

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 4, 2014

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
Alan Silverman

Staff Present: Maureen Feeney Roser, Planning and Development Director
Polly Sierer, Mayor
Mike Fortner, Development Supervisor

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

1. THE MINUTES OF THE JANUARY 7, 2014 PLANNING COMMISSION MEETING.

The minutes of the January 7, 2014 Planning Commission meeting were approved as submitted.

Mr. Bowman: I have a number of people who have written requests to comment on the second agenda item. The Chair is going to limit those comments to three minutes. If you would, please, address the issue, which is the change of zoning request and the amendment to the Comprehensive Development Plan; and, the Chair will also reserve the right to ask you not to be repetitive. We don't need 25 people coming to the microphone and saying the same thing over and over again.

2. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT AND A REZONING FROM THE EXISTING RS (SINGLE FAMILY DETACHED) TO BLR (BUSINESS LIMITED RESIDENTIAL) ZONING IN ORDER TO OPERATE A HOME BASED EMBROIDERY BUSINESS OUT OF THE HOME LOCATED AT 101 DALLAM ROAD.

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

"On October 3, 2013, the Planning and Development Department received an application from Churchill C. Franklin, Jr. representing Franklin Associates, LP for the rezoning of the property at 101 Dallam Road. Specifically, Mr. Franklin is requesting rezoning from the existing RS (single family detached) to BLR (business limited residential) in order to operate his business, Monogram Specialties, out of the home located on the property. Mr. Franklin describes his business as a home based business providing embroidery services and decorative apparel to corporations, schools and individuals in the Greater New Castle County area. The business is currently a home based business operating at 701 Valley Road. The business continues to grow and the Franklins can no longer accommodate the business in the physical limits of their home on

Valley Road. Therefore, as they own 101 Dallam Road in the Oaklands neighborhood, they requested permission to open their business out of that home. Because the RS zoning does not permit a customary home occupation in a dwelling unit in which the owner/operator of the business does not actually reside within, the request was denied. In other words, in RS zoning with a Council approved special use permit, an owner/occupant could operate a customary home occupation such as the one proposed. However, Mr. Franklin does not now, nor does he plan to, reside at the 101 Dallam Road site, which currently has a residential rental permit. Therefore, Mr. Franklin requests the property be rezoned to BLR, which allows offices for professional services and administrative activities, as well as personal services establishments.

The Planning and Development report concerning this rezoning follows:

Description and Related Data

A. Location:

The property is located at the southwest corner of the intersection of Dallam and Hillside Roads.

B. Size:

.3177 +/- acres.

C. Existing Land Use:

The house at 101 Dallam Road is currently vacant but has a residential rental permit, valid through April 2014. Previously, the home was a family dwelling with a doctor's office operated by Mr. Franklin's father. After the Franklin family moved from the home in the 1970s, 101 Dallam continued to house Dr. Franklin's medical practice in addition to becoming a rental property. When Dr. Franklin retired in 1992, the rental permit continued.

D. Physical Condition of the Site:

The site contains a two story brick and frame house with a semi-circular asphalt driveway and two curb cuts on Dallam Road. The property also has a covered porch and concrete patio in the rear yard. Along Hillside Road, a four-space parking area is included on the lot. The remainder of the site is lawn area.

E. Planning and Zoning:

The property is zoned RS (single family detached residential). RS zoning permits the following uses.

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.

- G. Municipal utilities; street rights-of-way.
 - H. Public and private swimming pools.
 - I. Temporary construction and real estate buildings.
 - J. Private garages as accessory uses.
 - K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
 - L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
 - M. Public transportation bus stops.
 - N. Bed and breakfast, with special requirements
 - O. Student Homes, with special requirements
- RS zoning also permits, with a Council-granted special use permit, the following:

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

The applicant is requesting BLR zoning. BLR is a limited business – residential zone which permits the follows:

- A. Church or other place of worship, seminary or convent, parish house, or Sunday school building.
- B. Public and private elementary, junior, and senior high schools.
- C. Park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- D. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- E. Municipal sewage pumping station and sewers.
- F. Right-of-way, street.
- G. Utility transmission and distribution lines.
- H. Public transportation bus or transit stops for the loading and unloading of passengers.
- I. Social club, fraternal, social service, union, and civic organization.
- J. Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
- K. Hospitals.
- L. Apartments are permitted in conjunction with any nonresidential uses permitted in this district. Nonresidential uses are permitted on ground floor and second floor only in such mixed use buildings and permitted nonresidential uses shall occupy a minimum of 30% of the gross floor area of each building.
- M. Offices for professional services and administrative activities.
- N. Undertakers.
- O. Barbershops, beauty shops.
- P. Personal service establishments, limited to a maximum floor area of 5,000 square feet.
- Q. Special retail stores, with a maximum floor area for any one establishment limited to 5,000 square feet.
- R. Finance institutions, banks, loan companies.

S. Parking spaces, off-street.

The following uses require special use permits as provided in Article XX, Section 32-78 of this chapter.

- A. Police and fire stations, library, museum, and art gallery.
- B. Country club, regulation golf course, including customary accessory uses subject to the following special requirements:
- C. All buildings shall have a minimum setback of 120 feet from all street and property lines.
- D. The golf facilities shall be used only during daytime hours.
- E. Substation, electric and gas, and telephone central office.
- F. Day care centers, kindergartens, preschools, day nursery schools, and orphanages.
- G. Drive-in and curb service business, for other than eating establishments, with a minimum setback of 65 feet.
- H. Bed and breakfast, defined as an inn, guest house, and similar commercial lodging establishment permitted only in a structure in existence at the time of this ordinance's adoption (6/26/95), subject to the following special requirements:

Embroidery service is considered a professional service and allowable under BLR zoning.

Regarding adjacent and nearby properties, adjacent to the south and west of the property are RS zoned single family residential lots, as are the lots to the north, directly across Dallam Road from the site which are owned by the University. UN zoned properties are also directly across Hillside Road from the site.

Regarding comprehensive planning, the Comprehensive Development Plan IV calls for single family residential (low density) uses at the site. Single family low density uses are defined as areas designated for dwellings occupied by one family, primarily single family detached with overall densities of one to three dwelling units. In order to accommodate the Franklin's request, a Comprehensive Development Plan amendment changing the designation of the site from single family residential low density to light commercial is necessary.

Status of the Site Design

Please note that Franklin Associates does not plan to make external changes to the residential nature of the home. The home was originally constructed in 1961 with an attached medical office for Mr. Franklin's father. In the 1970s Mr. Franklin's family moved and the home became a rental unit, while his father continued his medical practice at the location. When Dr. Franklin retired in 1992, the entire structure became a single-family rental unit. If approved, Franklin Associates plans to relinquish the rental permit, and use the entire structure for the monogram business.

Mr. Franklin indicates that 70% of their enterprise consists of business-to-business sales; another 28% is from school uniform sales; and the remainder or 2% from sales to individuals. Further, Mr. Franklin indicates that the bulk of their orders are taken over the phone or internet and delivered via UPS. The exception is the occasional walk-in customer and school uniform traffic. Their hours of operation, included in their transmittal letter, demonstrate the uniform high volume times, however, it is important to note that appointments for fittings are done one on one.

Subdivision Advisory Committee

The Newark Police Department and the Public Works and Water Resources Department, in addition to the Planning and Development Department's Land use and Code

Enforcement Divisions have reviewed the 101 Dallam Road Comprehensive Development Plan amendment and rezoning plan and have the following comments:

1. The Newark Police Department expressed concerns regarding delivery and customer traffic, as well as parking for a business in a residential area.
2. The Planning and Development Department has concerns about the operation of a business in a home in which the owner does not reside, and the rezoning of a residential property to a commercial one in an area that is mainly residential. The Department, therefore, suggests that if the Commission decides to make a positive recommendation on the rezoning request, the property be deed restricted to eliminate the possibility of the structure being used by any type of business other than the embroidery company. Specifically, it should be deed restricted against social clubs, fraternal, social, union and civic organizations, hospitals, undertakers, barber and beauty shops, personal service establishments, retail stores and financial institutions. We recognize that such a deed restriction will severely limit the resale value of the property, but it is the only way the community can be assured that the property will not be converted to a more intensive use allowed in BLR, should the rezoning be approved.
3. The Department also notes that if the rezoning is approved, the site should be further restricted as follows:
 - No storage of materials or products outside the dwelling shall be permitted unless completely housed.
 - No display of products shall be visible from outside the building.
 - Only one display sign affixed to the building not exceeding a total area of two square feet nor projecting more than one foot beyond the building, and not illuminated shall be permitted at the site.
4. The Planning and Development Department notes that while there is currently a single family rental permit for the property, Mr. Franklin intends to relinquish the permit should the rezoning be approved. The Department indicates that while the reduction of a single family rental unit may be a positive outcome from the rezoning, should the property be rezoned to BLR, a residential apartment use of the property would still be permitted, provided that 30% of the gross area is occupied by the non-residential use.
5. The Department also expresses concern with the required Comprehensive Development Plan amendment. The residential use designation continues to make sense at this location.
6. The Public Works and Water Resources Department indicates that should the rezoning be approved, utilities will be charged at the commercial rate.

Recommendation

Because the proposed Comprehensive Development Plan amendment and rezoning requests are in conflict with the purposes and land use recommendations in the Comprehensive Development Plan IV, because the continuation of single family zoning makes sense at this site, and because commercial zoning, even if severely deed restricted, may have a negative impacts on adjoining properties and the nearby community, the Planning and Development Department suggests that **the Planning Commission recommend that:**

- A. City Council **not** approve the Comprehensive Development Plan amendment; and,
- B. City Council **not** approve the rezoning of 101 Dallam Road from RS to BLR.”

The applicant is here and I will be happy to answer any questions that you may have for me.

Mr. Bowman: Does any member of the Commission have any initial questions for the Planning and Development Director? Hearing none, I will ask the applicant to step to the microphone.

Mr. Churchill Franklin, II: My legal name is Churchill Franklin, II. I go by Chuck. My wife is Nancy. We reside at 701 Valley Road in Newark. We are within the city limits. Valley Road is on the western end of the City of Newark off of Barksdale Road.

I can't address the zoning issue, because in order to do what we would like to do with the property, it needs to be rezoned. That being said, what I can do is address some of the concerns that were raised in the flyer that was passed out through the community and, I think, what generated the turnout this evening.

There was a lot of talk about the impact of traffic in the community if we were to have the business at the corner of Hillside and Dallam. Some of the things that were mentioned were UPS, FEDEX and the United States Postal Service bringing noisy traffic to the community. All three of those services currently serve the community. We had the business at Dallam Road, it would be one more stop for UPS, one more stop for FEDEX when they come to our business; and, the Postal Service would be delivering there today if I had left the mailbox. I took it down three years ago to avoid all the junk mail that comes. We would not be increasing that type of traffic in the community. Yesterday, I talked with our UPS driver who was doing the Oaklands and Nottingham Green community and I asked how many stops there were. There were 36 stops in those two developments. The closest one to us at Dallam was 125 Dallam. On Cheltenham, there were stops at 206, 207, 223, 225 and 227. UPS is in there. One more stop is not going to affect the traffic. We have never shipped out FEDEX. We do receive packages occasionally from FEDEX but we cannot convince our supplier to use UPS. We would prefer UPS delivery. And, as I said, the Post Office is already delivering to every home in the community. That talks about the traffic that we won't be generating.

There certainly will be traffic that we will generate. Most of that would be families coming from the Newark Charter School. We are one of three vendors that are authorized to do uniforms for the school. It is very generous of them to allow us to do that, but we don't do the entire school. I have some figures from the current school year. We start our fittings for the uniforms the first Monday in May and we do fittings individually one-on-one for each student that comes to us. From the beginning of May through our pick-up date, which is August 16th of this past summer, we saw 443 students. During that time, there were 64 days that we were open for business. If you divide the number of students by the days, it comes to seven students per day. That would mean 7 cars per day in the worst case scenario. However, many of the families that come to us have multiple children at the school and, in fact, I have a printout of all of the families that came to us during that time period and I circled the ones where there were two or more family members. There were 135 siblings out of 443. That brings the traffic down to 5 cars per day during an 8 – 10 week period. I don't think that is a huge impact on the community. It is negligible.

By comparison, when my father had his practice there, he scheduled patients every 10 minutes or about 30 a day. Far more traffic than we would ever anticipate. If we ever got to that point, we would be doing a whole lot more business than we are doing now. So, I hope I have calmed some nerves with that.

Another issue that was raised in the flyer was parking. We have plenty of parking. There is a four car parking lot on Hillside Road. That, however, is not where we intend our customers to park. That is where my wife and I would park. It is out of the way. It is behind the house. We would expect that the customers to park in the driveway on Dallam Road and use the front door because that is where the front end of the business is and that is where my wife would be. The embroidery would be done in the office portion away from the students, away from the visitors and the traffic would

enter from Dallam Road, not from Hillside Road. So, I don't think there is an issue with traffic and the safety concern on Hillside Road.

Some other issues in the flyer – signage and lighting. We have no signage at our home right now. We have no lighting. We don't do any advertising. We have a listing in the phone book but with no address. We would intend to do the same thing. The City would allow a sign up to two square feet but not illuminated and protruding no more than a foot from the house, if I remember correctly. The only thing that we would ask for would be a small plaque by the front door so that when people did come up they would know they had arrived at the right place.

We try to operate very low key. We try to stay under the radar. We have worked out of the home for so many years; we never wanted people coming to our home unexpectedly. My wife when she started the business had three daughters at home. That was the reason for that practice and we have continued it today. The children are grown and moved out and we have grandchildren.

The Department's recommendation, if the Commission were to approve this in restricting the use of the property to the embroidery business is exactly what I was hoping would be said by the department. It is what I would have requested if they had not made any comment on it. Our intention is not to disrupt the community. I agree with the Department's conclusion about restricting the use of the property to an embroidery business; and, I would prefer it be called a decorated apparel and accessory business because we do other things other than just apparel. We do travel bags, sheets and towels and pillow cases, but it is all embroidery. The department's assumption that by restricting the use of the property it would devalue the property. Absolutely, and I am willing to take that chance because I look at this as a ten year venture at which point I hope to be able to retire and would intend to sell the business and rent the property to the buyers of the business, sell the business and the property to a person who wants to have an embroidery business or if I cannot sell the business have the property rezoned to residential and then sell it. I can't overcome the issue of rezoning. I understand the concerns. I understand the concept of commercial creep and what is going to happen to the next property, but if the restrictions are tight enough I think you would discourage others from doing it. I understand that with BLR zoning the apartment issue would be there. I am willing to waive that if that can be done. I don't know whether legally that can be done or not. And, I am open to other reasonable restrictions on the business. The only thing I think anyone would ever notice would be that after three years driving by you might say, oh, somebody is finally in that house again.

If there are any questions, I would be happy to answer them.

Mr. Bowman: Are there any questions for Mr. Franklin from the Commission? There being no questions from the Commission, comments are entertained from the public.

Ms. Kari Callahan: 28 Old Oak Road, Oaklands, so I am just about a block behind this particular property. The reason I came tonight is because my little one block area of Old Oak Road has become extremely congested because of all the people attempting to miss that light at W. Main and Hillside. It is already a problematic intersection. It becomes even more so if a train stops the traffic there. What cars do is come down W. Main Street, turn on Old Oak and then turn left on Dallam right by this property and then go on or they turn on Dallam, come back out to Old Oak all of it to try to avoid the light because there is already way too much traffic. Old Oak and W. Main is frequently a police speed trap. The reason being is that people are coming down W. Main Street and they are going to try to make the light and they are speeding already. No more traffic. The intersection just can't take it. It is already handling more than it can efficiently handle. As to the point that Dr. Franklin had many more clients, I know he did but there were not nearly so many cars coming. As Pennsylvania has built up, as Maryland has built up, the intersection especially with the pedestrians around there that are University students, the intersection can be extremely congested. There are times when I cannot even go from Old Oak Road out onto W. Main Street. And the cars are actually speeding to get around. From a traffic point of view I would hate to see a business there and allowing a business there, I think, would be a precedent. Even though it is very specific

for this business, I think it would be a precedent that would probably have a very negative impact in the Oaklands community.

Mr. Michael A. Hoppe: I live at 103 Old Oak and I am also representing my daughter and son-in-law who live at 135 Dallam. First of all, I would like to commend Mr. Franklin's wife for bringing this up to the community before the meeting, but I am totally against having that rezoning done for these reasons. First of all, I hope you hope to grow. So, if that is the case you would have more customers. Secondly, there is a safety concern with all of the young children. I have two grandchildren who are under the age of four. The neighbor closer to this property has two children under the age of four. There are two children that lived across the street – I'm not sure they do now because it is a UD property – under the age of four. And, in the summer when most of the business would come in and out of the property, the Oaklands Pool many of the children walk down Dallam Road and then go down Hillside to get to the pool. So, there is a tremendous amount of pedestrian traffic of young children. And trust me, they are not as cognizant of cars as we are. Other things that are there, that corner is a bus stop for the UD bus and when those buses stop if you are unfamiliar with that corner you could rear-end those buses because they quickly stop and there is very little signage to tell you that. You have live in the neighborhood to know that is a bus stop for those dorms. When there is a car turning into the dorms and a car turning into Dallam off of Hillside, those entrances are almost across from one another. If you look at it, you have to have someone let you go through and if there is a bus stop there, it is a nightmare, again, with traffic and safety. Again, I commend you for doing this but I am totally against having that rezoned.

Mr. Robert Stozek: 203 Briar Lane, Oaklands. I have lived there for over 35 years. Most of my concerns go back to the traffic issue again. Hillside is a primary two lane connector for Cleveland Avenue and W. Main Street on the north and to Barksdale Road and the Apple Road Bridge to the south. There is significant traffic on that road particularly during rush hour. Often at the light at W. Main Street there is a queue that builds up to the south on Hillside and I have been there many times where it takes two cycles of the light for the traffic to clear out of that queue. And, this house is about one block south of that intersection.

The owner mentioned about the deliveries that would probably just be UPS and the fact that the business is going to be on the addition on the back of the building, that is probably where most of the deliveries are going to go, I would think. But in any case, UPS drivers do not walk long distances to pick up and deliver. They try to get as close to the building or close to where they are delivering the material as possible. It is very likely that they are going to stop on Hillside Road, again, which is a two lane road, heavily traveled which means traffic is going to have to go around them for however long they are sitting there.

The other concern is that this is going to be a precedent. If this is a precedent then how likely is the Commission or the City Council going to say no for the next request to rezone a house in this long established residential neighborhood.

The property is across from the Rodney dorms. The University has talked since at least 2005 about taking down the Rodney dorms. Whether they repurpose the property for some other University use or if they sell it to a developer who could build apartments there, whatever happens it is going to establish more parking places in there than they currently have for the students at Rodney which means more traffic onto Hillside Road.

Lastly, if you take a casual drive around the core of Newark, which I did twice in the last week, there are more than 80 vacant storefront properties in the core area of Newark. I have a list that you can have. That tally doesn't even include the buildings currently under construction or the ones that were just approved by the City Council. So, there are going to be more vacant storefronts. This tally doesn't include things like 850 Library Avenue that has offices in it. I don't know what the total use for that building is or any of the mini mall areas. So, I think there are plenty of business spaces available. I realize it adds cost to the business but I don't see any compelling reason to rezone this property to put a business in a long established residential neighborhood.

Ms. Sheila Anderson: 206 Sypherd Drive and I have lived there for 40 years. I am here tonight representing 129 people in the Oaklands who have, in spite of the snow and freezing temperatures, signed this petition that opposes the rezoning of 101 Dallam Road, and I would like seven minutes of your time to speak for this 129 people and myself. Is that possible?

Mr. Bowman: Mrs. Anderson, what would you add to the comments that have already been made?

Ms. Anderson: Quite a bit, Sir. I have been listening carefully.

Mr. Bowman: Alright, I will grant you the extra time but I will hold you to it.

Ms. Anderson: The issue at hand is that the owners of the property wish to change its zoning classification. It is currently classified as RS which is essentially residential single family. That is the zone it is now. They wish to change it to the BLR which is an office residential and limited retail zone. A portion of the Newark zoning map that you should all have before you (I put there before your meeting began), if you look at it you will notice the property in question is noted by an arrow. The orange color is the designation for residential single family classification on the map. As you can see, a great majority of that land area is residential single family. Included in that are the Oaklands and a bit of the Nottingham Manor development. An exception is the grey area which belongs to the University. As we all know, the purpose of zoning is to separate incompatible uses of property as can be easily seen as the current zoning map consists of two colors – orange and gray. The petitioners are requesting a change to allow for another color representing incompatible uses to be inserted into the middle of this area. This is patchwork zoning which is the antithesis of good zoning principals and also incompatible with the stated goals of the Newark Zoning Code.

People have been living in the Oaklands and Nottingham Manor for over 60 years because they like the quiet residential neighborhood and the atmosphere it affords. Since the purpose of the Newark Code is to prevent new development from interfering with existing residents and to preserve the character of a community, there should be a compelling reason to introduce this patchwork zoning. We see none. We only see evidence of incompatible uses.

To grant a business limited residential zoning for this property would seriously jeopardize the quality of life for the residents who live in this neighborhood in a number of significant ways:

1. Commercialism. The applicant states that uniform sales generates the bulk of customer traffic in and out of the shop. It appears the monogram specialties is somewhat a misnomer since they offer students a one-on-one fitting year round, monogramming is a minor part of the business. The major part appears to be the selling of uniforms on which they do the embroidery. In essence, they are requesting to set up a commercial shop in our residential neighborhood.
2. Congestion, which has somewhat been referred to. The applicant does the fitting of the uniforms mostly in the summer months, the same months that our Oaklands Pool across the street is open from 9 a.m. – 9 p.m. and children, as someone has already indicated, would definitely be in the neighborhood, the rezoning would be a serious safety concern and certainly cause unnecessary congestion.
3. Parking. To change the zoning of the area to accommodate the business would change the character of the neighborhood by likely creating the need for more street parking. If this petition is being made because they are growing, we assume they are going to continue to grow. Furthermore, the four parking spaces that are currently on the site, you would have to back out into the flow of traffic already moving on Hillside Road in order to exit the property. The circular drive which he refers to is a single lane half circle that is meant to have a guest or two coming to your home, not business.
4. Signage. Businesses usually have some kind of signage to advertise. Additional writing is often used. Both of these would cause deterioration to the neighborhood.

5. Consequences of the BLR zoning. It is important to realize that once the site has been rezoned, it can be sold and used in other ways. In short, it is short sighted to consider only the current proposed uses of the land. What else could happen? According to the City Code for a new owner would get it from the current one, they could use it for a place of worship, a community center, a tattoo parlor, a psychiatric reader, a social club. On and on it goes. It is, therefore, shortsighted to ignore the repercussions of this possible first patch of BLR zoning in the area.

To rezone the property would set a precedent for further congestion, for changes that would completely change the character of the area. This will adversely affect both the quality of life and the value of the homes in the neighborhood.

In conclusion, the proposed change in the zoning of 101 Dallam Road is not compatible with accepted conceptualization of zoning and it is not consistent with the stated purpose of the Newark Zoning Code in Section 32. The residents in the Oaklands and Nottingham Manor do not want the character of their neighborhood to change or their property values to fall. I ask you tonight to ponder this question. What right do homeowners in neighborhoods have about preserving their residential neighborhoods? What are their rights? As a Planning Commission, we hope you will advise against this proposed change in the strongest possible terms.

Mr. Tom Fruehstorfer: 506 Briar Lane. I am not a direct neighbor but I live in the Oaklands development. If I was a direct neighbor, I probably wouldn't want a change to a strict business zoning because of unknowns in the future, but I want to speak in support of Chuck's requests for Monogram Specialties. I use Monogram Specialties for my children's uniforms. I have three kids, so we drop their average down quite a bit with our three kids going at once. From what I have seen, I would be happy to have this business beside my house. From my experience, it really doesn't generate a lot of traffic. People go by appointment only, from my experience. I don't think I have ever seen more than one other car at the business when I was there. If anyone would drive by the existing business now, they would have no clue of what the business is. You can't tell at all. It just looks like any other house. There are no signs at all. It is just a house on Valley Road. As Chuck mentioned, we already have the UPS and FEDEX trucks. I see them down my street every day. I don't think it would be an issue. As far as traffic, if it is even double to ten people going in and out of there a day, I think with my kids and their activities, we probably have more traffic in and out of my house in a day than they will see in a day. So, the traffic I really don't think with this business would be any issue at all. Most of our uniforms get delivered straight to the school. So, it's not like we are even going there to pick up the uniforms. Our kids pick them up at school. There would be so little impact in traffic with this business. Also, Chuck is one of the most happy and friendly people I have ever met. I would like to have him as a neighbor even if it was only during the day, it would be a pleasure. I understand the concerns for changing strictly to business, but if you can figure out a way to have the change with the deed restrictions so he doesn't have to worry about what is going to happen there in the future, it would be good for the neighborhood rather than hurting.

Mr. Bowman: I will open it to those who haven't requested in writing to speak. I would only suggest that if you have anything beyond what has already been heard, that is fine. If not, in the interest of time and a full agenda, I would like to bring it back to the Commission. If anybody has any other super points they would like to make, please step to the microphone and state your name and address, please.

Mrs. Emily White: My husband and I live at 283 Dallam. There are only two issues. The first one is a slight redundancy. Even though there are none of us who can speak accurately to the amount of traffic that will be incurred with the change of zoning, a distinct possibility and likelihood is that a change in zoning would possibly would likely set a precedent to continue through Dallam and through other areas because there is a precedent and because of adjacent of the area that is owned by the University of Delaware.

The second thing is of great concern to us as fairly new residents in Newark. We have put a great deal of investment in the house we purchased. We renovated a pool. We

planned on having a firm investment to pass on to our children. This change this likely precedent would jeopardize the plans we made and it would be a very big shame for an area that is as great as Oaklands.

Ms. Yong Su Lee: 109 Dallam Road, next door to 101 Dallam. Chuck has been a great neighbor. I see the concern of the change of the zoning, but if there is a restriction that only limited business would be allowed, but in the future if he retired or finished the business that concerns me less for the zoning. My concern is that in the past when the house was empty, I have seen the college students come into the property and use it in not allowed uses. He is very good at maintaining the property so I would like to have him as my neighbor rather than the house kept as an empty place.

Mr. Daniel Grimes: 148 Dallam Road. I live in the same block as the proposed business. I also have a small child living in this block and we would like to have more children and it is nice live in a neighborhood with small children and with my count six out of the ten houses on this block have small children that walk on this street every day. In my opinion, this is not the right place to put a business when you have small children walking in this residential block every day. As we talked about, there are a lot of empty businesses other places in the City that would be a better fit for a business; and, furthermore, this is one of the nicest neighborhoods in Delaware. My wife and I have looked around a lot at different neighborhoods and I can say that without question, this is one of nicest small neighborhoods in the entire State of Delaware. We thought about Greenville. I think to put a business in the middle of one of the nicest residential blocks in Delaware just doesn't make any sense. And from a standpoint of the Planning Commission, I think if you want to preserve the beauty of Newark, Delaware, it should stay residential, in my family's opinion. I'm missing out on putting my year and a half son to bed tonight so I can be here because I am really worried about his safety if you are bringing in a lot of business into our block.

Mr. Will Metzger: 396 Briar Lane. I have a question. I would like to ask Chuck if he could clarify something. Chuck, the only uniforms you serve is the Charter School or are there other businesses that you serve and do you expect to increase that?

Mr. Franklin: The only school uniform program that we do is for Newark Charter School. We do it at the school's pleasure. At any moment, the call could come and say you are no longer an authorized vendor for uniforms. We do work for other schools, but not school uniforms. We do cafeteria workers in the Appoquinimink School District. We do athletic wear for Newark High School, Tower Hill, Tatnall, Friends, and Sanford. We don't do the whole football uniform but if they are the State Champions, we will do champion jackets or senior gifts. We are focusing on the traffic from Newark Charter School but the bulk of our work is corporate work. We do work for Artesian. We provide all of their uniforms. Artesian did drop off a couple of jackets the other day, but otherwise we send out fit lines to people. We either UPS them or we deliver them. We take the order, we sew it and we deliver the clothes. There is very, very little corporate interface at our shop. We do Delmarva Power, we do Artesian Water, we do the Town of Middletown, we do Middletown Police and the Port of Wilmington.

Mr. Bowman: I think you have answered the gentleman's question.

Mr. Welch: 223 Cheltenham. I have only been there a total of three years now. We chose this community and neighborhood because of what it would offer – quiet, peace, children, the elderly, a wonderful mixed community. I think it would be a hardship for this type of thing to go through. We have looked at many, many areas in the Newark area and all the way up to Wilmington. There is not a day that goes by that I don't tell someone where I work or a friend how wonderful our community is here in the Newark, Delaware area. We moved from Baltimore to get away from this sort of thing. I think that when you have children involved, you do have students coming to the homes and to the business. I was a student at one time. They don't always have their eye on the road and they are on their cell phone. I am not pointing anyone out but this is a truth. In reality, you have got to get past this sort of thing. When you talk about a community as wonderful as ours, there are plenty of other places to go in the Newark area that are empty storefronts. One question would be, what is wrong with the current address for

this business to run and why not look at other areas, perhaps, in the business district itself to have this type of thing.

Mr. Bowman: We are going to bring it back to the Commission. Does the Commission have any questions for the applicant?

Mr. Cronin: I think the applicant was about ready to respond to the questions this gentleman posed about staying where you are vs. another area you may have looked at or not.

Mr. Franklin: The current location is a two bedroom ranch house with a walkout basement. We have been operating from the lower level of the house. We have been fortunate, the business continues to grow and we simply need more space. Embroidery shops are measured by the number of sewing heads they have. We have now eight sewing heads in the shop. We have storage for the Newark Charter School uniforms. We have storage for other items. We need more space. We don't need a lot of space, but we need more space. We have this home. It is a family asset. It has been vacant for three years and it would be a good fit for us and we would be good neighbors. That addresses the current location.

Why not another location, a retail space on Main Street or S. Main Street? We are not a retail outfit. We don't want walk-in traffic. I don't want to do your pillow cases. We do them if people come to us. I don't want to do monograms on your husband's cuffs, but we do that work, but we are not geared up to be a retail establishment. So, to go to a retail location, it would be totally unfit for our business and more cost to our operating expenses.

Mr. Bowman: Back to the table.

Ms. Dressel: First of all, I have to make a comment about Monogram Specialties because in the past I have done work with them. I am employed by Newark Charter School. My children went there so they have used the uniforms and I am guessing by the comments by several of the public, that they have never been near the actual business to see that there is no traffic, there are no signs, there are no lights or anything like that. So, there is a lot of supposition that has been put out, which is disheartening for a community to do when there is the resource available to find out what is actually happening in the business. My experience with Chuck and Nancy has always been very positive, and, everybody that I have ever dealt with who has worked with them also had very positive experiences. And, again, there is no traffic there. Whether or not I think this is the right location, that is a different situation, but I really dislike the idea of anybody disparaging another business that has been a good citizen to the Newark community for over 24 years. That is my initial comment.

Mr. Cronin: Mr. Chairman, we have some more hands up out here.

Mr. Bowman: We are back to the Board, Ma'am.

Resident: Can you make an exception, please?

Mr. Bowman: If you have something different to add.

Resident: It is a response to your comment.

Ms. Dressel: There doesn't need to be a response to it.

Mr. Bowman: Ma'am, we are back to the table. We have had an ample amount of time to discuss this with the public. Back to the table for a recommendation.

Ms. Brill: Since 1970 I have lived in District 1 a few houses from Chuck's parents. There have been businesses on Dallam Road, specifically Dr. Franklin's office on the 100 block and Sunny Oak Preschool in the 200 block. Those businesses were very popular

with the residents because they directly benefitted the community. I will vote against this rezoning request because there is no direct benefit to the neighborhood.

Mr. Bowman: I am still looking for a recommendation.

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

- A. CITY COUNCIL NOT APPROVE THE COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT; AND,
- B. CITY COUNCIL NOT APPROVE THE REZONING OF 101 DALLAM ROAD FROM RS TO BLR.

VOTE: 7-0

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

NAY: NONE

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF A REZONING FROM THE CURRENT BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS) ZONING, MAJOR SUBDIVISION AND SPECIAL USE PERMIT APPROVAL TO DEMOLISH THE EXISTING BUILDING AND BUILD ONE THREE-STORY MIXED USE BUILDING WITH OFFICE SPACE AND PARKING ON THE FIRST FLOOR AND 12 UPPER FLOOR APARTMENTS AT 201 EAST DELAWARE AVENUE.

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

“On February 14, 2013, the Planning and Development Department received an application from Delaware Avenue Associates, LLC for rezoning, major subdivision and special use permit approval for .426 +/- acres at 201 E. Delaware Avenue (formerly the New Century Club). The applicants are requesting rezoning from the current BL (business limited) to BB (central business) zoning, subdivision and special use permit approval to demolish the existing building and build one three-story mixed use building containing 1,751 sq. ft. of office space and parking on the first floor and 12 upper floor apartments. In addition to the rezoning and subdivision, the applicants request the required special use permit for apartments in the BB district.

The Planning and Development report on 201 E. Delaware Avenue follows:

Property Description and Related Data

1. Location:

The property is located on the south side of Delaware Avenue at the southeast corner of the intersection with Haines Street.

2. Size:

.426 acres +/-

3. Existing Land Use:

The building at the site currently serves multiple uses including a fraternal club, and commercial and worship activities.

4. Physical Condition of the Site:

The property is mostly flat. The existing 7,000 GSF masonry and wood building is set back from the Delaware Avenue street line. Access to the building is provided through double front doors, a rear entrance from the parking lot and a side basement entrance. A parking lot to serve the facility is in the rear yard. The remainder of the site is grass with a Pin Oak tree on the west side. A chain link fence in the rear separates the parking area from the University Commons property. There is no fence separating this property from the Newark Masonic property to the east, and the rear parking lots of each are connected and appear to be communal. In the front of the building is a placard provided by the Delaware Public Archives which indicates that the building on-site was completed in 1917 and was built by a literary and social organization formerly known as the Tuesday Club and later renamed the Newark Century Club, which was established in 1893.

Having noted the historic placard, however, it is important to recognize that the building is not listed on the National Register of Historic Buildings nor is it listed on the City's list of historically significant properties.

Regarding soils, according to the Natural Resources Conservation Service, the site contains Urban Land (Up) soils. The Service does not note any development limitations for this soil type.

5. Planning and Zoning:

The property is currently zoned BL (business limited). BL is a light commercial zone which permits the following:

- A. Churches or places of worship
- B. Schools
- C. Parks and playgrounds
- D. Municipal utility uses
- E. Public transportation bus or transit stops
- F. Social club, fraternal, social service, union and civic organizations
- G. Accessory uses
- H. Hospitals
- I. Residences limited to one apartment unit provided in conjunction with any one non-residential use
- J. Offices for professional services and administrative activities
- K. Finance institutions, banks, loans companies
- L. Undertakers
- M. Barber shops and beauty parlors
- N. Medical clinic
- O. Bed and breakfast, with special requirements

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

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

The applicants are requesting the property be rezoned to BB, which is a central business district zoning that currently allows:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.

- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

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

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curbside service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning requirements, the 201 E. Delaware Avenue plan meets all applicable Zoning Code requirements. A special use permit will be necessary for apartments in the downtown zone.

Regarding adjacent and nearby properties, the land immediately adjacent to the east is BL zoned and is owned by the Newark Masonic Corporation. Beyond the Masonic property are the BL zoned lands of Calvary Baptist Church. The property immediately adjacent to the south of the site is the RM zoned University Commons property. Across Haines Street from the site are BL properties which include businesses such as Poland and Sullivan Insurance, the Community Services Corporation and a CPA. Across Delaware Avenue from the site are BB zoned properties which include a parking lot which serves Simon Eye on Haines Street and the Campus Edge mixed use development. Diagonally across Delaware Avenue from this site is the BL zoned Planned Parenthood facility.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for commercial pedestrian oriented uses at the site. Commercial (pedestrian oriented) land uses are defined as “. . . all types of retail facilities for the buying and selling of goods and services as well as administrative and professional offices, personal care establishments, eating establishments and shopping centers. Residential uses may be permitted under certain limited circumstances.” Note the majority of downtown Newark is classified under this Comp Plan land use definition. In addition, the Plan’s downtown economic enhancement strategy suggests, “downtown core district” land uses for the site. The strategy describes this district as:

“ . . . [The] center of Newark’s commercial business district is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and

closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of downtown’s economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods.”

More generally, concerning downtown residential uses, the Plan includes the comment that:

“Regarding the City’s review of downtown mixed use redevelopment projects with housing components, the intent is to make it abundantly clear that the City seeks positive impacts from such residential uses. One key positive impact from an individual project, for example, might include the potential at the site for affordable housing for owner occupants. In particular, and perhaps most importantly, to implement this Action Item, Council may need to actively consider density reductions for projects of this type, on a case-by-case basis, depending upon the location, other site conditions and the nature of the project. Through the City’s multi-year effort to limit the proliferation of off-campus student housing in traditional neighborhoods, we have learned that the best zoning tools to promote affordable owner occupied housing is of significance to limit permitted density in approved residential projects to individual families or to no more than two unrelated tenants, or with similar specifications. For example, in the developments of Casho Mill Station, Abbotsford, Country Place and Williamsburg Village, the City has very successfully preserved these communities for primarily owner occupant relatively affordable housing. If this approach worked at these locations, it should also work downtown. This zoning and development approval tool can be packaged with other incentives to encourage owner occupancy. In sum, we want Newark, especially downtown, to become a “destination city” featuring affordable housing for owner occupants, with an emphasis on occupancy for young couples and families, singles, recent University graduates, retirees, and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence.”

Regarding gross residential density, the 201 E. Delaware Avenue project proposes 28.17 units per acre. This density meets Code for the two and three bedroom apartment mix proposed. This is, in BB zoning, three bedroom units are limited to 20 units per acre; and two bedroom units are limited to 50 units per acre. Eight of the twelve units are proposed to be three-bedroom units, and the remainder (4) are proposed as two bedroom units. Therefore, using the formula for calculating the maximum number of dwelling units $[4 (50) + 8(20)/12 \times .426]$ 12.8 apartments are allowed at the site, resulting in the 28.17 units per acre density noted above. This density is somewhat less than the average density of mixed use buildings approved downtown (30.85) over the recent past.

By way of comparison, other nearby multi-unit developments have the densities noted below:

<u>Development</u>	<u>Units Per Acre</u>
Newark Shopping Center	47.79
Campus Edge	25.88
Kate’s Place and Choate Street Townhomes	25.02
Washington House	36.10
102 E. Main Street	20.83
108 E. Main Street	14.71

129 E. Main Street	35.29
132 Delaware Avenue	34.78
One South Main	37.27

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 32 bedrooms proposed for the 201 E. Delaware Avenue development calculate to 75.1 bedrooms per acre. For comparison purposes, other nearby and recently approved multi-unit developments have the following bedroom densities:

<u>Projects</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5
Kate’s Place & Choate Street Townhomes	59.3
102 E. Main Street	62.5
108 E. Main Street	58.8
129 E. Main Street	105.9
132 Delaware Avenue	104.3
One South Main	83.6

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 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 201 E. Delaware Avenue rezoning, major subdivision and special use permit plan calls for the demolition of the existing one and a half story building currently located on the site consisting of approximately 7,000 sq. ft. of multi-use fraternal, commercial and worship space. In its place, the applicant seeks to construct a new three-story building, along with other site amenities to create a mixed use project. The project is proposed to include approximately 1,751 sq. ft. of first floor office space and a 14 space covered parking area. 12 apartments consisting of eight (8) three-bedroom and four (4) two-bedroom units are proposed to occupy the two floors above. The approximate total building gross floor area, if approved, will be 23,400 sq. ft. A 17-space rear parking lot area is proposed to remain with access to the first floor parking under the building and providing an access driveway connection to the adjacent Masonic Lodge property to the east to maintain the connected surface parking lot. A total of 30 parking spaces are required to serve the development; 31 are provided.

The applicants propose a brick and cast stone building with precast concrete accents. The plans show a defined cornice line and extended parapet to hide rooftop mechanical equipment. The building is also proposed to incorporate an extensive green roof.

Regarding design, please consult the applicant’s submitted elevation drawings and supporting letter for additional information concerning the proposed architecture and site design. To evaluate the proposed architectural design, the Planning Commission should

consult the design criteria in Municipal Code Chapter 27 Subdivision and Development Regulations Appendix XIV. Please note, in this regard, the proposed elevation drawings were not reviewed with the Downtown Newark Partnership’s Design Committee because, while located in the downtown area, the site is not within the boundaries of the Downtown Newark Partnership’s area of responsibility.

Fiscal Impact

The Planning and Development Department has evaluated the 201 E. Delaware Avenue rezoning, major subdivision and special use permit 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 201 E. Delaware Avenue 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 revenue for the project is:

	<u>Net Revenue</u>
First Year	\$9,947.04
Second Year and Thereafter	\$2,447.04

Please note that the current fiscal impact of 201 E. Delaware Avenue is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note the difference between the first and future years estimate is the anticipated real estate transfer tax in the first year from the sale of 201 E. Delaware Avenue to the applicant.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate the proposed use will not:

- "A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the comprehensive development plan of the city."

Traffic

Because Delaware Avenue is a State owned and maintained roadway, the Planning and Development Department requested DelDOT’s review of the 201 E. Delaware Avenue rezoning, major subdivision and special use permit plan. The Department indicates that the development as proposed does not meet the volume based warrants for a Traffic Impact Study (TIS), which are 400 trips per day and 50 trips per peak hour. Having said that, however, the Department does have some recommendations for the specific project as follows:

1. East Delaware Avenue is classified as principal arterial and requires 50 feet of right-of-way from the center line. If the right-of-way is less than the minimum, a dedication will be required and should be shown on the plan.
2. A 15 ft. permanent easement along E. Delaware Avenue should be shown on the plan.

Subdivision Advisory Committee

The Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed 201 E. Delaware

Avenue 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 comments are as follows:

Electric

1. The developer must pay \$3,500 towards the cost of meters and electric distribution equipment. This price is subject to an annual CPI adjustment. The developer must pay up to \$4,000 to repair radio coverage if the building interferes with the existing Smart Meter Radio System.

Parks and Recreation

1. The applicant should refer to Chapter 32, Zoning, Article XXV, Section 32-87(g)(e) for the tree protection detail for the Pin Oak to remain on the west side of the property.

Public Works

1. A cross access agreement with the adjacent parcel to the east will be required.
2. Stormwater management calculations and system design as well as geoprobe, to determine environmental subsurface conditions and site suitability for infiltration will be necessary prior to Council review.
3. The developer must video inspect the existing sanitary sewer lateral to determine its capacity for reuse.
4. Water system plans will be forwarded to the State Office of Drinking Water through the CIP process.
5. A DelDOT Letter of No Objection will be required.

Police

1. The Newark Police Department has no comments regarding the subdivision.

Planning and Development

Code Enforcement Division

1. The building shall be designed and constructed in accordance with the IBC Codes as amended and adopted by the City at the time of submittal for plan review.
2. Two complete sets of architectural/structural drawings with details and sections are required to be submitted for construction review.
3. The height of the parking garage must be a minimum of 14 ft. clear.
4. The Division will have other comments during the CIP process.

Planning

1. The Department notes that the proposal is in conformance with the land use designations in the Comprehensive Development Plan for the site; and the rezoning is not in conflict with the uses in the area. Further, the Department notes that the proposed plan meets all BB zoning area requirements.
2. The Department notes that the addition of 12 apartment units in the area will significantly increase the density of the site. To minimize the overall impact of the 32-bedroom development on the community, the Department believes that the applicant 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 provided. The Commission may wish to discuss this suggestion with the developer at the meeting.

3. The Planning and Development Department suggests the following regarding subdivision site design conditions:
 2. The architectural design of the proposed façade should be carried out on all building elevations visible from public ways.
 3. 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.
 4. The plan area lighting should be designed to limit impact on adjoining and nearby properties.
 5. The building should be designed to allow for future conversions to condominiums.

Recommendation

Because the 201 E. Delaware Avenue rezoning conforms to the requirements of the Comprehensive Development Plan IV and because the rezoning, major subdivision and special use permit plan, with the Subdivision Advisory Committee recommendations, will not have a negative impact on adjacent and nearby properties, because the proposal meets all applicable Code requirements, and because the proposed plan does not conflict with the development pattern in the nearby area, the Planning and Development Department suggests that **the Planning Commission take the following actions:**

1. **Recommend that City Council approve the rezoning of .426 acres from the current BL (limited business) zoning to BB (central business) zoning as shown on the attached Planning and Development Department Exhibit A, dated February 4, 2014; and,**
2. **Recommend that City Council approve the 201 E. Delaware Avenue major subdivision and special use permit plan as shown on the Landmark Engineering plan dated November 14, 2013, with revisions through December 6, 2013.”**

That concludes the summary of the report. I will be happy to try to answer any questions you may have for me and, of course, the applicant is here.

[Secretary’s Note: The applicant, Commissioners and public refer to visuals brought by the applicant for their presentation to the Planning Commission].

Mr. Cronin: Mr. Chairman, in the interest of transparency and clarity, I would like to note that last year when this property was sold from the previous owner to the current owner I was the realtor and Patterson Schwartz was the broker that represented the seller on the transaction from which I did derive some commission income. That is all history, however, I think while I would like to contribute my experience and knowledge to commentary tonight, when it comes to voting I will abstain from voting to avoid any appearance of conflict of interest.

Mr. Silverman: I also would like to recuse myself from voting on this project. I am a member of the Masonic Lodge that is next door and affected by this project and I am going to leave this room until this discussion is complete and come back when we go to the next agenda item.

Mr. Bowman: Are there any initial questions from the members of the Planning Commission? Would the applicant please come to the microphone and state your name.

Ms. Lisa Goodman: I am here on behalf of Delaware Avenue Associates, LLC, which is the Tsionas family. Angela Tsiona-Matulas is here tonight. Joe Charma of Landmark

Engineering and Science is here as the project engineer, and Mr. John Winkler is here who is the project architect.

As Maureen has gone through, we are here seeking approval to redevelop this .426 acre site on the southeast corner of Delaware Avenue and Haines Street. It currently has an approximately 7,000 sq. ft. masonry building on it, which was formerly the home of the New Century Club. The Club was not able to maintain the building, placed the building for sale and the building has been purchased by my client. It is currently zoned BL and the proposed application in front of you is to rezone it to BB.

The current site, if you would, in the handout you all have now, on the first page you have a copy of the current site plan which simply shows you how the building sits on the lot and at the intersection of Delaware and Haines. If you flip to the next page, we have photos of every aspect of the existing building. These were actually taken straight from the listing agreement. It is a masonry building. It is a little bit less than 100 years old. According to the prior owners, it does have some significant issues, primarily sewage issues. On at least one occasion it had sewage backup into the basement and they have been told that it will require significant work under the masonry to even begin to address that issue. As you can see, and I'm sure you are all familiar with it, it is one of those buildings that has a basement that is partly out of the ground and partly into the ground. So, the first floor really starts about half a story up. So, it is not handicap accessible because of its elevation in addition to its other issues.

This proposal is to redevelop the site. If you flip to the next page, you will see the proposed site plan is to redevelop the site with a building consisting, as Maureen indicated, of 1,751 sq. feet of office in the front of the first story and 14 spaces on the first floor behind the office for level covered parking and 17 parking spaces to the rear. That is a total of 31 spaces, which is more than Code compliant. Above the first floor are two floors of apartments, six apartments each, a mix of three bedrooms and two bedroom which is what Council has indicated they would like to see in downtown – smaller units, lesser number of bedrooms. That is what has been designed here.

On the next page you will see the proposed elevations. This is from the corner of Haines and E. Delaware Avenue so you can see both sides of the building. What Mr. Winkler has designed here really is we think a very good downtown design. It is a nice mix of small town urban.

We are proposing to preserve the 36" Pin Oak tree here and that will require some careful work to protect the drip line of that tree to be sure that it survives. We are also proposing five new street trees to go in. Also, proposed for this is a green roof. That is a full green roof system with the planting materials in the channels with the plants which not only will increase the green but will help manage stormwater and will also help with air quality and global warming and all of the things that are the reasons why people are doing green roofs if they can.

The zoning sought here is BB, which is essentially completely consistent with downtown zoning. For you on the Commission, if you flip the next two sheets we have just provided you with the required views straight on from the front.

The next page is a black and white and shows that there is a marker on the front lawn of the existing building that talks about the New Century Club. The proposal is to take that marker and to incorporate it into the building so that it will remain on the site as a historical marker. It is shown here in this black and white exhibit that has been handed in to you and the next page just shows it up a little bit more. It is proposed to be right by the Haines Street side.

The final page shows you the zoning surroundings. What we are seeing on Delaware Avenue is a move toward BB, which is fully appropriate as Maureen has indicated in her recommendation in favor of the project. It is the downtown zoning. Almost directly across the street is Campus Edge which was in the last couple of years rezoned to BB and developed on Delaware Avenue. Sort of catty-corner on the other side of Haines Street across Delaware Avenue is 132 E. Delaware Avenue which, again, was also in the fairly

recent time rezoned to BB as well and developed with a mixed use building. So, we are consistent with the Comprehensive Development Plan for downtown Newark that calls for commercial pedestrian oriented, and that includes administrative and professional offices. We are certainly consistent with the mixed use development in the area and we are consistent with how we see Delaware Avenue developing. We think that this makes perfect sense.

We have also applied for a special use permit, which is, of course, required for apartments on the upper floors. Again, very consistent with apartments above commercial in the downtown district. We are proposing 28.17 units per acre, which is slightly below the average of 30.85. It is hard to average these projects because there are small projects and large project. We do hit that sweet spot. We also happen to hit the exact sweet spot of bedrooms per acre. If you look at the range in the Department's report, it goes from 105.9 to 59. Again, big project, little project so it is a little hard to compare and say what's the average. But, if you divide the number of bedrooms by the number of projects, you happen to get 75. That is almost exactly what this project has. So, again, right in the middle of where we are.

Angela has spoken to two representatives of the adjoining property, the Masonic Lodge, and they have not raised any objections with her. The property has been properly signed and noticed and I know that they received as adjoining property owners the notice from the Department as well. As a matter of fact, I think they have expressed an interest to have some further talks with Angela going forward. We will see what happens with that. So, we think we more than meet the standards for the special use permit. No adverse affect on health or safety. The existing building is really the health issue here. I believe it also has asbestos in it as well. So, the remediation of that alone would be considerable. We are not detrimental to public welfare or injurious to property. Again, it is an improvement in safety. We will have a fully sprinklered building. We will be preserving the large tree. It will be a fully parked project and it is consistent with the Comprehensive Plan.

We are happy to answer any questions, but we think it is a pretty straight forward project and we hope you will support it.

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

Mr. Hegedus: The building and the setbacks from the sides, it is only ten feet away from the line from the Masonic Lodge and 16 feet on the other side. That is fine. Is ten feet where we need to be?

Mr. Joe Charma: Mr. Hegedus, that meets the Code for the side yard and it also meets the Code for the fire protection provision.

Mr. Hegedus: The other question, Joe, is around the stormwater. We are talking, as part of the Comprehensive Development Plan stormwater management issues and there are going to be public meetings about stormwater. I saw that there is a new stormwater management underneath the parking lot, but there is also a connection out to a stormwater system. So, can you run me through the stormwater part, please?

Mr. Charma: We are well aware of the condition of the stormwater system on Delaware Avenue since we have had a couple of events in 2013 that have been horrendous – Main Street and Delaware Avenue. The system is over taxed. We all know that. It is antiquated and needs to be replaced. This site with the green roof and the small area in the middle of the parking lot, that small area is a recharge area. We are going to recharge 100% of all of our run-off from all storm events up to the 100 year event. The pipe that is coming out to the 24 inch line on Haines Street is an overflow just in the event that you get an event that exceeds the 100 year, there is a bypass to pass some of the water out of the system. We have just recently completed our additional geologic investigation. We did a geo probe in this area down to the water table and the material that is there is years of urbanization, not good permeability. We are replacing that material with good sand. That study was just reviewed by the Public Works and Water Resources Department and they concur with our findings. So, we feel that we have a really good design that not only will meet water

quantity management but it will provide excellent quality management because of the green roof and all.

Ms. Dressel: Do we want to have the discussion of the deed restrictions now?

Mr. Bowman: We can.

Ms. Dressel: I think the recommendation from the Planning Department is that we strongly consider deed restrictions and deed restricting the building to minimize any potential issues for the number of occupants per apartment dwelling.

Ms. Goodman: I have discussed that with my client and they have a very good track record of properties with or adding deed restrictions to the Continental Court, 58 E. Main and they are very comfortable deed restricting this project to the equivalent of no more than (the way it gets phrased is) four unrelated individuals per apartment. That allows for a family who has three children that wants to rent an apartment. That seems to work well. I can do the math on the total number but I can work with the department with how we phrase that in the final development agreement and we will be going forward to Council. But, that is consistent with what the Tsionas family has done elsewhere and seems to work well especially when you have a mix of different apartment sizes.

Ms. Dressel: So, four unrelated per apartment.

Ms. Goodman: Right, a total.

Ms. Dressel: So, the two bedroom could potentially have two people per bedroom, three bedroom apartments would have one of the bedrooms with two people.

Ms. Goodman: And the other two individual.

Mr. Bowman: A total of 48 bodies in 32 bedrooms. Is there anything else from the members of the Commission before we open it up to public comment?

We have no written requests to comment on the project, but anyone from the public who wishes to comment may come forward and state your name and address, please.

Mr. David Rodeheaver: I am a 36 year member of Hiram Masonic Lodge, the originator of the Masonic Temple there at 207 E. Delaware Avenue. I have not had a discussion myself with Ms. Tsionas but two of my fellow board members have. I have asked them to obtain some type of concrete promise that we will have access to the back of the parking lot because once this is cut off, this is a one way alleyway coming into the east side of our building. Consequently, we will not have access into our parking lot and I would want to have some type of written assurance that will not be the case, that we will not be blocked from having that access. Thank you very much for allowing me this opportunity to address you.

Ms. Feeney Roser: In the Subdivision Advisory Committee comments it talks about requiring adequate cross access agreements and the applicant is comfortable with that.

Ms. Sheila Anderson: 206 Sypherd Drive. I hadn't planned to speak about this tonight but I did notice the big yellow sign on this property. How refreshing it would be, since I consider this after a 100 years, to definitely be a historic building. It is rather unique. I don't know where you get in the game plan with the architect to try and do something where you protect the façade of this in some way and incorporate whatever you want to do with it, but do something to try to preserve a little bit of the history of the town. We are becoming a cookie cutter town. We have brick. We have right angles. We have three stories. We have flat roofs. We have metal window frames. We have parking underneath. The whole town is starting to look like this. In conclusion, when are we going to wake up to maybe it's time for a moratorium on apartments. I want to go on the record for that.

Mr. Bowman: You are on the record. Is there anyone else who wants to speak?

Ms. Tracy Dickerson: 809 Highfield Drive. I would just like to say that the building is historic. It may not be registered with the Historic Registry but it is eligible for that and there have been many things that have happened on that site that are very important and noteworthy. The building is beautiful architecturally inside. Have any of you ever been inside it? And, I would just like to point out I know that you have approved developing on the property but I think we need to remember that you are also approving demolishing a beautiful piece of property and you have to do both at the same time. It is very easy to approve development but you are approving demolition. I would like for you to remember that you are doing that.

The other thing that I think is very important and I want to segway off of what you said, that there are a lot of apartments in Newark. The word apartment means exactly what it says, apartment. It separates people apart into tiny little rooms. What that building has been for many years is a community center. There were dances for World War II soldiers, there were blood drives. It was a community center. And, community is the opposite for apartment. Apart means apart and community means together. Really, Newark has enough apart-ment and we need a lot more community. So, if you will just remember you are voting for demolition and your are voting for more apartments in the City. I hope you will remember that.

Mr. Bowman: Is there anyone else? If not, we will bring it back to the table. Does anyone have any further questions for either the Planning Department or the applicant?

Mr. Cronin: I guess with regard to the location of the historical monument. I would like to encourage the applicant to put it facing Delaware Avenue which is the address of the property. Concerning the history of the property, someone looking at what used to be here if they were showing a relative or something and would say, there is the monument marker facing Delaware Avenue, not around the corner on Haines Street. I might suggest one corner of the building or another – just give that consideration.

Ms. Dressel: That was actually one of my comments, too, to move the marker to a more prominent spot either by the front door or on one of the pillars facing Delaware Avenue. I think the architecture of the building looks very nice. It looks a little bit different than some of the other things, yet has incorporated a lot of what the Planning Commission has been suggesting and what the Downtown Newark Partnership has been requesting. I am really impressed that you are incorporating the green roof into it. I think that bringing in that new technology is a great step forward.

Mr. Bowman: We are ready for a recommendation.

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

1. RECOMMEND THAT CITY COUNCIL APPROVE THE REZONING OF .426 ACRES FROM THE CURRENT BL (LIMITED BUSINESS) ZONING TO BB (CENTRAL BUSINESS) ZONING AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED FEBRUARY 4, 2014; AND,
2. RECOMMEND THAT CITY COUNCIL APPROVE THE 201 E. DELAWARE AVENUE MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE LANDMARK ENGINEERING PLAN DATED NOVEMBER 14, 2013, WITH REVISIONS THROUGH DECEMBER 6, 2013 WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, AND THE ADDITIONAL CONDITION THAT THE TOTAL OCCUPANCY OF THE DEVELOPMENT BE DEED RESTRICTED TO THE EQUIVALENT OF FOUR UNRELATED TENANTS PER APARTMENT.

VOTE: 5-0

AYE: BOWMAN, BRILL, DRESSEL, HEGEDUS, JOHNSON

NAY: NONE

RECUSE: CRONIN, SILVERMAN

MOTION PASSED

3. REVIEW AND CONSIDERATION OF A PARKING WAIVER, A SPECIAL USE PERMIT AND LIFTING OF A DEED RESTRICTION FOR A RESTAURANT SERVING ALCOHOL AT 168 E. MAIN STREET.

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

“On December 5, 2013, the Planning and Development Department received an application from Deli Days, LLC for a parking waiver and special use permit for the property located at 168 E. Main Street. The applicants are requesting a 24 space parking waiver and a special use permit for a restaurant serving alcohol in the BB zone. The vacant 168 E. Main Street property was previously occupied by the Pita Pit and Cold Stone Creamery. Please note in this regard that a former use of the site (before Cold Stone Creamery and the Pita Pit), known as Nirvana Café, applied for and was awarded a special use permit in 2000 to operate as a cafeteria-style restaurant at the location. As a requirement of that special use permit, the property was restricted so as not to permit the sale of alcoholic beverages at Nirvana Café or any other restaurant proposed for the site. Therefore, in order to accommodate the applicant’s development request, and in addition to the required parking waiver and special use permit, the deed restriction against the sale of alcohol at the site will have to be lifted. Please see the attached 168 E. Main Street site plan and supporting materials.

The Planning and Development Department’s report on the 168 E. Main Street project follows:

Project Description and Related Data

1. Location:

North side of E. Main Street approximately 180 feet from the intersection of Chapel Street.

2. Size:

The property is .1329 +/- acres.

3. Existing Land Use:

Vacant commercial site.

4. Physical Condition of the Site:

168 E. Main Street is a developed site containing a one-story commercial building divided into two vacant commercial spaces. The building is comprised mostly of cinderblock with a brick front and a mansard roof. A very narrow access way runs along the west side of the building between it and the Choate Street Associates mixed use office building. The driveway runs to a rear parking lot allocating 17 parking spaces for the proposed use. The parking lot is fenced along the west side separating it from the Astra Plaza property located at the intersection of Main and Chapel Streets. The parking lot is shared with townhouse style rental properties, also owned by the same property owner.

5. Planning and Zoning:

168 E. Main Street is zoned BB. BB is our downtown central business zoning which permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

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

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curbside service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, except for off-street parking, the 168 E. Main Street development plan meets all applicable stipulations. Please note that a special use permit is required for restaurants serving alcohol, and as noted above, a previously imposed deed restriction on the sale of alcohol at the site will also need to be lifted to accommodate the restaurant's request.

Regarding adjacent and nearby properties, the lands to the north of 168 E. Main Street are zoned BC and contain non-conforming residential rental units fronting on Choate Street. East and west of the site are BB zoned properties consisting of a mixed use buildings known as Astra Plaza to the east, which includes Santa Fe Mexican Grill and Blair Computing to the west. Across Main Street are BB zoned properties housing businesses including Papa John's Pizza, Sinclair's, and the Days of Knights, among others.

Regarding comprehensive planning, the Comprehensive Development Plan IV calls for "commercial (pedestrian oriented)" uses at the 168 E. Main Street location. In addition, the Plan's economic development enhancement strategy suggests "Downtown Core District" uses for this site described as ". . . first floor specialty and traditional retail shops with a balanced concentration of food and entertainment."

Status of the Site Design

The applicant proposes to do some minor demolition and reconstruction of the building to create approximately 3,392 +/- square feet of restaurant space, including an outdoor patio. A 93 seat restaurant is proposed.

Although not required by Code, the applicant has voluntarily met with the Downtown Newark Partnership's Design Committee to review the exterior changes to the building proposed by this development. The Committee was impressed by the tenant/restaurant owner's preference for durable materials such as real brick and stone, as well as the relatively simple and attractive signage above a defined and covered doorway, make it inviting to pedestrians. In addition, the Committee believes that the applicant's willingness to move the front wall of the building rearward (north) to accommodate a larger patio will add to the appeal, as well as the pedestrian feel, of this building and those around it. Based on the above, the Committee recommended in favor of the alterations proposed by the developer. Please note that the applicant's architect is still working on the design features, and the applicant may offer minor revisions to the attached at the Planning Commission meeting.

BB Off-Street Parking Option Procedure

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

- A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

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

Regarding the 24 space parking waiver requested, our procedure specifies that applicants receiving such approvals must make an "in lieu of spaces" payment to the City to be used to improve downtown parking. The required payment for the requested parking

waiver, based on an estimate of the cost of construction of one surface level parking space provided by the Public Works and Water Resources Department (\$6,272) is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$ 1,568.00 (5% of cost)
Six to Twenty-five (19)	<u>\$59,584.00</u> (50% of cost)
	\$61,152.00

The Commission should consult the applicant’s supporting materials for additional information concerning the parking waiver request.

Special Use Permit

The applicants are requesting a special use permit for the sale of alcoholic beverages at 168 E. Main Street.

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate the proposed use will not:

- "A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the comprehensive development plan of the city."

The Commission should refer to the applicant’s supporting materials for more information about the special use permit request.

History of the Site/Deed Restriction

On February 22, 2000, the Planning and Development Department received a special use permit application and supporting materials from Michael A. James on behalf of the Synergy Group, Inc., to operate “Nirvana Café,” a cafeteria style coffee shop/”cyber café” at 168 E. Main Street. The location was the former home of Gershman’s Clothing Store. Because the proposed restaurant had more than 25 seats and because of the method of service proposed, Nirvana Café qualified as a cafeteria style dining facility and, therefore, under the requirements of the Zoning Code Section 32-18(b)(12) required a Council granted special use permit to operate. In the Planning and Development Department Report which accompanied this special use permit request, the Department suggested that, as a condition of approval, the property be deed restricted so as not to permit the sale of alcoholic beverages at the Nirvana Café, or other restaurant facility proposed for the 168 E. Main Street site.

On March 27, 2000, City Council approved the special use permit for a 30 seat cafeteria style coffee shop/”cyber café” at 168 E. Main Street with a series of conditions, one of which was the deed restriction against the sale of alcoholic beverages at the site. Another deed restriction requiring that as long as the special use permit continued in use, the parking area behind the building had to be available for the business at 168 E. Main Street. Further, the special use permit required that the access alleyway from East Main Street be made one way (north) to the off-street parking lot. These deed restrictions were recorded.

Nirvana Café opened and subsequently closed. In 2003, two new businesses replaced it. Both businesses, the Pita Pit (168 E. Main Street – A) and Cold Stone Creamery – (168 E. Main Street – B) opened in 2003 and operated until 2013 at the location. Both restaurants were considered “take-out” under the Code and neither business served alcohol. Therefore, the restrictions formerly placed on the site for Nirvana Café were not challenged. Now Deli Days (the applicant) seeks to combine the two commercial spaces into one and open up an Arenas Restaurant, which proposes to serve alcohol at the site.

While the Planning and Development Report associated with the Nirvana Café special use permit does not specify the reasoning behind the deed restriction against alcohol sales, it is likely that the restriction reflected concern about alcohol sales with “cafeteria-style” service, and also the then prevalent political concern about alcohol in downtown. Be that as it may, the applicant is asking that the deed restriction be lifted. Specifically, the applicant is seeking consent of Council to modify the declaration by German’s Things to Wear, Inc. dated September 4, 2000, which states in operative part that “No restaurant or café hereinafter operated within the structure located at 168 E. Main Street, Newark, Delaware, may sell alcoholic beverages” by removing the deed restriction in its entirety.

Departmental Comments

The Planning and Development and Operating Departments have reviewed the 168 E. Main Street parking waiver and special use permit request. The Departmental comments are as follows:

Planning

1. The Planning and Development Department notes that the use does not conflict with the purposes of the Comprehensive Development Plan of the City and is in character with the development pattern of the surrounding area. The Department also notes that the proposal will fill two vacancies on the street, and improve the aesthetic and pedestrian appeal of the area.
2. The Planning and Development Department notes that a 93 seat restaurant at the location is an improvement for the business mix in downtown Newark over the two take-out restaurants previously at the location, and certainly an improvement over vacancies.
3. The Planning and Development Department notes that as there are 17 parking spaces allocated for the use at 168 E. Main Street and, therefore, the deed restriction requiring the parking on the adjacent parcel (parking lot) be dedicated to the 168 E. Main Street site should stay in place. In addition, should the Planning Commission approve the 24 space waiver, the Department recommends that the Planning Commission require that any business located at 168 E. Main Street participate in the municipal parking validation program, and validate parking during all hours of operations of the Arena Restaurant or any other Code permitted uses operating at the site. In addition to providing validation, adequate signage to indicate validation is provided must also be installed.
4. The Planning and Development Department indicates that the access driveway to the parking area from Main Street should remain a one way configuration because of its width; and it should be one way northbound. There is adequate access to Choate Street from the parking lot for exits.

Parking

1. The Parking Division of the Planning and Development Department is concerned about deliveries. Therefore, all deliveries to the restaurant will have to be made from the nearest Main Street loading zone and delivered to the restaurant via hand trucks or from the rear parking lot. Deliveries must not block Main Street traffic; no exceptions will be permitted.
2. The Division also indicates that employee parking in the 17 space lot should be limited by the applicant in order to make those spaces available for customers, especially since the nearest municipal lot (#4) is some distance away. Finally, the Division notes that the parking waiver fee required will make a significant contribution to the fund used to make improvements to the downtown parking system.

No other Departmental comments were submitted.

Recommendation

Because the proposed restaurant serving alcohol at 168 E. Main Street conforms to the land use recommendations in the Newark Comprehensive Development Plan IV, because the proposed use does not conflict with the development pattern in the immediate vicinity of the site, and because the project will occupy existing vacant downtown storefronts, the Planning and Development Department suggests that **the Planning Commission:**

- A. Approve the 168 E. Main Street Parking Waiver, as shown on the 168 E. Main Street site plan dated December 4, 2013, with the conditions in the Planning and Development Department Report;**
- B. Recommend that City Council lift the deed restriction against the sale of alcohol at 168 E. Main Street; and,**
- C. Recommend that City Council approve the special use permit for a restaurant selling alcoholic beverages at 168 E. Main Street, with the conditions in this report.”**

I will be happy to answer any questions you may have for me and the applicant is here.

[Secretary’s Note: The applicant, Commissioners and public refer to visuals brought by the applicant for their presentation to the Planning Commission].

Mr. Hegedus: Maureen, If you will refresh my memory. We get to the 17 parking spaces because of how many people the restaurant is going to serve and how many employees it has.

Ms. Feeney Roser: The 17 spaces is what is available in the parking lot assigned to this location, so they have 17 spaces. The 24 required would be in addition and is the combination of the number of seats and the employees on the greatest shift of employment.

Mr. Hegedus: What happens if five years from now the business sells and they decide to do a restaurant with 20 more seats inside than what this has right now?

Ms. Feeney Roser: That would require more parking and they would have to come back for an additional waiver. If it were a business that needed less parking or the same amount of parking, the waiver would be enough. The waiver stays with the property, but if they need more parking we would have to consider a second waiver.

Mr. Bowman: Any other questions? The applicant is here.

Ms. Lisa Goodman: Young, Conaway, Stargatt and Taylor representing Deli Days LLC. Here with me this evening from Deli Days is Mr. Ramsey Schrader and Mr. Matt Evans who are two of the three principals in Deli Days, LLC, Mr. Joe Charma the project engineer and Mr. John Winkler the project architect.

As Maureen ably went through, we are here tonight seeking approvals for Arena’s Deli to open its seventh Delaware location. It currently has six locations all in Delaware. They are about as hometown as they get. Their proposed location is in the existing building at 168 E. Main Street. If you take a look at the handout, the first page shows you in mustard color the building we are talking about. It is the former home of the Pita Pit and Cold Stone Creamery. So, we are talking about the former sites of those two restaurant businesses and combining them into one site and putting one restaurant business in there.

We are here tonight because we need three types of approvals, although, they are really all very interrelated. 1). is the parking waiver, 2. Is a special use permit to permit the sale of alcohol and we are going to be asking you for something that Council has granted before and that is a recommendation that the business be permitted to serve until 1:00 a.m. instead of midnight which is something that was written into Newark’s Code I think back when Newark was trying to get its arms around what was perceived to be an alcohol issue. I will talk about that and that is not a new thing either. That was done, for example, the

Greene Turtle which is right next door here. The third is, perhaps, less usual, as Maureen indicated. There is a deed restriction on the site that was put in place in 2000. Newark did not enact its special use permit requiring a special use permit for the sale of alcohol until May of 2005. So, this was a pre-special use permit attempt to get a grip, again, on this perceived issue; and, I'm not suggesting it wasn't a real issue. So, we have some things here that are sort of holdovers from the old days that we need to deal with here.

First, let me talk about the parking waiver. Unlike the Pita Pit and Cole Stone, even though they both had tables, they were characterized as takeout restaurants. So, they were not actually required to have any parking. They did have some parking in the rear of this building, which is where we are proposing to park this building. Arena's is a sit-down restaurant that serves alcohol as a compliment to food. And, I will talk a little bit about their percentages later. Many of you may know it from its original location in Rehoboth in the little alley if you are coming in toward the ocean on Rehoboth Avenue to the left is an alley called Village by the Sea, and Arena's is in there. They have a lovely outside patio. You see people and their dogs sitting there. I am personally thrilled that they are coming because my favorite food in the whole world is their powerhouse sandwich. They promised me they are bringing it to Newark. It is part of my fee. They serve deli food. They serve alcohol as a compliment. They are famous for a pleasant place to sit outside and eat delicious food, and that is what they are bringing to Newark.

They will be tenants in this building, not owners. If you turn to second page, the plan for this building is actually to make it smaller. When is the last time you heard anyone come in and say that? We are going to tear off roughly the front nine feet of this building and move the building back. That will open up the sidewalk. It will make room for three sidewalk tables and it will make more room and make the street fill a little bit more open. We think it will make it look much, much nicer and open. That will allow also the renovation of the building façade to what you see on page 2 and 3 of your handout and what I have here. The nice thing about this building is that it stands out from its buildings on either side because it is only one story so we get some difference in height. We are not proposing to change that at all except to add a little peak detail here, which is really just decorative. The third page is a close up of just the building. We will have a simple sign on it that will say on it Arena's, nothing else and then a nice railing for the patio and an entrance. We will have a total of 93 seats as Maureen indicated. That requires by Code 41 parking spaces. As this Commission knows, most buildings along Main Street have some sort of parking waiver. That is sort of how it was designed so that the City could build of its coffers either in land or in cash to eventually build a parking structure. This will be the cash type because, again, my clients will be tenants. They don't own the land. They don't own the parking spaces. So, they can't give the parking spaces to the City even if they were so inclined to do it. There are plenty of lots nearby with parking for staff and for customers, specifically, the Choate Street lot behind Kate's. They are perfectly comfortable requiring their employees to park off-site. This calculation is based on 10 employees at the highest shift. That is probably more than they are ever going to have, frankly, they tell me, but they wanted to be sure that they didn't have any issue if they needed to staff up for a big event. So, that will actually allow more income for the City because those employees will be parking in a City lot almost certainly, plus the City will get the funds from the parking waiver payment which will be about \$61,000. We believe this meets the standard for the parking waiver. It is not in conflict with the Comp Plan. In fact, it is perfectly consistent with the Comp Plan. It is in harmony with the character and the development pattern of the central business district. You just have to look on every side of it, essentially, to see that. It is certainly not highway oriented. It is not detrimental to the public welfare. It adds another restaurant to the thriving restaurant scene of a type that we don't really have yet. It does provide some, and we think, adequate off-street parking primarily because so much of the trade will be walk-in and we have the recommendation of the Department. Those are the six standards of the parking waiver.

I would like to move on to the special use request to serve alcohol and to serve it rather than to midnight which is Newark's sort of rookie designation, if you will, but to permit them to serve it to 1:00 a.m. which is the Delaware Alcohol Beverage Control Commission limit. So, we are talking about one hour difference. This City requires the special use permit for the sale of alcohol and the big thing that the City did is that it is revocable. So, if a restaurant or a bar or anyone that serves alcohol doesn't behave, the City

has a giant enforcement mechanism. I am not aware that the City has ever had to use it, which actually shows how well it worked, but the City could use it if they wanted and that is a control above and beyond the State's granting of a liquor license, which the State must also do; and, my clients already hold liquor licenses for their other facilities so they are a very known entity to the DBACC. As I said, they have six current locations all in Delaware. Downtown Rehoboth is 25 years old. They have owned it for nine years and they have opened all of the other locations since they have been owners.

If you turn to the next page (the 4th page), I just included this to show you the proposed layout. You can see that there will be very sort of cozy typical deli seating. There are booths along one wall, tables, a small bar area and then the outdoor seating.

If you turn to the next page, you will see the locations of their other restaurants with addressing, the name of the restaurant and if you should be so inclined a phone number to make reservations. We wanted you to see where their other locations are.

I think this speaks to the type of restaurants that they operate. The next two pages are letters of recommendation, if you would, one from Greg Forrese who is the immediately past City Manager of the City of Rehoboth. He was the City Manager when he wrote this letter. He just retired. He is talking about his long-term relationship with their deli in downtown Rehoboth, what a great restaurant they are, and that he highly recommends it. The next page is from former Newark Mayor Hal Godwin, now the Sussex County Deputy Administrator, talking about their new restaurant at the Sussex County Airport, which they opened last year, what a pleasant experience it was working with them and how great having a restaurant there has been and another recommendation. So, I think, to have two City officials from different municipalities provide those sorts of recommendations says a lot about them. For those of you who are on this Commission, if you recall, when I stood in front of you for the identical thing for the Greene Turtle, which was to come in and to begin serving immediately at 1:00 a.m. We talked about a very similar thing, known quantity, great management, other locations and you recommended and the Council granted that they get their special use permit to serve alcohol and to be able to serve until 1:00 a.m., and I think that has worked very well. They have been a great citizen. They are incredibly popular because they came in with a great track record as does Arena's. I would submit to you that it makes sense to treat Arena's the same way. If anything, Arena's is even more of a Delaware only. The Greene Turtle is all up and down the coast. Arena's is Delaware, Delaware, Delaware.

I have also provided for you a copy of Arena's Training Manual and that makes up the bulk of this handout. This is their training manual solely on the service of alcohol which all of their employees must go through. They must be certified by the DACC to serve alcohol and that must be renewed every two years. I have also included their employee handbook which talks about their rigorous controls for excellent service and citizenship. You don't get those sorts of institutional recommendations without that.

Alcohol is not their primary revenue. Their existing locations have a track record we can look at. Alcohol averages 14.38% of their total sales, which shows that it is a compliment to their food. It is in no way is anywhere near as important as the food, but when you go in and have a sandwich on an evening or on a sunny Saturday lots of people want to have a beer or a glass of wine with it. So, it is important to their business.

The other thing they are going to do here after talking to me about, and this again comes back to looking at what other restaurants are doing, they are going to implement electronic ID readers here in their Newark location, which is something they have not had a need to do elsewhere, but it is something that the Greene Turtle does and they looked into it and decided that it would be a great enhancement to what they do now and they are going to do that. You put a license into the electronic reader and it spits the ID back out and says it is valid or not valid. It is a great way to help the servers be sure they don't have any issues.

Let me talk briefly about the 1:00 a.m. vs. midnight. It is purely a competition issue. So, if you went out to see a movie and you were at a little league game or whatever and you wanted to go have dinner at 9 o'clock or meet your friends for munchies at 10 o'clock, you are going to pick the place that can serve later rather than the place that has to stop serving at

midnight. It doesn't set a new business up for success if they are handicapped like that from the beginning for the business next to them. Especially, when you have a business that has a great track record here, there is really no reason to handicap them and make them start out with one foot in a bucket. That is what Council saw with the Greene Turtle and I believe they have granted others since then and that is what we believe is true for Arena's as well. And, that is really why Arena's is requesting the 1:00 a.m., just to put them on an even playing field as they come into a new town.

Finally, the deed restriction modification. I think Maureen covered this pretty well, but in 2000 before Newark enacted their current controls on alcohol via the special use process, this deed restriction was placed. My understanding from talking to Mr. Lopata and other folks that were here at the time was, they aren't asking for alcohol so let's just ask them to deed restrict. Again, it was a way to try to get their arms around this issue because they hadn't yet changed the Code. So, it was put on as a deed restriction, but it is very clear that the deed restriction can be modified by action of Council and that is what we are seeking, to remove the restriction to allow a great responsible restaurant group to come in and fill this vacant space with a great restaurant.

I am happy to answer any questions. We have Ramsey here if you have any operational questions. I hope you will recommend approval.

Mr. Johnson: Lisa, what are the proposed hours of operation? I know Arena's in Lewes serves breakfast.

Mr. Schrader: Deli Days. The hours of operation will be 11:00 a.m. to 1:00 a.m. We usually start with an early lunch and run through the evening.

Mr. Johnson: You have no intention of serving breakfast at all?

Mr. Schrader: As it stands right now, we don't. It is on the table I guess, but currently no.

Mr. Johnson: I happen to like your creamed chipped beef. You might want to reconsider that on Sundays, though. The other thing, Lisa loves her sandwich. I like your fish tacos, so do you have any intention of bringing fish tacos to Main Street?

Mr. Schrader: Absolutely. Everything that is on Arena's menu now is coming with us.

Mr. Bowman: Are there any other questions now that we have the food issues out of the way?

Mr. Hegedus: The bricks shown on this picture seem redder than most bricks than I am used to.

Ms. Goodman: Yes, and I apologize. The copies that were done here were done in my office and our printer seems to be in a purple mood. So, those are not accurate. They are, in fact, more purple. When they came back, I had a small freak out. The brick is a multi-colored dark brick.

Mr. Hegedus: Is it like the brick on Abbey Court? Does it match that or is it intended to be a contrast to it.

Ms. Goodman: That was our architect who said it is intended to be a little more in contrast and a little darker than the Abbey Court brick.

Mr. Winkler: Architect. It was also recommended by the review committee to paint the side of the building and get rid of the pink. So, we are going to try to get closer to the colors of the brick.

Mr. Silverman: Is this a signature storefront as we identify a McDonald's or Burger King, or was this designed for the site?

Mr. Schrader: Arena's really doesn't have a signature. We've kind of adapted to every location that we have moved into. This was our architect's idea to blend into Main Street. We are open to interpretation on it.

Mr. Silverman: I like that kind of contribution. It helps with the texture of Main Street. There's an access driveway to the parking in the rear. Until I became aware of this project, I didn't even know it was there. I don't know how, but can you explore a way of somehow marking that, signing that, working with the City, because that is 17 valuable parking places on Main Street that remain hidden.

Mr. Charma: Landmark Science and Engineering. That was one of the discussions that was had with the Design Committee when this project went before us, because you are right, the little alleyway just to the west of the building, it is only about 10 or 11 ft. wide, you would miss it when you are driving down the street. Signage is one of the things we are going to try to identify in some way to put signage there to direct customers. Choate Street is one way coming out so you have to go in this way or come down Choate Street to get in from the back. That is one of the things that we will work on to try to get some good signage there that is not obtrusive. We are working with the Downtown Newark Partnership to try to create some signage and also, we would be happy to get some information from the Parking Committee.

Mr. Silverman: I am very much in favor of the project. I agree with the original deed restrictions being kind of a first cut at dealing with what at that time was an alcohol issue. More than 15 years have gone by. I would like to think that between the University, the City, law enforcement and the responsibility of downtown merchants, some kind of balance has been reached. It is significant that only a relatively small portion of the income of the property is derived from alcohol and it is clearly represented that alcohol is a compliment to food and not the primary objective. With respect to the parking waiver, I also support it. Main Street, Newark, the downtown group has done an admirable job and we've created an urban setting for a city. When I go to West Chester, when I go to Elkton, I don't expect to find suburban type parking where I can drive up to the front door and know I am going to get a parking space near the shop where I want to be. The cash support of the program for the City parking projects, I think, reinforces the public monies and other private monies that are going into the downtown parking program. The other thing I like is, it is a local corporation. It isn't franchise fees going to some place in another part of the world.

Mr. Bowman: I have no written requests to comment on the project from members of the public but anyone of you who represent the public can come to the microphone, state your name and address and speak in support or opposition to the project.

Hearing none, we will bring it back to the table for members of the Commission to give us a motion.

Ms. Dressel: I like the way this project has come about and I like the architecture and the fact that you are pushing the building back, I think, is wonderful. I like the idea of having seating outside in front of the restaurant as well. I think that is really making the City look more community oriented. So, I think that is a good move. I also agree with lifting the deed restriction and approving the special use permit.

MOTION BY DRESSEL, SECONDED BY SILVERMAN THAT THE PLANNING COMMISSION:

- A. APPROVE THE 168 E. MAIN STREET PARKING WAIVER, AS SHOWN ON THE 168 E. MAIN STREET SITE PLAN DATED DECEMBER 4, 2013, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT;
- B. RECOMMEND THAT CITY COUNCIL LIFT THE DEED RESTRICTION AGAINST THE SALE OF ALCOHOL AT 168 E. MAIN STREET; AND,

C. RECOMMEND THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR A RESTAURANT SELLING ALCOHOLIC BEVERAGES AT 168 E. MAIN STREET, WITH THE CONDITIONS IN THIS REPORT.

VOTE: 7-0

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

NAY: NONE

4. A COMPREHENSIVE DEVELOPMENT PLAN UPDATE DISCUSSION.

Mr. Mike Fortner: I gave you a packet that has four revised chapters. I know you are concerned about the weather tonight, so I wrote a memo. I wanted to walk you through the chapters but I wrote a memo instead. The memo states the rationale of what has been changed in the chapters, why I did some of the changes and then I also included in the memo the date of the next Planning Commission Workshop – Tuesday, February 18th. Are there any questions?

As there was no more business, the Planning Commission adjourned at 9:05 p.m.

Respectfully Submitted,

A handwritten signature in dark ink, reading "Elizabeth Dowell". The signature is written in a cursive, flowing style.

Elizabeth Dowell
Secretary, Planning Commission