

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

September 4, 2007

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Acting Chairman: James Bowman

Commissioners: Ralph Begleiter
Angela Dressel
Mary Lou McDowell
Rob Osborne
Joe Russell

Absent: Chris Hamilton

Staff Present: Roy H. Lopata, Planning Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

Mr. Ralph Begleiter: Mr. Chairman, I want to offer some words of praise to the Planning Staff, to DelDOT, Commerce Bank and others who may have been involved regarding the Chapel Street project. In case you have not driven Chapel Street between Delaware Avenue and Main Street since the summer, you should do that and you should try it at 5:30 p.m. because it no longer takes twenty minutes to get through that block. The improvements made to that street – very minor improvements – have made a big difference. I have actually overheard other people talking about it since it has been done and School has started again, and it is amazing what a difference that simple little improvement has made on that street. So, I want to thank the Commission and the City and State staff that has been involved as well as Commerce Bank for coming up with the money to support that solution.

Mr. Bowman: I think all of us would agree that this is a great example of everybody being in a situation and working together to solve a problem. Thank you, Ralph.

Mr. Roy Lopata: I want to welcome Rob Osborne, our new Commissioner to the Planning Commission on behalf of the Planning Department.

1. THE MINUTES OF THE JULY 3, 2007 PLANNING COMMISSION MEETING.

The minutes of the July 3, 2007 Planning Commission meeting were accepted as presented.

2. REVIEW AND CONSIDERATION OF THE REZONING FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL) AND MINOR SUBDIVISION OF THE .56 ACRE PARCEL AT 203 NEW LONDON ROAD TO ADD A FOUR UNIT APARTMENT BUILDING TO THE SITE.

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

“On August 2, 2007, the Planning Department received applications from H. Gibbons Young and J. Jeffrey Lindeke for the rezoning and minor subdivision of their property at 203 New London Road. The applicants are requesting that their .56 acre parcel be rezoned from the existing RM (multi-family dwellings – garden apartments) to BLR (business limited residential) and are requesting minor subdivision approval to add a four unit apartment building to the existing four unit apartment facility on the site.

Please see the attached KCI Technologies, Inc., rezoning and subdivision plan and supporting project description.

The Planning Department’s report on this project follows:

Property Description and Related Data

1. Location:

West side of New London Road just north of the Corbit Street/New London Road intersection.

2. Size:

.56 acres.

3. Existing Land Use:

2½ story four unit apartment building and associated gravel parking area.

4. Physical Condition of the Site:

A portion of the 203 New London Road site is developed. The property, in general, slopes from northeast to southwest from a higher to lower elevation toward a small creek that runs along the southwest boundary of the property. The creek side portion of the site is wooded.

Regarding soils, according to the United State Department of Agriculture’s Natural Resources Conservation Service, the 203 New London Road property contains Glenville Silt Loam soil. According to the Natural Resources Conservation Service, Glenville Silt Loam has “severe” development limitations for the use proposed because of its “wetness.” In this regard, the Natural Resources Conservation Service indicates that, “a rating of severe does not mean that a soil cannot be used for the intended use. However, it does mean that severe limitations exist that must be overcome with proper design or operation.” As a result, the applicant will be required to include in the construction improvement plan for the site proposed engineering methodologies designed to take into account any soils’ limitations.

5. Planning and Zoning:

The 203 New London Road property is zoned RM. RM is a residential, multi-family zone that permits the following:

- A. Garden apartments, subject to either site plan approval as provided in Article XXVII and 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, with special requirements.
- 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 may 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(a)(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 zoning requested by the applicants, BLR, is a limited business residential zone that permits 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 curb service for other than eating establishments

Regarding area requirements, please note that the existing apartment at this site is a legal nonconforming use in terms of the one acre minimum lot size requirement for apartments in the RM district. The applicants are requesting the change from RM to BLR because with BLR's one-half acre minimum lot area, additional apartments can be built on the site.

In any case, the proposed 203 New London Road minor subdivision plan meets or can meet all the applicable BLR standards.

Regarding adjoining properties, the land immediately north of the site was recently recommended by the Planning Commission and approved by City Council for rezoning from RS (single family, detached) to RM, with an accompanying major subdivision for this and an adjoining site further to the north. The approved ten unit townhouse style apartment complex known as CampusSide at this adjacent property is now under construction. Single family homes fronting on Kennard Drive are located southwest of the site on the other side of the small creek on lands zoned RD (single family, semi-detached). An RD zoned legal nonconforming small apartment building is located immediately south of the property fronting on Corbit Street. UN zoned vacant University of Delaware property is located across New London Road from the southern portion of the site. The BC (general business) zoned Blue Hen Marriott Hotel is located across New London Road from the existing 203 New London Road apartment building.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for "multi-family residential (medium-high density)" land uses at the 203 New London Road site. The Plan recommends a density range of 11-36 dwelling units per acre for this land use category. The proposed use, calling for 14.29 units per acre, therefore, conforms to this land use guideline for the location.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design of the project. Specific details taking into account topography and other natural features must be included in the building permit and/or construction improvement plan. For architectural character, under the City's recently adopted design review criteria, applicants for minor subdivisions may be requested to submit color scale elevations of their proposed buildings. In any case, if the construction improvement plan, which is reviewed and approved by the City Operating Departments, does not conform substantially to the approved subdivision site plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial City Council subdivision approval means that the general site concept 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 to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design and related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the rezoning/minor subdivision plan and supporting materials call for the addition of a two-story four unit apartment building to the site. The new building is proposed to be located between the existing building and the under construction CampusSide project on the north side of the property. Two bedrooms will be included in each new unit. Additional parking is shown on the site, including a three-car garage within the new building, accessed from a driveway to run in front of the existing facility. Roadway access to the site is shown from New London Road.

Please consult the applicants' landscape plan for proposed landscaping at the site.

Departmental Comments

The City's Planning, Management and Operating Departments have reviewed the 203 New London Road rezoning and subdivision plan and have the comments below:

1. The Planning Department notes that the proposed new four unit structure, while technically in compliance with the BLR zoning area specifications, appears to be awkwardly placed on the property. The new building, for example, is proposed to be located farther than the existing building (even with its porch removed) is now setback from the street frontage. In addition, the building is located quite close to the existing building. Beyond that, the new driveway is shown paralleling New London Road along the front of the existing building linking the surface parking area with the proposed three car garage in the new structure. As a result, therefore, we believe that this site design does not correspond to the subdivision "Policies" in Subdivision and Development Regulations Section 27-3 (f)(1) that stipulates that, "the subdivision plan shall conform to the highest principles of land planning and design, and shall be evaluated on the basis of the overall suitability in the context of the neighborhood within which the land to be subdivided is a part so that land planning for the area may be properly conducted and a rational pattern of development attained." We will suggest, therefore, as noted below, that the plan be tabled and the site design readjusted.
2. The Planning Department also notes that it would be helpful in evaluating this plan if the applicants included building color elevations as outlined in Subdivision and Development Regulations Appendix XIV, "Design Review for Major Subdivisions Not Located Downtown." Note in this regard that while this section requires such submittals for major subdivisions it also stipulates that the criteria in this appendix "may be applicable to minor subdivision plans."
3. The Planning Department notes that General Note #7 on the subdivision plan needs to be revised to specify a minimum lot area of one-half acre not 3,000 square feet.
4. The Planning Department notes that the height of the proposed building is not shown on the subdivision plan legend.
5. The Planning Department notes that a subdivision identification sign should be shown on the plan.
6. The Planning Department suggests that the Planning Commission, once it reviews a building elevation for this plan at a subsequent meeting, recommend as subdivision site design conditions the following:
 - A. The proposed architectural design shall be consistent on all building elevations visible from public ways.

- B. Storage areas, mechanical and all utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
7. The Planning Department suggests that the Planning Commission recommend as a condition of approval that since the new apartments are to include two bedrooms and because two parking spaces are to be provided for each unit, that the building be deed restricted so as to limit occupancy to families or to no more than two unrelated tenants.
 8. The Electric Department indicates that the applicant will be required to pay \$1,700 toward the cost of the installation of a transformer for electric service. In addition, the applicant will be required to pay \$65 per meter toward the cost of radio read meters. Finally, the Department notes that the Ginkgo Biloba trees shown along New London Road on the landscape plan are not acceptable and must be replaced with trees that grow no higher than 18 feet at maturity.
 9. The Water and Waste Water Department indicates that based on the sanitary sewer capacity analysis performed for the adjoining CampusSide development sufficient capacity exists for the additional units at this site.
 10. Regarding water service, the Department notes that the proposed driveway to the new building may impact water services to the existing unit. The Department adds that the landscape plan shows a tree planted too closely to the existing water service; a 20 foot separation from the water lateral is required.
 11. The Building Department indicates that any building permit plans for the 203 New London Road site will be required to meet all applicable City Building Code requirements, including the requirement for fire suppression systems within the new facility.
 12. The Public Works Department notes that the Subdivision and Development Regulations required stormwater management information for quantity and quality control has not been provided. Volume control will also need to be considered since the site drains into a tributary to the White Clay Creek. The Department adds that a wider buffer should be created between the top of the bank of the small creek and the parking area.
 13. The Department notes that proposed and existing water and sanitary sewer lines need to be shown on the plan.
 14. The Department notes that there does not appear to be an adequate turn around for vehicles exiting the proposed garage in the existing facility; backing out of the garage past the existing home into the current parking area would be quite difficult.
 15. The Department concludes that the subdivision plan needs to be revised to show soils' conditions.
 16. The Parks and Recreation Department indicates regarding the landscape plan that, as noted above by the Electric Department, the Ginkgo Biloba trees along New London Road should be replaced. The Department suggests that the applicant consider replacing these trees with Full Moon Maples, Kousa Dogwoods, or Eastern Redbuds. An evergreen landscape screen fence or wall a minimum of six feet of height will be required along the northern property line separating this project from the CampusSide site. The Parks Department also indicates that the proposed parking lot is too close to the adjoining creek swale running along the southwestern boundary of the property. Finally, the Department notes that the landscape notes referring to buffer screening and "Article XXV, Section 32-86(f)(4)" should be revised to refer to "(5)". The accompanying language needs to be revised as well since it refers to parking areas with more than 25 spaces.

Recommendation

Based on the above Departmental comments, the Planning Department believes that there are significant revisions needed before this plan is forwarded to City Council. Therefore, we suggest that the Planning Commission recommend that the applicant table the plan and make the revisions noted above, as well as any other changes recommended by the Commission during its review of the project.”

[The applicants referred to visuals brought for their presentation to the Planning Commission].

Mr. Gibby Young: I am one of the two owners of the property. As anyone that has driven by there consistently has seen over the last year and a half, we have refurbished what was known as the Ice House and made it larger into a four-unit building. The reason we are requesting a rezoning is because the property, for a number of years, has been miszoned because it does not conform to the one acre minimum. It is next door to a ten-unit project, CampusSide, which is a rather large and attractive complex. We would like to add an additional building.

The restriction of two people or a family is not realistic to talk about in that neighborhood. It is a student neighborhood and is going to be situated in the middle of a lot of student housing. It is across the street from North Campus, which you are all well aware. There is Terry Manor behind the property. The reason for the setback is that we felt that it was more aesthetically pleasing that way, plus it does help us out in the fact that there is more room for people to back out of the driveway and turn around. The driveway going in front of the existing building is a two-fold reason. One, it is not realistic to ask DelDOT for another curb cut because it is a busy road. The front porch has caused a problem with the students over the last year and they congregate there. We have had complaints from the hotel across the street. We have had several instances. We are trying to gear people towards the back of the property where we have built decks.

I am requesting that this not be tabled. Any of the engineering issues, obviously, have to be addressed before a building permit can be issued. If anyone is interested, I have photographs of the existing building and the existing space to the west of the building where the property is going to be built. It is going to be a similar size building with garage parking on the first level and then two levels above that. The most important issue is that the property is totally conforming to what BLR allows. We will have a total of eight units which are allowed. We meet all the side line restrictions and setback restrictions. We meet all the parking requirements. We cannot do the building unless we meet the other issues – sewer, water, electric, Building Department, Public Works. We have to go through all of them to get a building permit.

I think I understand the role of the Planning Commission. Our architect was unavailable tonight through an unexpected occurrence where he was drawn out of town, so I do not have the renderings that I would like to have except to say that the building will be in keeping with the building that is there. Anyone that is familiar with the projects that I have built in Newark knows that I am very proud of every one of them. We are going to put an attractive building there. We put an attractive building where we have one right now. The other building is going to be in keeping with the architecture.

Are there any questions from the Commission?

Mr. Rob Osborne: You mentioned that you have done some other projects in Newark. I am new to the Commission and am curious to what other projects you have done that I might be able to associate this project with.

Mr. Young: We built the building that has the Iron Hill Brewery. We were quite proud of that building. I think one that is very similar to it was 175 Elkton Road, which is literally across the street right next door to Friendly’s. We took an old office building that was, basically, an old house and refurbished it, and I think it looks 100% better. I owned, at one point, the Kinko’s Copier building, the former CVS Drug Store, and an apartment building

on Haines Street, which is an all brick attractive building. Everything I own in Newark I am proud of and I keep them up. I would not build anything that wasn't right.

Mr. Begleiter: How old is the building that exists on the property now?

Mr. Young: Half of it is a year and a half old. The other half is anyone's guess between one hundred years and one hundred and fifty years old.

Mr. Begleiter: Two years ago you decided to expand and refurbish the existing building. Did you consider at that time asking for the zoning change and expanding to eight units? You went from two to four.

Mr. Young: It was always our plan to have eight units in the building. 150 years ago I did not have anything to say about where it was located on the property or even if that property was the same property it is right now. It is, frankly, in an awkward spot. We have about 52 feet west of the property. The shape of the property is more triangular than rectangular. We had to do a lot of work to fit everything in.

Mr. Begleiter: If you could point to your drawing, which part of the existing building is the 150 year old portion and which part is the new portion?

Mr. Young: The front is the old part. We were allowed by Code to expand the building 30%.

Mr. Begleiter: Have you considered the possibility of building the new building as you propose but remodeling the old building to remove the front so that you wouldn't be dealing with all the access issues and, perhaps, fixing the awkwardness of the site?

Mr. Young: That would be pretty much an impossibility. No, it could not be done.

Mr. Begleiter: It could not be done to remove the 150 year old portion and leave the new portion?

Mr. Young: No, that cannot be done because it is all one unit and half of it is old and half of it is new and it all ties in together. There is one bath in each section. The kitchen is right in the middle. Two bedrooms and the living room are in one section and two bedrooms and the bath are in the old section. The answer to your question is no, it is not really feasible.

Mr. Begleiter: Was the awkwardness of the site a consideration for you when you extended onto the old building a year and a half ago? Had you thought about the awkwardness of the site at that time or was it not a problem then because you were not planning to go . . .

Mr. Young: Our goal was to get one building up and running and then build a second building. It is awkward but we made it work. Our plan is to take away the front porch and to put an overhang there which is in keeping with the building. It would be much smaller and make it much easier to drive around the building.

Mr. Begleiter: I am only asking because it seems to me that if the entire existing building were 150 years old, you could easily make the case that, look this building has been here for 100 years and the awkwardness of the site was a result of that and it is too bad, but that is the case. But what we are faced with here is the awkwardness of the site is, in affect, largely because you added onto the back of the old building two years ago. If that portion of the building did not exist, you would have no parking or access problems to the proposed new building. The proposed new building would not be in an awkward position. So, to me, it looks like the awkwardness of the site is not a result of the site but a result of, perhaps, a premature decision two years ago to limit your development proposal to the initial expansion knowing that you planned on a larger building later.

Mr. Young: My reply to that is that it would be impossible for you to understand that without going through the building. The old building was basically uninhabitable and had been vacant for awhile.

Mr. Begleiter: But not destroyable.

Mr. Young: There were one bedroom, one antiquated bath units. It was not feasible to purchase the site with one bedroom units. In dollars and cents, it does not work. We had to add additional bedrooms.

Mr. Begleiter: But not to go to the full plan. You have done this in increments. You did a little bit a year and a half ago and now you are doing another little bit. I guess what I was trying to get at is, it seems as though had you thought ahead to the grand plan two years ago, you might have constructed differently on the site at that time knowing that there would be this awkward problem only a year and a half down the road.

Mr. Young: Actually, we really did not have a choice even leaving the decks off the back. We explored the possibility of not building the decks thinking that that could give us access to the westerly side of the property and even without the decks back there, which we were trying to gear the students to the back of property, we could not get access to the westerly side. We did not do anything without looking ahead. There is really no other plan than the one that is before you.

Mr. Begleiter: In other words, two years ago you actually knew this problem was going to exist now. You thought ahead and you realized that this was going to be the case.

Mr. Young: My answer to that is that I do not consider it a problem. The Code is clear. It is not the ideal plan but it conforms to the Code. I guess that is my main point.

Mr. Lopata: Just to make sure we understand what is going on here. It is not rezoned right now. It is zoned RM, so it does not conform to the Code. From a zoning standpoint you are requesting a change so that you would come into conformance. It does not conform to the Code.

Tabling is absolutely necessary. This plan would not have been discussed tonight without plans to table because there is no stormwater management provided. That is a Subdivision Regulations requirement. It is not a Building Code requirement. If the Commission wants to recommend . . .

Mr. Young: Is this something that the Planning Commission would base a decision on?

Mr. Lopata: Absolutely. It is in the Subdivision Regulations. That is what the Commission does.

Mr. Young: We cannot get a stormwater management plan from the City without showing them the building.

Mr. Lopata: The Subdivision Regulations, as I explained to your engineer, requires stormwater management at this stage – meaning prior to the Planning Commission. It was not submitted. We decided to go ahead tonight so we could talk about the other issues, including the ones you are talking about, but the Commission can either table or require that these things be done prior to City Council review, not to a building permit. I just want to make sure you understand that.

Mr. Young: That is our hope that we can proceed forward with these and they can be addressed before it goes to Council. That would be our request and our hope.

Mr. Begleiter: I have a question about the soils issue raised. Is that part of the stormwater plan?

Mr. Lopata: That is a minor issue. That would be reviewed through the construction improvement plan process. That comes after Council approval. That is certainly something that would be taken into account in stormwater design, but that is not a problem. We do not anticipate it being a problem is a better way to put it.

Ms. Angela Dressel: I was concerned as well about the way that this is set up and now I am actually a little bit more concerned because if the back half of the building is a year and a half old, I am not sure why you would not have turned the building sideways so that it was parallel to New London Road and then it would have made more sense to put your secondary building behind. Then you would not have the issue of the parking coming in front of the first building and actually being the first thing you see from New London Road. I do not have the Code in front of me, unfortunately, but I think we have been trying to move away from having the driveways right in front.

Mr. Young: That is a very good point because we actually thought about doing that and it was not a real practical thing to do because of the layout of the existing units, and then we laid out two buildings, one in front of the other, and we could not satisfy the parking requirements.

Ms. Dressel: How are you able to satisfy the parking requirements better this way?

Mr. Young: You turn it over to your engineers and they sit down and play with a piece of paper and see what works and does not work. That is a very astute and interesting observation to me because it really is one of the first things we thought about. How does the direction go? We decided against it because with the parking there is 18 feet of parking, they have to be nine feet wide and there has to be a 24 foot turn around. It would have created a situation where we would have had parking plus the parking can only be so close to the building. It would have created a situation where we could not have worked out two rows of parking. By the time we went east, we could not get the parking. This way we can satisfy the parking requirements. That way it would have been ideal. We would have had another 50 feet. It would have been a much better plan.

Mr. Bowman: You say you object to the restriction of having two persons per unit and yet you have 16 parking spaces. If you allow four per unit, what are you going to do with the extra cars?

Mr. Young: First of all, the recommendation from the Planning Department asks that the property be restricted by deed to two people or a family in these units. We already have one building where we have rental permits for four people. We have four bedrooms in each unit. First of all, unless Roy knows something that I don't, a restriction has to be on the entire parcel.

Mr. Lopata: It would only be on the new building.

Mr. Young: Second of all, a restriction, once it is on a piece of property, never goes away. Getting a restriction lifted is literally impossible. I am not willing to deed restrict my property to two people. I cannot build the building with each unit having just two people because it is not economically feasible. We are satisfying every code there is as far as living space. I realize that the Planning Department does not recognize the International Building Code when it comes to housing when it comes to the number of people. The City has its own way of doing things. They have been doing it a long time as far as the number of people. I know of no other BLR property in town that restricts their units to two per. I do not want to be the first, and I cannot build the building with two people per unit. I cannot generate enough income. I am just talking about my rights as a landowner and developer. I am in the business of making money, but I am also very conscience about doing things the right way.

Mr. Bowman: I guess one comment I would make about some of your comments tonight is that it seems as though, when it is pretty common knowledge that the type of information that is asked for in Roy's report is provided by pretty much everyone that comes before this body, you would just as soon prefer to skip this Planning Commission piece.

Mr. Young: No, I do not think that is a fair comment. It is my understanding that my engineers had satisfied Mr. Lopata's requests for information. Frankly, I was away, I got the letter the middle of last week and I did not realize there was information requested by Roy that was missing. Never in a million years am I trying to bypass the process. This all has to be done before a building permit, before we go to Council, before we get approved.

Mr. Bowman: All of us up here understand that.

Mr. Young: I am not trying to bypass this panel.

Mr. Begleiter: I have a question for Roy. Is there any reason why it would be important for us to change the zoning on this lot? If the developers says it is not feasible to do it any other way and this is not an acceptable plan, then there is no reason to change the zoning is there?

Mr. Lopata: This is an interesting question, Ralph. The Comprehensive Plan calls for the density that they are proposing. So, on the one hand the rezoning conforms to the Comprehensive Plan. But, on the other hand, the RM zoning standing by itself does not conflict with the Comprehensive Plan. It only calls for larger lot area – the one acre. That is really all this amounts to in terms of zoning. So, you have to sort of step back from that and say, yes, is there an imperative, must the City grant the zoning? No. We do not have to. Mr. Young and his partner have asked for it. That is really up to the Commission and Council ultimately. I like to look at it in terms of, what is it about the plan that fits into the community or can be made to fit into the community. That is why we proposed the restrictions we did. We think that with these restrictions the rezoning is relatively reasonable and we certainly think that the plan needs to be significantly redesigned. You and some of the other Commissioners touched on some of these items. I think these buildings can be done in a way that will fit the site better. It is a very awkward site. Gibby is absolutely right. You sort of need a triangular shaped building. Nobody builds that.

Mr. Young: If you have any ideas, Roy, we would be well and glad . . .

Mr. Lopata: T-shaped would be much better, L-shaped, not putting the back on would have made more sense. There are lots of things that you may not be able to do, a lot of them cost money, and clearly that is one of the issues here. Ultimately, this is up to the Commission and Council. The regulation issues are pretty standard and straight forward. I was in touch with the engineer every step of the way. The communication between the engineers and the applicants is nothing I can control. The materials that are not here tonight are the kinds of materials, as the Chairman said, are normally on a plan. Certainly stormwater management is typically on a plan. That may affect the way the building is laid out on the site. The comments about the driveway and the water line are important. Those are things we just cannot overlook, so I think they need to be reexamined. The policy issue you raised is up to you.

Mr. Young: I would like to add one thing before anyone else would like to comment. Right next door to us is on almost exactly twice the size we have. We have one building, we are asking for two. There is a one acre, exactly, because they had to get a variance to get approval for .97 acres. Garden apartments in this town is part of the Zoning Code, they can build units, but they do not need to abide by the limit of four. They can put more than that in them. They can put, literally, as many kids as can fit in there. There is not a restriction on the number of people. Now, this is next to us. We have the option of joining forces with the people next door, eliminating a property line which is something we do not even need to talk to the City about. We do not need to talk to anybody about it, to my knowledge. I could be wrong.

We could have created a one and one-half acre piece of RM ground. It would have been, then, worth our while to consider altering the building or building another building. But, we chose not to do that. We (Mr. Lindeke and myself) went to Mr. Lopata and he said change it to BLR. He encouraged us to do that. Of course, now, he might have encouraged us to do that without studying the plan and configuration of the plan. We have ten units next door to us on one acre. We are a half acre. They, literally, can put an unlimited number of people in that complex. We are asking for eight units. I am not saying that we are going to have four people in every unit. It is just that I am unwilling to deed restrict my property. I just don't think it is right on my behalf. As a property owner, I don't think it is right.

Mr. Lopata: Just for the record so there is no confusion. When an applicant comes to see me and asks how he can go about doing something and getting it done, I explain what the process is. I neither encourage nor discourage an applicant from applying from a rezoning. In order for Gibby and his partner to do what he wanted to do, that is eight units, the only

feasible way to do that was to rezone it. There is no way I said, “Go ahead and do this. It is wonderful. We are encouraging it.”

Mr. Young: The reason that we are RM right now is because at some point that parcel, which was before we owned it, was miszoned by the City because it is a one acre minimum and we are only half of that. Any more questions. My engineers are here.

Mr. Osborne: I am looking at the plan and there is a space of 12 feet between the buildings. Was there any consideration to whether a driveway could fit between the buildings and that the garage could be behind the building?

Mr. Lopata: He cannot do that, there are fire lane problems.

Mr. Osborne: So it was considered and it was not appropriate.

Mr. Lopata: The way it is laid out now, he could not do that.

Mr. Young: The bottom line is, for whatever the plan may be, it conforms to the zoning. I think you are all probably familiar with the project. There will be another very attractive building there. We are as concerned about parking, safety and everything else as everyone else. We have to live with it. It will be a nice project. If more information is required, then so be it. I will turn you over to my engineer.

Mr. Chris Flathers: KCI Technologies. Our office is located at 1352 Marrows Road in Newark. Just to answer some of the questions you had regarding the engineering of the site. The area we are primarily looking at for stormwater management – I know we did not address that and Mr. Lopata has pointed that out – looking at the layout of the site, it will most likely be located back here at the rear of the existing and proposed buildings. At this stage we will most likely be looking at doing a bioretention type facility. It will address both stormwater quantity and quality. Additionally, there is a buffer between the parking lot area and stream that will likely be used for a filter strip as green technology to provide water quality management. Without having a set layout, it is very difficult to proceed down a design path for stormwater management. At this stage we would only be able to do it on a conceptual level and that is what we should have submitted to Mr. Lopata, and we apologize for that omission.

As far as the setback of the existing building, it is kind of awkward. But, again, in order to meet the parking requirements we needed to have an additional three parking spaces to providing the garage, providing the access drive across there grants us access to that and having the setback was needed in order to get some distance in order to provide a method of turn around in that area for cars to back out and exit back out the access drive.

As far as the water and sewer, there is an existing building on the site. Obviously, we would have to bury a new water line because of the City’s requirements for fire suppression. The existing water line for the building is shown and existing water line along New London Road is also shown on the plan. At this stage, without knowing the layout of the building, where we would most likely be able to bring in fire service and water service into the building, we do not know that information at this time.

Mr. Lopata: You are going to have to put that information on the revised plan.

Mr. Flathers: Right, absolutely.

Mr. Bowman: Are there any questions?

Mr. Begleiter: At the time you were considering developing the engineering plan for this proposal, did you consider or develop preliminary ideas for a proposal that would include, not the creation of an additional building but the restructuring of the new portion of the existing building, such as wings, a T or an L or an angle or anything connected to the other building?

Mr. Flathers: The problem, again, given the awkwardness of the site and the triangular nature, in order to provide the parking space it would need, we needed 16 spaces on the site. It may even be possible if we provide some sort of building across this direction here (inaudible).

Mr. Begleiter: I guess what I was asking was, did you develop any such plans or consider such plans at the time?

Mr. Flathers: Three or four different building locations on the site. Three or four different configurations especially with the parking configuration trying to meet that 16 spaces that we needed.

Mr. Begleiter: Were there any restrictions placed on you in terms of anybody saying, look, we would much rather just do an additional building than fool around with the existing building?

Mr. Flathers: Our intention was always to do two buildings. That is where we were directed.

Mr. Begleiter: Always meaning not a year and a half ago but more recently than that?

Mr. Flathers: We were not involved with his first phase of construction.

Mr. Lopata: I think what the Commission needs to understand, if you do not already, implicit at what is being said here is, the number of parking spaces are driven by the number of units. So, if you want the four more units, you need the 16 spaces. That is obviously up to the applicant but that is part of what this process typically is about with developers who are successful in getting through our regulatory maze. They are willing to do some give and take, and they may recognize, well if we are going to get this property rezoned, and we are going to get it developed and we are going to add units be they one, two, three or four, we may need to reexamine how many units we are proposing. Every unit is two parking spaces.

Mr. Bowman: Irrespective of the number of bedrooms.

Mr. Lopata: If they have more than three bedrooms, there is an additional space. I do not think they are proposing that.

Mr. Bowman: Would anybody from the public like to address the issues? Hearing none, we are back to the table.

MOTION BY BEGLEITER, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION TABLE THE PLAN AND REQUEST THAT THE APPLICANT MAKE THE REVISIONS NOTED IN THE PLANNING DEPARTMENT REPORT.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, DRESSEL, McDOWELL, OSBORNE, RUSSELL

NAY: NONE

ABSENT: HAMILTON

MOTION PASSED UNANIMOUSLY

Meeting adjourned at 8:10 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission