, and do you know where I work? I work down on Wyoming Road. When the college is closed, I can get there in 15 minutes. When the college is in full swing, it takes me 45 minutes to get to work. If you put more cars in this area, more college students walking up and down the street, I'm going to have to take an hour or two to get to work on Wyoming Road. I go up and down New London Road every day for my personal use and I go up and down New London Road because I work for the University of Delaware, and it is miserable. I don't think we should have any more development in this area. You've got to put a stop to it somewhere. If you don't put a stop to it, it is going to get worse and worse.

Mr. Willie Slay: I live at 165 Butler Bridge Circle in Covington, Georgia. I own the property at 67 W. Cleveland Avenue and they are encroaching on my property. They are crossing my property to get out down there. It goes all the way to the end. If you look at slide three, you will see that they stopped halfway to one of those lots and go to the end of that lot and it is staked out as such.

Mr. Curtis Tucker: 43 Church Street. My concern is, like Brother Patrick said, safety. There is one fire hydrant about two blocks in at Church Street for the whole street. If you put these apartments in, you are going to have problems with the fire engines getting in there, with the Police getting in there. It is going to be a problem because you have one fire hydrant at the end of Church Street.

Mr. Kenneth McCollister: 1880 Superfine Lane, Wilmington. Before I start, I have one question for the person who did the traffic generation. Does that include traffic generated by the University of Delaware buses?

Mr. Bowman: When everyone is finished we will answer that question Sir.

Mr. McCollister: First let me speak for Mr. James Roy. His mother lives at 56 Church Street. Imagine you are on Church Street and somebody builds a construction building in back of your house so high that you can't see out. Put yourself in that position. How would you feel? I work for the University of

Delaware. I retired after 18 years as a bus driver. I still work for the University part time. Any given day, every five minutes, there is an express bus going up New London Road. Every half hour there is a Laird bus going up New London Road. Every hour there are four Unicity buses that go from Cleveland to New London Road every four hours that needs to be included in that survey. What I want to know – I am not speaking to any particular developer and I am speaking to all of them and to the Commission – what do you want Newark to look like in 10 to 20 years? Do you want the City of Newark to look like that because that is the direction it is going. There is a property on Cleveland Avenue that they just built that looks exactly like that. It looks out of place. These developers when they come in they take a one story building and make it two or three stories. It is out of place and it shouldn't happen to this city. There is a lot of history here and what the developers are doing is changing history and making it new.

Mr. Syl Woolford: 71 New London Road. We are all working at a disadvantage because we do not have a Comprehensive Plan. We should know what the density of our neighborhood is. We should know what the density of the City is. We should know what can be developed, therefore, we can communicate intelligently.

Mr. Bowman: Sir, if you would, speak to the project. We can sit here and speculate all night about what we should have, could have, and would have and this body has to live within the Code's standards and issues we have today.

Mr. Woolford: The body is not living within the Code. We have about four or five variances.

Mr. Bowman: That is a subject you have to take to Council, not this group.

Mr. Woolford: Why not this group? If the community is two story and somebody asks you for three stories, then shoot down the project.

Mr. Bowman: It is not quite that simple, Sir, to be honest with you.

Mr. Woolford: It works for me.

Mr. Bowman: It works for you but unfortunately we have to live by the Codes and standards.

Mr. Woolford: We have a community that has a way of objecting to a project if it knew what the standards were and you were abiding by the standards.

Mr. Bowman: You have the opportunity and you have objected here and all the standards that are available to us are available in the City and online and in the Planning and Development Department. They are public information. I am not trying to squelch everybody, I'm just trying to say we need to try to stick to this subject which is this project before us. If you are against it, you can state why you are against it.

Mr. Woolford: I said that last time. I said we didn't need any more development. I spoke to this group. I said two cars ran into my house one of them knocked it off of its foundation, but no one seems to hear me. Is this working?

Mr. Bowman: And, that is fine.

Mr. Woolford: But when a car runs into my house, it doesn't seem to be your problem.

Mr. Bowman: We hear you, but that particular subject right now is not germane to this project.

Mr. Woolford: A car running into my house is not germane to this subject?

Mr. Bowman: It is not germane to this project. I'm sympathetic to you but it is not germane to this project.

Mr. Woolford: But you didn't fix it. You didn't ask for it to be fixed. You didn't ask for an investigation. You didn't ask for a survey. Can't you ask for a survey?

Mr. Bowman: We are limited by what this charged Commission is to do. We are an advisory body.

Mr. Woolford: When cars are running into my house you shouldn't approve anything.

Mr. Bowman: We advise what is before us. If you have an issue with what you are talking about, you have a City Councilman to go to. That is who I suggest that you go to, Sir.

Mr. Woolford: He is paid off by the developers.

Mr. Bowman: Sir, that is a comment that is out of order here.

Mr. Blake Hardcastle: I work at Baptist Student Ministry, 50 Amstel Avenue. We had a partnership with the developer last year. They completed what they said they would do in the timeframe that they said they would do it and the property behind us which they own and operate has student rentals and all last year we have not had any incidents of graffiti or trash or inconvenience of that sort. So, I am speaking on behalf of the project.

Name Inaudible: I reside at 50 Amstel Avenue which is the building that is owned by the Baptist Convention of Maryland and Delaware. I am a recently graduated University of Delaware student. I have resided off-campus for the last two years of my undergrad. I've lived with two different developers and rented their properties. Obviously, Mr. Heitzenroder built the building for BCMD and I have had no issues with the people who have lived behind there. I have had a half dozen friends that have rented his properties. They have never had issues with them. From what I can tell, every property that I have been to, I never have seen issues with more people living there than are supposed to be occupied. I have never seen unlivable conditions. The conditions that he provided the building to us were more than satisfactory more so than, honestly, other developers that I have lived with and I just think, personally, I am okay with this.

Mr. Will Alger: 50 Amstel Avenue at well. I am definitely in favor of this project. He does a very good job of selecting his applicants and tenants in his properties. I have never had any issues there. I have been in buildings throughout other developers throughout the City and I have had friends that have lived in his properties and his properties are held up to a higher standard than any other developer in this area. So, I highly recommend this development.

Name inaudible: I am a former director of admissions of the Delaware Baptist Association. 1012 Mayflower Drive. I have done about half a dozen building projects over my years of ministry and I just want to attest to the integrity and the concern for the community of the developer. For that reason, I would encourage the Commission to approve the project.

Mr. Jim Hearn: 1509 W. 14th Street and have owned 64 New London road for over 20 years. I could probably speak for two hours on this issue. As soon as the sign went up, I met with the Planning and Development Director to discuss this because I, as well as, people that I have known who have lived in this community are really up in arms about the density, the fire and safety concerns of this dense of a project. This project is going to cover 77% of the lot and that is not at all consistent with what the current zoning and the current properties in the area are right now. The properties that are in this neighborhood now, that adjoin this, are primarily single family residential homes. From the attorneys showing, I have

counted over 15 long-term residents. A few of them spoke tonight. The long-term residents are senior citizens. I have known one of my friends in the community for over 20 years and she is very opposed to this project. They don't leave their home at night but yet they are forced to put up with the noise of the current students. The lot that they are developing is a 90 foot lot. Most of the lots on Cleveland Avenue are 90 foot wide. Right across from this is a home that was built and developed by the Arc of Delaware, which is for intellectually disabled challenged individuals. It is a gorgeous property. It is on the same 90 ft. wide lot. The same area and you have one single family home for four residents yet you are going to have 30 some residents on this. From the neighbor's perspective, prison would really have more open space than this. That is really what it comes down to, and then you add in that there is no fire lane coming off of W. Cleveland on one side of the building. The only fire access is a narrow lane coming off of New London Road. You can see the small little walkway because it is a 90 ft. wide lot. The most important thing that I would like to pass along is the developer currently owns several single family homes that are student rentals that are 90 ft. wide lots that are adjacent to this one that is one lot over, one that is on the other side of the street, and I can speak that the residents in this area have put up with these nuisance properties. They are animal houses, these places. And for the record, I am a landlord. I own 64 New London that abuts this property. I have owned it for 20 some years. I consider myself a good landlord in that I know my neighbors, I care about my neighbors, and I know what goes on in the area. The developer is going from building what is currently allowed on a 90 ft. wide lot renting out to 4 students on several parcels right on the street and now he is stepping up and on the same thing he wants to put up something that going to house more students. I will clarify, they are shorter lots. His attorney may be able to clarify. They may be .10 or .15. They are shorter but they are the same width of lot in terms of having some buffers, fire safety.

Mr. Bowman: Mr. Hearn, you are approaching your five minute limit.

Mr. Hearn: To wrap up, I know all of you on the Commission have an interest in preserving the proper zoning for Newark. What the developer is looking to do is coming up New London Road would be going from RM zoning to commercial.

Mr. Bowman: We can't make our judgments based on speculation of what somebody thinks the developer is going to do.

Mr. Hearn: No, this is the plan. If you look at the parcel before, it is residential. I am urging to keep the current zoning is in the best interest of the neighborhood in terms of all the residents' issues, the churches' issues. We all want to keep the current zoning. If there is a 3,000 sq. ft. or 3,800 sq. ft. commercial area, that is much more in keeping with the current area than to go to a 9,000 sq. ft. (rough calculation) would be a major detriment to the Newark community. Changing the zoning to allow something like this is the type of thing that if there was a fire issue, it is going to be on the front page of the national news to approve something like this in a primarily residential neighborhood.

Ms. Feeney Roser: I just want to put on the record that this plan has been reviewed for compliance with the Fire Code, and it does meet the Code. There is a 16 ft. secondary fire lane which is the lane coming off of New London Road and it is 24 ft. wide from Cleveland Avenue, which, I realize, is a one way street, but if the Fire Department needs access, they will meet it. It has come up a couple of times in tonight's remarks. I just wanted to clarify that.

Mr. Bowman: The building is also completely sprinkler protected. I will give the applicant a couple of minutes to answer the questions that arose and then I will bring it back to the table.

Ms. Goodman: The first thing I was going to address, Ms. Feeney Roser just did, this property has been reviewed by the Fire Marshal. It is a 24 foot fire lane off of

Cleveland Avenue and is totally meets the Fire Code. Parking – it is also more than Code compliant. Parking is controlled by the Code which we exceed but also simply by my clients telling tenants how many parking spaces they get. That controls how many cars they can bring. The parking issue is one that they are used to dealing with. It is not an issue with their other properties and that is really not an issue that makes sense.

Regarding the Elks building. 1). We didn't point this out, but the Elks building is actually partly on my client's property. They have actually designed this property to deal with that, but the Elks Lodge actually encroaches over the property line by about a foot. That is fine, but you should be aware of that. We heard a gentleman talk about running into the Elks property. This property has been redesigned to avoid an issue, frankly, that the Elks property has created because not only does it not meet the setbacks, but it is actually over the property line. On the topic of the Elks property, as recently as two days ago, the broker of the property was shopping the property to my clients. If it is no longer for sale, that is very recent. We have also done a complete survey of the property so Mr. Slay's issue of property encroachment we think is legally incorrect.

The average lot size on Cleveland and New London is approximately 22 feet wide. So, in comparing the lot sizes here, those are not consistent comparisons.

And, finally, I think the general assertion that commercial is more in keeping with the neighborhood is just factually incorrect. When we look at this, again, the blue are residential rentals, the purple is institutional and the yellow is UD. Even though we have these few commercially zoned properties, there simply isn't commercial in this immediate vicinity and the traffic difference that it would make would be very significant. I am happy to answer any questions.

Resident did not give name: I have a question about the last point. You are talking about the immediate area. You are shooting that way. You are not even including my house, my neighbor's house, you are including a little sliver of my property down there because I am next to the purple of the bottom which is the church next door to me. So, when you are talking about the immediate area, you are slanting it to show what you want to show that way. You are not showing the other way. So, that is kind of a little biased there when you say that this doesn't include any commercial properties or whatever you are talking about.

Mr. Slay: If you look at the white piece of property between the orange and blue, it is supposed to be 100 feet in. There is a stake there where it has already been surveyed. They are encroaching on my property here.

Ms. Feeney Roser: Mr. Slay, for clarification, are you talking about the triangular shaped property?

Mr. Slay: Yes.

Ms. Feeney Roser: Thank you.

Mr. McCollister: The question I asked about the University buses included in the survey they did in terms of traffic was not answered.

Mr. Williams: The traffic estimates that I provided those are just the traffic counts entering and exiting the property. The site is not intended to accommodate buses coming in and out of the project so those counts should not include buses.

Mr. McCollister: But, they should include the traffic that goes up and down and around Cleveland Avenue and New London Road.

Another thing. I made a statement about my mother-in-law's property on Church Street. It is right there. See where the building line is. Think about putting a property like that in back of your house.

Mr. Bowman: We are going to bring it back to the table to the Commission.

Mr. Hegedus: One of the recommendations in the report from the Department was not only to deed restrict about number of occupants but also deed restrict the property to prohibit other BLR permitted uses. Is that something you have considered?

Ms. Goodman: Yes, we would consider that. Essentially, what that is proposing is to limit the uses of the property to residential, essentially, because the other use you didn't mention is hospital. It is pretty clear that the property is too small for a hospital or a social club or things like that. I think, in general, that would be acceptable.

Mr. Hegedus: I'm sorry, but I missed the math on how you got that 38 occupants.

Ms. Goodman: I didn't do a very elegant job of explaining. There are six units. The way we have done it in the past is we have taken the number of bedrooms per unit, so that is 26 bedrooms, in 6 units. What we have done in the past is number of bedrooms plus 2 per unit. So, that is 26 bedrooms, plus 12 (2 additional persons per unit to give flexibility if you get a group of five or another group that might want three and another wants 6). $26 + 12 = 38$. It is number of bedrooms plus 2 per unit.

Ms. Dressel: I have a couple of comments to make and then I would like to make a motion. The buildings themselves are beautiful. It is following the same plan as you have used before, however, it is unbelievably apparent to me that there are a lot of issues with this particular property. There are issues with the size. I think that the applicant has made the point numerous times that the site would be in keeping with the surrounding area. However, on that particular block, there is nothing that looks like this and this would be a completely new situation on this section of Cleveland Avenue. It does not appear to be in keeping with the neighbors and with the properties that are there. There also seems to be the issues of encroachment by one or the other different properties. I don't think that is something that can be resolved here by the Commission. That is something that needs to be looked at and decided upon. I think that this project is potentially detrimental to the welfare of the community. So for that reason, I make a motion that we do not approve this project and do not approve the changes to the Zoning Codes.

Ms. Brill: Is it too late to ask a question?

Mr. Bowman: There is no second yet.

Mr. Cronin: I'll second the motion.

Mr. Bowman: The motion has been seconded so the questions are for clarification of the motion.

Mr. Cronin: Did you say you wanted to clarify the motion?

Mr. Bowman: The questions now should be limited to those clarifying the motion. You have heard the motion. I have no questions for clarification.

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

- A. RECOMMEND THAT CITY COUNCIL NOT REVISE THE EXISTING COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINES FOR THIS LOCATION FROM “LIGHT COMMERCIAL (LOCAL SHOPPING)” “SINGLE FAMILY RESIDENTIAL (MEDIUM DENSITY)” TO “MULTI-FAMILY RESIDENTIAL (MEDIUM TO HIGH DENSITY);” AND,
- B. RECOMMEND THAT CITY COUNCIL NOT APPROVE THE REZONING OF .354 ACRES FROM THE CURRENT BC (GENERAL BUSINESS) ZONING TO BLR (BUSINESS LIMITED RESIDENTIAL) AND THE REZONING OF .103 ACRES FROM RM (GARDEN APARTMENT) TO BLR (BUSINESS LIMITED RESIDENTIAL) ZONING AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED APRIL 2, 2013; AND,
- C. RECOMMEND THAT CITY COUNCIL NOT APPROVE THE 63 W. CLEVELAND AVENUE AND 60 NEW LONDON ROAD MAJOR SUBDIVISION PLAN AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC. PLAN, DATED APRIL 9, 2009 WITH REVISIONS THROUGH FEBRUARY 27, 2013, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS.

VOTE: 5-1

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, JOHNSON
 NAY: HEGEDUS
 ABSENT: BROWN

MOTION PASSED

3. CONSIDERATION OF A ZONING CODE AMENDMENT: DEFINITION OF HEIGHT OF A BUILDING.

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

“Over the recent past, a concern has been raised regarding the definition of height in the City’s Zoning Code. Specifically, the Zoning Code definition and the ICC Code definition of height of building are inconsistent with each other. As you know, the City recently adopted the 2012 ICC Codes for building construction, and the Department believes that the height definitions in both the Zoning and Building Codes should be identical so that development plans are consistently reviewed and processed, and confusion is limited.

Current Conditions

The current definition of the height of a building in the Zoning Code Section 32-4 is as follows:

“Height of a building: The vertical distance measured in the case of flat roofs from the curb level to the level of the highest point of the roof beams adjacent to the street wall, and in the case of pitched roofs, from the curb level to the highest height level of the gable, where no roof beams exist or where there are structures wholly or partially above the roof, the height shall be measured from the curb level to the level of the highest point of the building. Where the walls of the building do not adjoin the street line, the average level of the finished ground surface along the main front wall of the building may be taken in measuring its height instead of curb level.”

The 2012 International Building and Residential Codes’ definition of building height is as follows:

“Height, building. The vertical distance from grade plane to the average height of the highest roof surface.”

The simplicity of the ICC Codes definition is attractive, and as noted above, the two definitions should be consistent, particularly as Zoning Code compliance and Building Code compliance are both enforced by the same department.

Research

In order to determine whether changing the Zoning Code to match the ICC Code definition of height made sense, the Planning and Development Department conducted an internet search on the definition of building height in Zoning Codes around the Country. We found many communities that define height in their Zoning Codes as height is defined in the ICC Codes. Specifically, all of the following use the exact ICC Codes language:

Blunt County, TN
Carroll County, MD
Clarmont, CA
Grandville, MI
Hastings, FL
Luisa County, IA
Napa, CA
Pueblo, CO
Restin, VA
West Mifflin, PA

In addition to the above, several community Zoning Codes were reviewed which, while not using language identical to the ICC Codes, used similar language, and in fact, defined the height of the building as “average height” between the highest eaves and the ridge or peak of the gable, hip or gambrel roof. These communities include:

Arlington, VA
Atlanta, GA
Bellingham, WA
Brevard County, FL
District of Columbia
Emmet County, ID
Fairfax County, VA
Hastings, FL
Madison Heights, MI
Rockville, MD

It appears, therefore, that there is adequate precedent for defining building height as it is defined in the ICC.

For clarification of the ICC Codes definition of height (The vertical distance from grade plane to the average height of the highest roof surface.), for a flat roof the measurement is from the grade plane to the highest point, which is how we measure flat roofs now, and the average height, is the average height between the roof eave and the roof ridge. Specifically, the commentary for the International Building Code explains the definition of height more clearly indicating that “the definition establishes the two points of measurement that determine the height of the building. This measurement is used to determine compliance with building height limitations. The lower point of the measurement is the grade plane. (See definition of “Grade Plane”). The upper point of measurement is the roof surface of the building, with consideration given to sloped roofs (such as hip or gable). In the case of sloped roofs the average height would be used as the upper point of measurement, rather than the eve

line or ridge line. The average height of the roof is the mid height between the roof eave and the roof ridge, regardless of the shape of the roof.

This definition also indicates that building height is measured to the highest roof surface. In the case of a building with multiple roof levels, the highest of the various roof levels will be used to determine the building height. If the highest of the various roof levels is a sloped roof, then the average height of that sloped roof must be used. The average height of multiple roof levels is not to be used to determine the building height. Where structures are divided into multiple buildings by fire walls, building height is determined by each building separately.”

Regarding the Grade Plane, the ICC Codes define it as a “reference plane representing the average of finished ground level adjoining the building at exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line, or where the lot line is more than 6 ft. from the building. In other words, the term ‘grade’ means the finished ground level at the exterior walls. The grade plane is a hypothetical horizontal plane. The only time where the grade and the grade plane are identical is when the site is perfectly level.” (Please see attached illustrations).

Staff Comments

- The Planning and Development Department indicates that there should be a consistent definition of height in both the Zoning Code and the International Building Codes, particularly as both Zoning and Building Codes are enforcement by the same department.
- The Department believes that the ICC definition is easier to understand and will provide greater clarity as to what the height definition means. The consistent definitions will also increase consistency and predictability for users.
- The Department also believes that changing the definition will allow for more flexibility and lead to more interesting roof lines representing Georgian and Victorian details, which can be found throughout the City and in University buildings.
- The Department notes that for flat roofs, the height measurement will not change by amending the definition of building height, as the average height will only apply to gabled roofs or sloped roofs.
- The Department believes that the change in height definition will lead to fewer variances for height of a building, particularly for residential structures.
- The Code Enforcement Division of the Planning and Development Department notes that consistency between the Zoning Code and the International Building and Residential Codes will simplify Code Enforcement.
- No other Departments had comments or suggestions regarding the proposed definition change.

Recommendation

In order to accommodate this change, two new definitions – one for height of a building and one for grade plane will need to be added to the Zoning Code. Specifically, the Planning and Development Department suggests **an amendment of the Chapter 32-4, Height of a Building, to delete the current**

definition 32-4(53) in full and replace it with a new Height of a Building definition, to read:

“The vertical distance from grade plane to the average height of the highest roof surface.”

And to add a new definition to 32-4 for “Grade Plane” to read:

“Grade Plane – the plane representing the average of the finished ground level adjoining the building at exterior walls.”

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

Mr. Cronin: Maureen, does the 32-4 cover all buildings or just residential buildings?

Ms. Feeney Roser: It is the definition section and what we are talking about amending is the height definition, so it would be all buildings.

Mr. Cronin: How about steeples, how about buildings that have these faux chimneys like the Galleria coming up the front and two chimneys. Truly they are higher than, perhaps, the flat roof. It isn't clear to me how these words would apply to situations like that.

Ms. Feeney Roser: There is an illustration in your report. It is the roof ridge. If it is a faux chimney, it doesn't count.

Mr. Cronin: How about a steeple. How about, for example, the roof in the Lutheran Church. They did a reworking down on S. College Avenue with a nice rising roof with steeples on that.

Ms. Feeney Roser: It is the roof ridge not the steeple.

Mr. Cronin: You have adding a definition for grade plane. I agree with that, but I think we need to have a definition pertaining to the roof height because the way I read the words, you have the highest roof surface. I know what you are trying to accomplish, but the highest roof surface doesn't have an average height. You have to have some definition of what you are trying to accomplish beyond the words you have.

Ms. Feeney Roser: It is the average between the highest roof surface and the roof eave.

Mr. Cronin: Then it should say that or else provide a definition under definitions because where you have made your recommendation, it doesn't say that. It doesn't use those words.

Ms. Feeney Roser: What would you suggest?

Mr. Cronin: Something like you just said, perhaps, because the highest roof surface does not have an average. It is the highest.

Ms. Feeney Roser: It is the average height of the highest roof surface so what you want is a definition of average height of highest roof surface?

Mr. Cronin: I think we would need that. The intent is okay. The wording is a little short, I think.

Ms. Dressel: Are you suggesting that you would prefer to have this definition that is on page #3 from the ICC Code? “Reference plane representing the average of finished ground level adjoining . . .”

Ms. Feeney Roser: That is the grade plane.

Ms. Dressel: I'm sorry.

Mr. Cronin: They have the paragraph above that on the highest.

Ms. Feeney Roser: What I think you are saying is that if we put the vertical distance from grade plane to the average height of the highest roof surface defined as the average height between the roof eave and the roof ridge?

Mr. Cronin: I would like to have what is at the bottom of page 2 and top of page 3. The average height of the roof is the mid height between the roof eave and roof ridge regardless of the shape of the roof. Something that, at least, clarifies.

Ms. Feeney Roser: The definition would then be, "The vertical distance between the grade plane to the average height between the roof ridge and the roof eave." Instead of saying the average height of the highest roof surface, to say, the average height between the roof eave and the roof ridge.

Mr. Cronin: It's probably not compelling that we do this tonight. Perhaps we can rework it and reword it and do it at a later time. Is there a compelling need to accomplish it tonight?

Ms. Feeney Roser: I would ask if your concern is such that it would require us to come back. I think we could probably talk it out.

Mr. Hegedus: My preference would be to go with the standard ICC definition and then allow the Planning and Development Department to interpret that through guidance or regulation to developers or people to ask questions. I prefer just to go with the Code as written with examples that you have presented here.

Mr. Cronin: If we have definitions for some terms like grade plane, I think somebody reading the Code, the word "average height of the highest roof surface," calls for a definition because the highest roof surface doesn't have an average height. It is the highest. The words have meaning and I think we need a definition of the term, so I disagree with you there.

Ms. Feeney Roser: I think the height surface is what we are referring to – the average between the eave and the ridge.

Mr. Cronin: We ought to say that then. I didn't rework the words before I came. Maybe I should have.

Ms. Feeney Roser: So, what would help then for you would be also a definition of what the . . .

Mr. Cronin: Average height of highest roof surface means.

Ms. Feeney Roser: No, you would like a definition of highest roof surface.

Mr. Cronin: That too, perhaps.

Ms. Feeney Roser: I think so, because if we defined highest roof surface as the area between the eave and the ridge then you have roof surface.

Mr. Cronin: But, then you have to include the eave in there. If you are going to do the average, you have to have the bottom point and top point

in order to have an average, and right now, we are only referring only to the top point.

Ms. Feeney Roser: Yes, but I think if you define roof surface as eave to ridge your problem is solved.

Mr. Cronin: Pretty much. Yes.

Mr. Hegedus: Maureen, I'm sorry. I think it is defining average height as the ridge to eave because you are talking about a building and you have three different roof surfaces, you want to go to the top roof surface, right? That is pretty clear to me, but you are just talking about what the average height is? That is the distance between eave and ridge. So, if you strike average height and put "midpoint between eave and ridge" of the highest roof surface, I think you are there.

Ms. Dressel: No, not the midpoint. To the average of the highest roof surface, because the midpoint is way down here, but if you are talking about that. . .

Ms. Feeney Roser: That is what we are talking about. The height of the building would be here. We do have some folks in the audience that might want to speak to this.

Mr. Bowman: We could do that.

Mr. Richard Longo: Architect, engineer and planner. I have designed a number of buildings here in the City. Basically, I don't know any other definition, but if that is the eave and that is the highest roof surface, between the two is the average and that is where you measure to. So, it doesn't make it a four story building. It makes it still a three story building, but it allows it to have a more creative roof line by measurement, and it stops us from just building flat roofs especially like the mixed use. So, we get better drainage and it works really well. That is the eave and that is the peak and it is the average between the two. It is that distance from here, half of that is where you measure to. It is really that simple. I don't know how else to define it. If it is a flat roof, you go right to there. That is why it is a more creative definition for us to have more residential looking in buildings. Especially, the mixed use along S. Main Street. Because of this definition, everything is flat roofed because they just can't get an eave and ridge that would make it look a little more residential.

Mr. Cronin: It seems to me – I appreciate your goal for diversity architecturally and agree with that – that if your building height is half way up your scenario, that would tend to push the ceiling height down.

Mr. Longo: Then you could put dormers into the third story.

Mr. Cronin: Couldn't you do that now?

Mr. Longo: No, you can't because what happens is, let's just say we want to have a three story building.

Mr. Cronin: There is a height restriction already – three stories only.

Mr. Longo: It is 35 ft. What I am saying is, if you have three floors, especially in a mixed use where you want to have 12 foot on the first floor for commercial. You need joists, you need 10 ft. on the other two, now you can't do anything with the roof because you are already at 35 feet. Whereas, if you allow to measure from the eave to the ridge, you can put those last window in the roof line to give it more of a residential look.

Ms. Dressel: Then the peak of the roof goes higher than the 35 feet because of the midpoint.

Mr. Longo: You get that benefit but it is still a three story building. If you look at Old College and that architecture, there are dormers inside that roof that provide window for that third story. So, it really allows for a lot more creative architecture. It does make it a lot better.

Jim Hearn: 1509 W. 14th Street, Wilmington. I'm all for having more interesting architecture in Newark and I think that the proposal has a lot of good significant points. One thing that I think should be considered would be to define the height of faux chimneys and architectural embellishments on the buildings. From what I have heard and encourage clarification, they are excluded from the actual height that is being defined. What I think would be important to include and define would be the height of those embellishments as well and maybe it could be a percentage of the height of the building. I'm thinking that if you have a 30 ft. structure, maybe there is something in ICC, I'm not familiar, whether that be 25% over the building height.

Mr. Cronin: Other communities and I'm sure, locals, rather than define height in terms of feet would choose to define it in terms of one story, two stories, three stories and how does that work for them if they do it that way?

Ms. Feeney Roser: The way our Code works it says three stories or 35 feet. So, you can have three stories but it has to be 35 feet tall.

Mr. Cronin: Not more than.

Ms. Feeney Roser: I assume that there are a lot of them that way. I was not looking at the stories. I was looking at height when I looked at the other ones.

Mr. Cronin: Because in a way, if we have stories, you almost don't need height because people aren't going to go 15 ft. high for the second floor, 15 ft. high for the third floor.

Ms. Feeney Roser: We have had some three story buildings. As a matter of fact, the one that was here before got a five foot variance and it was a three story building so that would have been 40 feet tall. So, you can do that, particularly if you are putting parking underneath. I think probably we need both.

Mr. Bowman: I have not seen many codes that don't put the foot or some measurement height limit for a lot of reasons, mostly lawyers.

MOTION BY HEGEDUS, SECONDED BY BRILL TO ADOPT THE 2012 INTERNATIONAL BUILDING RESIDENTIAL CODE DEFINITION OF BUILDING HEIGHT AS, HEIGHT, BUILDING, THE VERTICAL DISTANCE FROM GRADE PLAN TO AVERAGE HEIGHT OF THE AVERAGE SURFACE.

Mr. Cronin: Will there be a second motion made for grade plane definition?

Mr. Bowman: The motion is as it stands.

Mr. Cronin: I understand that.

Mr. Bowman: If you want to amend it, you can amend it. We vote on the amendment first, then if that goes, the main motion.

Mr. Cronin: I would like to propose an amendment for the wording for the average height of highest roof surface. The average height between the lowest and highest roof surface.

Ms. Dressel: May I make a suggestion on the wording of that?

Mr. Cronin: Sure.

Ms. Dressel: For the height of the building would be, the vertical distance from grade plane to the average height of the highest roof surface which is further defined as the midpoint between the roof eave and the highest roof ridge. To be clear on the eave and the ridge. It has to go back to Andy.

Mr. Cronin: If you have multiple roof lines, it would be lowest eave to the highest ridge, perhaps.

Mr. Hegedus: The wording you just used, I don't think it is the intent. If you want to make a formal amendment to it, that is fine, but I would like the wording still here because I believe the measurement is from the highest roof. You don't go from the lowest eave to the highest part when you take the average.

Mr. Cronin: If you have multiple roofs on a structure.

Mr. Hegedus: You go to the highest roof.

Mr. Cronin: For the highest roof, yes, but where do you start the lowest eave?

Mr. Hegedus: From the highest roof.

Ms. Dressel: Yes, it should be the highest roof.

Mr. Hegedus: It is the average height.

Mr. Cronin: I understand, the eave of the highest roof. If you have a little tower at one end of the building and you have a roof there and you have eave for that tower, is that where it is?

Ms. Dressel: It is going to bring your whole building down, then, because that has to be at the 35 feet.

Resident (inaudible – not at microphone).

Mr. Bowman: We have a motion on the floor.

Ms. Dressel: Can you repeat it please?

Mr. Hegedus: Adopt the wording as is from the 2012 International Building and Residential Code definition.

VOTE: 5-1

AYE: BOWMAN, BRILL, DRESSEL, HEGEDUS, JOHNSON

NAY: CRONIN

ABSENT: BROWN

MOTION PASSES

Mr. Bowman: You could add a supporting definition to make it clear what you mean by that average roof height. A lot of codes and standards put a drawing in the Code, which really helps, but I don't know if we do that or not. That is a possibility. You could define what that average roof height

is. I think that is where the sticking point is, is it not? I think Mr. Longo properly explained it. If anybody wants to add a definition of average roof height as measured, go ahead.

Ms. Dressel: Do you think we need it?

Mr. Cronin: I do.

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

Amendment Zoning Code, Chapter 32-4, Height of a Building, by deleting the current definition 32-4(53) in full and replacing it with a new Height of a Building definition, to read:

“The vertical distance from grade plane to the average height of the highest roof surface. (The average highest roof surface is further defined as the midpoint between the highest roof eave and its roof ridge).”

Mr. Bowman: That is to add an additional definition that clarifies what the average is.

Mr. Hegedus: My problem with the definition as I just heard it is that it combines both a definition of highest and average height.

Ms. Dressel: The average height of the highest roof surface is further defined as the midpoint between the highest roof eave and its roof ridge. So, that is the highest roof. That is defining the average of the highest roof surface.

Mr. Hegedus: Okay.

VOTE: 6-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, HEGEDUS, JOHNSON

NAY: NONE

ABSENT: BROWN

MOTION PASSED UNANIMOUSLY

Mr. Cronin: Don't we need to have a motion for this grade plane definition? Is that part of your recommendation, Maureen?

Ms. Feeney Roser: Yes.

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

Add a new definition to 32-4 for "Grade Plane" to read:

“Grade Plane – the plane representing the average of the finished ground level adjoining the building at exterior walls.”

VOTE: 6-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, HEGEDUS, JOHNSON

NAY: NONE

ABSENT: BROWN

MOTION PASSED UNANIMOUSLY

Mr. Bowman: Are there any further items to come before the Planning Commission tonight?

Mr. Hegedus: I would like to make a comment. The vote that we had on the first proposal. I am a little bothered by the parliamentary procedure that we used as a body. I don't know that it would have changed the outcome at all, but with the movement and second and then the questions on the motion, there was no chance to debate the motion and in the Parliamentary Practice and Procedure book I looked at while the next thing was being discussed and it says, that there should be a chance for the members to debate the motion.

Mr. Bowman: That was the questions on the motion part.

Mr. Hegedus: My understanding with questions on the motion was not a debate. It was did I understand the motion.

Mr. Bowman: That was part of the debate, questions on the motion.

Mr. Hegedus: Got it, misunderstood the language.

4. COMPREHENSIVE DEVELOPMENT PLAN UPDATE DISCUSSION.

Ms. Feeney Roser: The Comp Plan workshops are still going on. We had the New London Road Neighborhood Workshop on May 15th. Mike did provide a summary which I can share with the Commission and members of the audience that might be interested.

We also had an Environmental and Natural Resources Workshop, which was pretty well attended. More information on that will follow.

Next, Mike is planning a summary of the themes that had been provided through these workshops to give us a framework to do a visioning session which he would like to do in July. He does not have a time for that session at the present.

[Secretary's Note: The visioning session will be held on August 13th at 7:00 p.m. in Council Chamber, 220 South Main Street and is open to the public].

Mike is not here tonight because he is moving to Newark. He did live in Perryville, Maryland, and he was Chairman of their Planning Commission and so, he has resigned that position and they were giving him an award tonight. So, he could not be with us.

As there was no further business, the Planning Commission meeting adjourned at 8:59 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning and Development