

**CITY OF NEWARK  
DELAWARE**

**PLANNING COMMISSION  
MEETING**

**February 3, 2015**

**7:00 p.m.**

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

**Chairman:** Alan Silverman

**Commissioners Present:** Bob Cronin  
Andy Hegedus  
Willard Hurd  
Edgar Johnson  
Frank McIntosh

**Staff Present:** Maureen Feeney Roser, Planning and Development Director  
Mike Fortner, Development Supervisor

Chairman Alan Silverman called the Planning Commission meeting to order at 7:00 p.m.

Mr. Silverman: We have two items on our agenda tonight. One is an item that very rarely comes before the Planning Commission for discussion and that is an Administrative subdivision. We will be dealing with a section of the Code that is normally handled internally. I believe it is 27-19, if memory serves me correctly. The only item of discussion dealing with the particular property will be the request from DelDOT to move a right-of-way line. The plan has been approved with the exception of this right-of-way line, and therefore, the status of the plan, the status of the activity site will not be considered a matter for discussion tonight. The only item this Board will consider is the request for, I believe, 650 +/- square feet along the existing right-of-way of State Route 896.

**1. THE MINUTES OF THE JANUARY 6, 2015 PLANNING COMMISSION MEETING.**

There being no additions or corrections the January 6, 2015 Planning Commission minutes were approved as received.

**2. REVIEW AND CONSIDERATION OF THE REZONING, MAJOR SUBDIVISION AND SPECIAL USE PERMIT FOR 52 N. CHAPEL STREET TO DEMOLISH THE EXISTING BUILDING AND BUILD A THREE-STORY MIXED USE BUILDING WITH 3,382 SQ. FT. OF COMMERCIAL SPACE AND PARKING ON THE FIRST FLOOR, AND 12 APARTMENTS ON THE TWO FLOORS ABOVE.**

Planning and Development Director Maureen Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On September 11, 2014, the Planning and Development Department received an application from Lang Development Group LLC on behalf of Thomas and Patricia Hall for the rezoning, major subdivision and required special use permit for the .36 acre property located at 52 N. Chapel Street. The applicants are requesting approval to rezone the parcel from BL (limited business) to BB (central business district), and major subdivision approval to demolish the existing building at the site and build a three story, mixed use building with 3,382 sq. ft. of office space and parking on the first floor, and 12

two and three-bedroom apartments on the two floors above. The required special use permit for apartments in the BB zone is also sought for this development.

The Planning and Development report on 52 N. Chapel Street follows:

**Property Description and Related Data**

1. Location:

The property is located on the east side of N. Chapel Street approximately 140 feet south of the Chapel Street entrance to the Newark Shopping Center.

2. Size:

The property is .36 +/- acres.

3. Existing Land Use:

The site presently contains a one story commercial building which is the home of Cardio Kinetics, and an associated parking lot.

4. Physical Condition of the Site:

The property contains a one-story 6,000 sq. ft. masonry and brick commercial building, which is accessed through a 24 ft. wide driveway fully contained on the property north of the site (62 N. Chapel Street). Use of the access way is secured via recorded cross access agreement. The building is served by a parking lot containing approximately 23 parking spaces.

The site is almost completely paved and slopes gently west to east.

Regarding soils, according to the subdivision plan and the US Department of Agriculture's Natural Resources Conservation Service, this site consists of Up (Urban Land) soils. The Conservation Service indicates that these soils have no limitations for the development proposed.

5. Planning and Zoning:

Currently, the site is zoned BL (limited business). BL is a limited business zone that permits the following:

BL is primarily an office zone that 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 curb service for other than eating establishments

A summary of area requirements in the BL district is provided below. With some exceptions, area requirements are as follows:

- 1. *Minimum lot area.* 3,000 feet.
- 2. *Maximum lot coverage.* Unless otherwise regulated, 40%.
- 3. *Minimum lot width.* 75 feet.
- 4. *Height of buildings.* Three stories or 35 feet.
- 5. *Building setback lines.* 20 feet.
- 6. *Rear yards.* 15 feet for all structures, but in no case less than half of the height of the building.
- 7. *Side yards.* 10 ft. wide with an aggregate width of not less than 25 feet.
- 8. *Parking.* As per Code Section 32-45.

The applicants are requesting BB (central business district) zoning for the site, which permits the following:

BB is a commercial and related retail zone that 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 curb 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.

In addition, a summary of BB Area Regulations may be found below:

1. *Minimum lot area.* 3,000 square feet.
2. *Maximum lot coverage.* Buildings or other structures may occupy the entire lot with conditions and subject to rear yard requirements.
3. *Minimum lot width.* 20 feet.
4. *Height of buildings.* Three stories or 35 feet, with bonus floors for projects meeting certain requirements.
5. *Building setback lines.* No setback is required for structures three stories or 35 feet in height or less. A 20 foot setback for all buildings above three stories or 35 feet in height.
6. *Rear yards.* 15 feet. The rear yard may be used to meet the applicable parking requirements.
7. *Side yards.* No side yards are required for buildings up to 35 feet in height. For buildings with floors above 35 feet in height, a minimum side yard is required.
8. *Parking.* As per Code Section 32-45.

Please note that in terms of area requirements, the 52 N. Chapel Street project meets or can meet all BB zoning area requirements.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for office uses at the site. Office uses are defined as non-retail business activities, including administrative, professional and similar offices and small business offices. Further, please note that the Comprehensive Development Plan IV indicates that residential development can be accommodated very satisfactorily along with or adjacent to areas intended for office uses with appropriate landscaping and site design.

In addition, the Plan's downtown economic enhancement strategy suggests housing rehabilitation uses for the site. Specifically, the Plan notes that "Housing rehabilitation and affordable housing redevelopment should be concentrated in these downtown districts, located in the north central and southeastern portion of the Downtown Development Framework." Having said that, however, the parcel is directly adjacent in the rear to the area designated in the comprehensive economic strategy of the Comp Plan as appropriate for mixed use redevelopment, which is described as a prime location for mixed redevelopment integrating retail, services, offices and residential uses (both student and non-student, affordable and market rate housing). Both districts (housing rehab and mixed use redevelopment) caution that depending on their overall impact on downtown, the City may consider reducing allowable densities. Specifically, the mixed use district verbiage cautions that, "Any new apartments 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 in residential neighborhoods. Beyond that and particularly to encourage owner occupancy downtown, the City may request reducing the permitted density in a project in this district for residential projects."

Regarding adjacent and nearby properties, the land to the north is zoned BL (limited business) and contains a two-story office building and associated access ways. South of the site and west across N. Chapel Street are properties zoned RM and contain single family dwellings fronting on N. Chapel Street. To the east of the property is the BB zoned Pomeroy Station, and beyond that the BB zoned Newark Shopping Center.

Regarding gross residential density, please note that the 52 N. Chapel Street rezoning, major subdivision and special use permit plan calls for residential uses at a density of 33.33 dwelling units per acre. By way of comparison with other recently approved BB zoned projects in the area, please note the following densities:

| <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                 |
| 58 E. Main Street                        | 44.28                 |
| Pomeroy Station                          | 10.33                 |

As noted above, the Commission should weigh this requested density against the overall contribution of the project to the quality of the downtown economic and aesthetic environment.

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 30 bedrooms proposed for the 52 N. Chapel Street plan calculate to 83.33 bedrooms per acre. For comparison purposes, 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                     |
| 58 E. Main Street                      | 95.3                     |
| 102 E. Main Street                     | 62.5                     |
| 108 E. Main Street                     | 58.8                     |
| 129 E. Main Street                     | 105.9                    |
| 132 Delaware Avenue                    | 104.3                    |
| Pomeroy Station                        | 31.5                     |

**Status of Site Design**

Please note that at this stage in the Newark subdivision and review process, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project 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; and, in addition, contextual color scale elevations showing the front facades of all buildings immediately adjacent to the property. 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 must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the 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 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 plan and agreement for the project.

Be that as it may, as you can see from the 52 N. Chapel Street rezoning, major subdivision and special use permit plan, supporting letter and applicant’s color building elevations, the proposal calls for the demolition of the existing building on the site to allow for the construction of a new mixed use building with first floor parking and 3,382 sq. ft. of office space and 12 two and three-bedroom apartment units on the second and third floors.

The apartment mix proposed is: six two-bedroom units and six three-bedroom units for a total of 12 units. Parking is proposed underneath the building on the first floor and in the surrounding surface parking lot. A total of 36 parking spaces are provided, which meets Code for the uses proposed. Access is provided through a 24 ft. fire lane contained wholly on the property to the north of the site (62 N. Chapel Street). The access is memorialized in an access agreement between the two properties.

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, Design Review for Major Subdivisions Not Located In Downtown. (Please note: While the proposed project is located within the boundaries of the Downtown Newark Partnership, the City's Subdivision Regulations refer only to buildings fronting on Main Street as downtown properties in terms of Appendix XIII, Design Review for Downtown Commercial Properties. Therefore, Appendix XIV applies).

Further, please note that because the site is located within the boundaries of the Downtown Newark Partnership, the proposed architecture of this project was reviewed by the Downtown Newark Partnership's Design Committee at their January meeting. The Design Committee recommends in favor of the proposed design indicating that the project meets the Design Guidelines for Downtown except for landscaping but indicates that there is minimal space for landscaping available at the site. Other comments that the Committee had were that they were happy that the project would share a trash compactor with Pomeroy Station directly adjacent in the rear of the property (See Planning and Development Subdivision Advisory Committee <SAC> Planning and Development Department comment #1); that since the building was to be occupied by only one office tenant, the second sign box on the rendering could be removed; and that, while they liked the variation in the materials and color, they would prefer delineation between the different colors of brick. The Committee also notes the connectivity to the Pomeroy Trail as a positive feature of the design.

Finally, please note, regarding design, the Planning and Development Department requested revised elevations meeting the requirements for Appendix XIV, (specifically a rear elevation and the front facades of building immediately adjacent to the site) but because the packets are being prepared a bit early due to inclement weather, the revised elevations will be available for your review at the meeting.

### **Special Use Permit**

Please note that the applicant needs a special use permit for the 12 proposed apartments in downtown. Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided that the applicant demonstrates that 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."

### **Fiscal Impact**

The Planning and Development Department has evaluated the impact of the 52 N. Chapel Street project on municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the 52 N. Chapel Street development plan's fiscal impact; that is, the total annual municipal revenues less the cost of municipal provided services. Based on the Model's estimate, we project that the annual 52 N. Chapel Street net revenue to be \$8,183.

Please note that the current fiscal impact of the site 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 that there is no difference between the first and future years estimates because the applicant already owns the property, and therefore, there is no anticipated real estate transfer tax in the first year from the sale of 52 N. Chapel Street.

### **Traffic and Transportation**

At the request of the Planning and Development Department, the Delaware Department of Transportation (DelDOT) has reviewed the 52 N. Chapel Street rezoning, major subdivision and special use permit plan. The Department indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which is 400 trips per day at 50 peak hour. Further, the Department indicates that while the building is small, the actual trip generation can vary significantly depending on the particular occupancy of the site. Beyond that, DelDOT provided a series of comments for the record plan including right-of-way width and easement requirements; and the need for monument C/O and damaged curbs and sidewalk notes as well as construction timing. These comments will have to be incorporated into the plan.

### **Subdivision Advisory Committee Comments**

The City's Subdivision Advisory Committee – consisting of the management, Planning and Development and Operating Departments – has reviewed the proposed 52 N. Chapel Street development plan and has the comments found 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. No trees over 18' at maturity may be planted under power lines.
2. If the building interferes with the City's smart metering system, the developer must pay to remedy the issue.
3. The developer must pay \$14,000 towards the cost of electric service to the building. One half of this amount or \$7,000 is due prior to the issuance of the first building permit for the project. The price is subject to a yearly CIP increase from the date of Council development approval.
4. Electric meters must be grouped and installed outside. Switch gear must be approved by the Department.
5. If it is not feasible to install a utility pole on the property, the developer must install secondary conduit and cable under Chapel Street to existing pole 20F11 on the opposite side of the road. Contact the Department with questions.

#### **Police Department**

1. The Department notes that while the plan meets Code for parking, there are no guest parking spaces provided. Parking in this area is already saturated. Additional parking spaces are recommended. There will be no residential permits issued nor will there be any guest permits issued for this development.

#### **Planning and Development**

1. Plan Note #21 indicates that trash will be shared between 218 E. Main Street and 52 N. Chapel Street. More information regarding this arrangement, including facilities, screening options and frequency of pickup is necessary in order to determine if the arrangement is acceptable. The Design Committee indicated that one of the positive impacts of the plan was trash compactors. If the plan is approved, trash compactors will be required.
2. Bike racks must be shown on plan.

3. Columns cannot impede the size of required parking spaces. A framing plan confirming that columns will not conflict with the garage and parking layout is required.
4. While the Department recognizes that the density of the project meets Code for the BB zoning requested with the bedroom mix proposed, because the site currently has no residential units and it is adjacent to property zoned RM, with a maximum allowable density of 16 units per acre and a residency restriction of four unrelated tenants per unit, and Pomeroy Station, which is zoned BB but developed, even with the recent subdivision, to a density of 10.33 units per acre; the Department believes that the proposed density (33.3 units per acre) of the development should be reduced. Likewise, considering the site has no residential component and adding any units will increase site density, the Department recommends that the occupancy for each unit, regardless of bedroom count, be limited to four unrelated individuals. A reduction in the number of units or permitted occupancy will also help address the Police Department concern for guest parking spaces. The Commission may wish to discuss unit density reduction and/or occupancy limits recommendation with the applicants at the meeting.
5. All buildings shall be designed and constructed in accordance with the current IBC Codes as amended and in effect at the time of submittal for review. Likewise, the building will be required to meet the IFC and the Delaware State Fire Prevention Code, whichever is more restrictive.
6. The building will be required to meet 25 points of the LEED-like requirements of the City.
7. Regarding parking, the Department has previously noted that the 36 spaces provided meet Code for the proposed uses. Having said that, double stacked parking is only suitable for residential units and should be assigned as such. The parking assignment plan should, therefore, be presented as part of the CIP.
8. Because the proposal involves providing office space for Cardio-Kinetics, and the BB zoning requested allows more intensive commercial uses than that proposed, the Department recommends that the property be deed restricted, prior to the approval of the Construction Improvements Plan, to prohibit the following BB permitted uses:
  - (1) Retail and specialty stores
  - (2) Retail food stores
  - (3) Restaurants of any type
  - (4) Finance institutions, banks, loan companies
  - (5) Motels and hotels
  - (6) Commercial indoor recreation and indoor theaters.
9. Finally, the Planning and Development Department suggests the following regarding subdivision site design conditions:
  - The architectural design of the proposed façade should be carried out on all building elevations visible from public ways. Storage areas, mechanical and utility hardware should be screened from view from all public ways and adjacent properties in a manner consistent with the proposed architectural design.
  - Area lighting should be designed to limit impact on adjoining and nearby properties.
  - The building should be designed to allow for future conversions to condominiums.

#### Public Works and Water Resources

1. The shared parking stall at the property line is 13' wide, restriping may be warranted.
2. The benchmark needs to be shown on the plan.
3. Verification for building adjacent to the utility pole needs to be provided before the subdivision can be approved.
4. Note #3 must be revised to add the wording "Prior to Subdivision Plan Approval" at the end.
5. Note #4 must be revised to add the wording "Prior to Subdivision Plan Approval" at the end.

6. A revised stormwater report is required before Council review.

### **Recommendation**

Because the 52 N. Chapel Street 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:**

- A. Recommend that City Council approve the rezoning of .36 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 3, 2015; and,**
- B. Recommend that City Council approve the 52 N. Chapel Street major subdivision and special use permit plan as shown on the CDA Engineers Inc. plan dated, August 1, 2014 with revisions through October 20, 2014, with the Subdivision Advisory Committee conditions.”**

Ms. Feeney Roser: Please note that new renditions have been given to the Planning Commission tonight, rear and side elevations as well as ones that show the building in context with the front facades of buildings on either side.

I know I went very quickly. I apologize for that, but it is a lot of material to get in in a short period of time. I will be happy to answer any questions the Commission might have for me.

Mr. Andy Hegedus: What I heard you say was that there is a required storm water review prior to approval. I remember a sewage review, but I can't quickly find the words in your document.

Ms. Feeney Roser: The Public Works Department, #6 in their comments on page 10. It is a revised storm water report.

Mr. Hegedus: Thank you.

Mr. Silverman: Maureen, with respect to the double stacking or double load parking, you mentioned that it is more appropriate for residential uses.

Ms. Feeney Roser: Yes.

Mr. Silverman: I would think in a case like this where there are employees that are going to be onsite for long-term, that it may also be appropriate for this kind of use, where when the boss gets here at 6:30 in the morning, that the automobile is parked up against the wall in the corner and the spaces behind the individual are available for general public use.

Ms. Feeney Roser: If that is what the Commission would like to suggest, but I think it is fairly easy for them to assign it to residential uses and then you don't have to worry about it.

Mr. Silverman: Okay.

Mr. Hegedus: Back to that same stormwater report, it says a revised stormwater report is required. That implies that there is one.

Ms. Feeney Roser: Yes, there is a stormwater report that is associated with the original submission and it's been reviewed and with changes to the plan, they will need another one before they can sign off on it completely. I believe the applicant's engineer is here.

Mr. Hegedus: I will get into questions with the engineer because it says that they are just going to pay money instead of stormwater management on a note on the drawing. So, I will ask the engineer about it.

Mr. Silverman: Would the applicants like to make their presentation?

Mr. Jeff Lang: Lang Development. It is a pleasure to be here this evening. I am here with Tom Hall, Patty Hall, as well as Chris Locke and Dan Hoffman, who worked with myself on the development plans of the project.

To give you a little history of my relationship with Tom and Patty. I've known Tom for over 30 years. I had an original relationship with him when Cardio-Kinetics was at the building behind the Stone Balloon down in the bottom of the space in the building that used to be on Delaware Avenue. I was rehabbing my knee when I hurt it in college, and Tom was nice enough to take care of me and then in the early 1980s moved over here with Patty to build this building in 1984 and this is their 30<sup>th</sup> Anniversary of their business being located here at 52 N. Chapel. They have worked on thoughts of doing something at this property for a number of years and we got together about a year ago and started thinking about the adjacency of Pomeroy Station. We started rekindling our relationship as far as, how could we work together, and how I could assist he and Patty on what they would like to do with their property. We started thinking about what would be a logical use. Obviously, we have been successful at Pomeroy Station having a mixed use environment there and the Newark Shopping Center. Subsequent to that, we started working with the Newark Shopping Center about two or three years ago when they were looking at doing something at their site. The idea to develop this property happened when we found out that there was no opportunity to work directly with the Newark Shopping Center with a revised access, which happened when they finally got approved about a year to a year and a half ago. So, we started to think about the nuances of relocating his business; how do we relocate his business, how do we keep his business in play, do we build on top of the building? The logical thing, after looking at the site and his building, was to have a temporary relocation of his business, relocate it back in, and then, we looked at the logical use of the first floor space. His business is operating now in about 6,000 sq. ft. He probably figures he needs somewhere between 3,000 and 3,500 feet, and that is how we arrived at what the first floor plan was going to be. So, it was really dictated more by his use and his continued interest in staying in the Newark community, which, obviously, as a Newark person I think it is an invaluable asset to continue to have.

If we develop that opportunity, we started to think about what else we should do here. I think Tom worked on a similar project in concept five or six years ago, looking at 16 units, and we started looking at the parking requirements, the amount of space he needed on the first floor and the building just kind of materialized then. That is how we ended up with 36 parking spaces, 12 apartments and 3,300 sq. ft. for his business use. We got together with Dan Hoffman who has done a number of projects with us at CDA, started developing a design. I think the design goes well with some other buildings that have been built around town. We think it is a big advance from the present Chapel Streetscape and we hope that it will be the beginning of the N. Chapel Street redevelopment. As you know, this portion of Chapel Street, as time will attest, for the last 30 years has had very little development. The only real development project that happened was on the corner and Gus Tsonias built Astra Plaza in the early 1990s. Other than that, there has really been nothing happening from Main Street to the underpass. This is the first significant project, and we think, hopefully, it will be a catalyst of some additional new development on that street.

As a point of clarification, there is an easement that does exist between ourselves and the adjoining property owner and I want to point out tonight that that easement, and I think Maureen is aware of it, extends all the way to the back of the drive path but not to the back three parking spaces, and those three spaces are not counted as part of our parking requirement, although historically there has been a shared arrangement with Tom and the adjoining property owner. We are not needing that and not using that as part of our Code compliant parking. The other point we want to talk about with regards to

parking and unit development is, we are creating garage parking. So, it is not under building parking, it is not garage building enclosed. So, it is actually a garage with two cars in it. It meets Code. It allows for either one car or two cars, two cars by Code but also storage for an occupant. If you ever converted the building to owner occupant, you would have your own garage, you wouldn't be shared parking with somebody else. So, Alan, as you had brought up, how are we going to feasibly work this parking arrangement? It probably does work better for a resident who has their own garage. So, if you live in apartment 1, you'd have your own garage with two spaces. If you live in apartment 2, you'd have your own also. In theory, you could, obviously, rededicate those garages based on the commercial units' needs and whether you want to take two of them out of play and put those residents' cars outside. You could still do that.

The other nice thing about this situation is because Tom is the resident on the first floor with his business, he will be using the parking outside, during the day, for his business. At night, that will be the opportunity for residents of the building to have their visitors over as long as they are out by a certain time in the morning. We manage this very well at a number of other projects and will continue to manage it at this project going forward.

The materials of the building are a nice change from some of the look. Tom's building is presently is all brick. The building next door to him is all brick. We've tried to soften it up with some other materials; stucco, bay windows, balconies, something that gives the residents in the building a little more of an appeal than a straight box.

From a comparison perspective, this building is very similar in size to 132 E. Delaware Avenue; a project we did about three years ago; and 201 E. Delaware Avenue, which is presently under construction (Newark New Century Club). They are both about the same footprint, utilization of space, give or take on the first floor, and they are both 12 apartments. This just gives you an idea where the symmetry is between this project and other projects that have been recently developed, approved and/or under construction.

I don't know if there is anything else to specifically talk about and, obviously, we are here to answer all of your questions. One of the things that you brought up initially, Andy, is the stormwater management. The process that we are working under now with the development process with the City is a little bit different than it used to be. It used to be you would come to Planning and even Council and get approved and submit your CIPs and work through the entire stormwater management calculations through the process. Now, we are actually asked to provide them earlier. So, we are now providing a preliminary study which we have already done. A follow-up study is being requested as part of the earlier review process. So, what we do is the preliminary study to show everybody it can work, then they ask for infiltrations studies and those types of things. We do soil borings. We submit them to the Public Works Department. So, there is no issue with stormwater management. It is just a process that we have to work through now earlier than we ever used to, and Maureen can probably attest to that, but I can, obviously, assist in any particular question.

Thank you very much, we are here for any questions you may have.

Mr. Silverman: I would like to open the floor up to anyone who would like to make any comments. We have not received any requests to speak. Is there anyone who would like to comment on this subject? Hearing none, I would like to open the discussion up for Commissioners' comments.

Mr. Hegedus: May I ask the applicant questions?

Mr. Silverman: Yes.

Mr. Hegedus: In Maureen's recommendation, she recommends reducing the size of the building, the density which means building size.

Mr. Lang: I think she recommends reducing the density of the residential component of the project.

Mr. Hegedus: Sorry. I wasn't clear with my statement. Other than for financial reasons, can you talk about why the size is the size?

Mr. Lang: When you build a project, obviously, if you are a property owner and you want to attempt to realize a reasonable return on your project you try to figure out what you want to do with your property. As Tom and Patty dictated to us, they said they would like to maintain our business here. So, we first started with how many square feet they thought they needed. If they needed 6,000 sq. ft. we, obviously, couldn't build 12 apartments because of the size of the site. There are only so many parking spaces to meet Code. Otherwise, we could have requested a waiver. When they arrived at the size of their square footage, we, then, started arriving at the parking spaces for their use, which is about 10 spaces. The question is, how many spaces are left based on the size of the site, based on the present imperviousness. You could say, okay, I'll chop off half the existing parking lot and turn it into a park, you could just make the whole building smaller, but from a property owner's perspective, which Tom and Patty are, they are saying what else can be built here? At one point they had a 16 unit building with very little commercial space. So, the trade-off is commercial or residential. Really, it is a parking driven issue and it is a unit type issue. We could have come in with eight four-bedroom units and our density would look better but our overall occupancy potentially could have been higher, unless you talk about a limit on how many people live in each unit. So, the type of unit is also driven by that and the parking requirements associated with each type of unit. Realistically, what I would try to build here is smaller units but, unfortunately, smaller units don't benefit you from a parking perspective. If you build a one-bedroom unit, you still need two parking spaces. You are better off building a two or three bedroom unit if you are constrained by the size of parking lot. So, that is how we ended up with the building the size it is. We looked at the site. It is very similar to 132 E. Delaware Avenue and 201 E. Delaware Avenue from an overall site perspective. We look at the density of the sites and, obviously, Maureen does, too, and we try to compare it and said, okay, we have a building at 132 E. Delaware, which is 8,600 sq. ft., 5,000 sq. ft. of commercial and it has 12 apartments. This is about 9,000 sq. ft. and it has 3,400 sq. ft. of commercial and 12 apartments. So, there is a lot of logic behind the design and how it fits into the commercial development box. Can you make the building bigger? Yes, and you could make the building smaller. You could do either. But, what Maureen, I think, was commenting on was the unit density, not necessarily the people density, which is really two variations. If you have 40 one-bedrooms is the same as 10 four-bedrooms, but her comment was really addressing the 40 units not the 40 people, I think.

Ms. Feeney Roser: My comments were both, that I thought that it should be limited to four unrelated individuals per unit and that we should talk about reducing the units. Of course, it is up to the Commission about what they would like to do about that.

Mr. Lang: If you make less units, your units would get bigger because the footprint of the building is the same size.

Mr. Hegedus: In this case you looked at the size and you looked at what is the maximum number of parking spaces we could have and then from the max number of parking spaces you back your way into how many units you can have.

Mr. Lang: That's kind of the logic behind how you try to figure out what type of unit you want to build and how many units you try to build.

Mr. Hegedus: You talked about that this building would be, hopefully, the start of a redevelopment on N. Chapel. The building is clearly bigger than surrounding buildings. It is not in character with the other buildings that are currently near it. You were here at a prior meeting and talked about redevelopment of one other area – your vision for that. Can you talk about your vision for what North Chapel might look like if redevelopment takes place?

Mr. Lang: One of the issues on North Chapel is the number of adjoining property owners that are all different so you don't have any logical way to assemble the property. Now, if you assembled all of the property, you could have a cohesive plan that may look different than four, five or six different buildings. It's just like Main Street. What is Main Street going to look like? Are you going to end up having a three-three story building and a two-story building and one-story building and a three-story building, and that is probably what ultimately may or may not happen on Chapel Street, but as Tom will attest, we've been there for 30 years, so really nobody's done anything. Someone has to make the first revised footprint and then, I think BB is a logical reuse of that street because you do have residential and commercial uses behind you and adjacent to you. The question is that little area between Astra Plaza and Tom's new building, do you want to have a commercial component to that or not. I think that there needs to be a commercial growth some place in town. Is it on Delaware Avenue, is it on Chapel Street, is it on Haines Street, Center Street? On what street is our growth going to happen because we can't continue to have a linear growth pattern up and down Main Street. That was spoken about at the recent housing study that was just presented a couple of weeks ago that there needs to be a continued proliferation of development in the downtown area so it pulls people down into your area and doesn't allow them to sprawl into your suburban neighborhoods. So, that is what we are trying to move towards in our mind.

Mr. Hegedus: In this report, the Police were concerned about no guest parking and what I heard is because there is a day office and night time no one is there, that will provide the guest parking.

Mr. Lang: It does at Pomeroy Station, as an example. So, Pomeroy Station is very similar right next door – Ski Bum, Hardcastle and a number of other tenants. There are 30 – 35 parking spaces available all night which our residents use for their guests and during the morning we police it and have to entice them to leave nicely, but it works itself out and people understand that that is how it works. That is how you allow guest parking for residents.

Mr. Hegedus: If I look at this right, there are 12 spaces required for the office based on the square footage, but you are providing 10 spaces with two ADA spaces that are non-garage.

Mr. Lang: Right.

Mr. Hegedus: So, that means to provide the 12 required by Code somebody is parking two cars in the garage.

Mr. Lang: Probably Tom and Patty will park their cars in the garage however he wants to park being the commercial user. If we have multiple commercial users, we would have to assign commercial spaces but because we will probably only have one commercial user, it will be much easier in that Tom and Patty or Tom and one of his employees will negotiate how they are going to manage their garage use. And, I am sure they will enjoy managing their garage use.

Mr. Hegedus: So, that is the plan, two spaces for the office use would be under the building. I would like to hear a little bit about the stormwater runoff. Lots of the other buildings that you have presented here had self-contained stormwater management so there was nothing getting out to the City system at all. As you know, we have issues with stormwater here in the City. Note #7 says, a fee in lieu of providing onsite stormwater management will be provided for this project. It looks to me like you are not doing anything other than taking the water and getting off your site. What am I missing?

Mr. Lang: Because of the present imperviousness of the site, which is totally impervious, the proposed imperviousness is very similar. So, what we are doing is, we are actually going to treat more of it because more of it lands on our building than it used to. When we talked to the Public Works Department, they said that is a benefit because you are actually collecting more water on your roof because our proposed building is about 9,000 ft. vs. 6,000 ft. footprint. It is collecting 50% more water. So, within the new State regulations, which you are aware of, we need to reduce by 30% the runoff from the

present situation. We get somewhat of a credit for that. There is also a vehicle where if you meet a certain threshold that you can pay a fee associated with the additional nominal runoff. So, that is what we are alluding to in Colm's (the engineer) comment. Unfortunately Colm wasn't here tonight, but Chris has some comments from Shane in the preliminary review and what they also wanted us to do is check infiltration because there is a possibility that we can take some of our roof runoff and run it through pipes that will infiltrate. We have done an infiltration study and this site does infiltrate very well. So, we will be modifying our stormwater plan to reflect that. That is part of the next step of the project. We may be able to infiltrate enough of that water.

Mr. Hegedus: Have you done any preliminary look at sewer because this site is going to have five times the amount of sewage.

Mr. Hall: No.

Mr. Lang: What Tom is commenting on is the original use vs. the proposed use. I don't have the numbers in front of me. It used to be a fitness center with multiple showers, multiple bathrooms, that type of a setup historically. So, the sewer was sized for that. Obviously, I don't know the numbers, but it is something that normally we submit a lot of this stuff after the approval process because the Public Works Department reviews this stuff and says, is there sewer capacity – yes, is there water capacity – yes, can we handle stormwater – yes. Maureen can talk more about this. They won't let us come to this meeting unless all of those criteria are at least addressed to their satisfaction preliminarily. So, I don't know the sewer numbers and I can't comment on whether 2,000 or 4,000 or 20,000 is appropriate or not. We send them the stuff and they look at it and say, you are good to go, and that is how we end up here.

Ms. Feeney Roser: There was no indication from the Public Work and Water Resources Department that there was a concern on sewer, other than to make sure that, and it is on the plan here as a note, the developer will continue to investigate the capacity of the system as part of the Construction Improvement Plan.

Mr. Hegedus: And, that is what got me interested was, going from 2,500 peak to 11,000 peak, 600 to 2,700 gallons per day total with a note that says the developer will keep his eye on it.

Ms. Feeney Roser: Public Works and Water Resources has looked at the preliminary data. They don't have concerns at this point. It's an approximate plan.

Mr. Hegedus: For my last question, there is also this note about no trash removal and you will work with Pomeroy Station.

Mr. Lang: One of the discussion points was the consolidation of trash receptacles for the benefit of the City as well as benefit of all adjoining property owners. We have spoken about that and have pledged to work on a joint location for the two properties because we are adjacent to each other, and one of our receptacles is presently in that adjacent area. So, that makes a ton of sense. It is kind of what we talked about at 108 E. Main and Center Street.

Mr. Hegedus: Is there easy access between the two places?

Mr. Lang: The back of the site is the back driveway out of Pomeroy.

Mr. Hegedus: I just didn't remember if there was a hill down. I didn't go walk the site.

Mr. Lang: It is a gentle slope. Probably what we will end up doing for convenience is create a small little sidewalk there to share the receptacle.

Mr. Willard Hurd: Regarding the height and the size of the building, the elevations that you provide to us show the peak of the roof well over 35 feet. Are you getting a height bonus or are you asking for a variance?

Mr. Lang: It is a flat roof as you get up into the building so the top of the structure is 35 feet.

Mr. Hurd: Yes, but visually it is way over that.

Mr. Lang: Probably another 4 or 5 feet in the peaks of the (inaudible).

Ms. Feeney Roser: There are height bonuses for doing parking on the first floor.

Mr. Hurd: That was what I was asking because the plan says that the maximum is 35 ft. and the building is providing 35 ft. It doesn't say anything about a bonus.

Mr. Lang: By Code by the Building Department is the top of the structure. The main structure of this roof is a flat structure in the middle where the mechanical units are. So, just like at 132, we have a little popup and at 257 E. Main where Formal Affairs is, there are these little peaked roofs that create an architectural feel, although they really aren't continuous throughout the whole project. So, it is really just an architectural feature which has not ever been part of the technical height approval.

Mr. Hurd: It is just that on that street in the context, it is way out of scale. I agree with Andy on that. I think we have the issue that we are dealing with the current Comp Plan and not with what future comp plans might say about Chapel Street and dealing with that, we are dealing with a much lower height currently existing, we only have two stories and a roof as opposed to three stories and a roof. So, that is a concern of mine. I think that your renderings obscure the reality nicely about what is adjacent and how it fits in with the scale of other things because you don't see the full scale of what it is and like that two-story brick building that is down there. It is there. You are well above it. I had to go out and look at the site to really see where the adjacent building lands relative to what this is.

Mr. Chris Locke: General Counsel for Lang Development. You will see in the pictures that we handed out tonight how it compares to the adjoining properties and the buildings. Also, we did go to the DNP Design Committee and we did get a positive review on the design of the building as well as the effect that we have on the street. Also, we would like to know, if you look at Cleveland Avenue you will see that that street is now being redeveloped by various projects. You will see the varying heights of different buildings. You have some houses that are 25, 30 feet and you have others that are 35, 40, 45 feet. So, we have to look at this street as a potential for change, which hopefully, I think, everyone in the City agrees would be a benefit. You are going to have some varying heights of buildings at this point.

Mr. Hurd: I guess my last comment is to add on to what the Design Committee said. I agree that the two types of brick is kind of distracting and not, I think, effective. So, I would say either look at using a single one throughout or look at some sort of band to separate the two of them if you are going to go with different color brick.

Mr. Lang: We didn't know if we should have two different colors of brick or not, but now we do have a band now between the first and second floor and I think it is depicted on the picture you have now.

Ms. Feeney Roser: I'm sorry. I have the rendering Mr. Locke references in front of me and I thought everybody got them at their seats, but now I see I have the new pictures.

[Secretary's Note: Ms. Feeney Roser handed out the new renderings].

Mr. Lang: It also shows you a little bit more of the adjacency.

Mr. Hurd: Is there a rationale for two colors of brick?

Mr. Lang: The architect came up with the design. What we have done in some buildings is we had a darker base and lighter field on the second floor and I think that is what Dan was driving at. I think he was breaking it at the water table, based on the height of the

building. The idea was that the first floor would have a darker component to it and I don't actually know the tinting of the rendering, but the idea is to have a little bit darker brick on the first floor and little bit lighter brick on the second floor and then transition to a whiter stucco.

Mr. Hurd: I will say that these renderings are better. They have a wider view. To this architect's eye, it is looking busy with three tones and I would say, pick two, but mostly because I'm sitting here and not standing out there. In the way the Comp Plan is structured and the way things are now, this is really a transitional space between the higher density of the BB and the residential pocket that is around it. So, to my eye, I am looking at that. I am looking at it as we should be working to preserve that transitional buffer, I would say, between the two. Obviously, you have thoughts on the value of the BB zoning and the benefits that it brings to you for your property. Is the Comp Plan heading towards BB up and down Chapel?

Mr. Lang: We have seen a tremendous growth in our downtown district in the last 15 years. So, I don't see how our downtown district, albeit only one street, can continue on the growth patterns it's been on the last 15 years. And, as the University continues to expand and grow, how are we going to react? That is part of the whole discussion that came up a couple of weeks ago when we were talking about housing study in general and really, it's not just the housing study, it's a study of our entire community, whether it's the commercial piece of our community, the residential piece, the rental housing piece of our community and how are we going to accept this growth because short of the University closing up, I don't see Newark getting smaller as I age. So, where are we going to see this growth pattern going? Do we want this growth pattern to go where we want it to go? And, that is what we all need to talk about. And, as a developer, we look at Chapel Street is a logical area. You have Newark Shopping Center there. It has been there for 50 or 60 years. It is a huge development project. We just approved some apartments back there. We have the Pomeroy Station which is a nice transitional development for Newark Shopping for this back side of the Newark Shopping Center. At one point we were working with the Newark Shopping Center people to modify the access point back there, put a light in, create development here. This is, in my opinion, a logical place for BB, and really, this whole N. Chapel Street could be cleaned up and improved. Now, is this the exact design of every building that is going to be on the street? I don't think so, but there are going to be different types of buildings of your commercial streets. Some of them are going to be one story, some two stories, some will be three stories. It will look a lot like Main Street looks now in the next 20 years. This just happens to be a project that we've brought before you. We think that the infill there is going to be logical for more of an office community, not so much a retail community, with residential. We really think that is what Tom and Patty want to see and what we would like to help them do.

Mr. Hurd: The last thing, to Mr. Hegedus' point, I believe that the handicap spaces are counted into the total. So, it is 12. By Code, I think it is one in five or is it two minimum? Two minimum. Okay.

[Secretary's Note: Mr. McIntosh referred to the elevations before him].

Mr. McIntosh: This, which is what we had before and this is what you are proposing now. Is that correct?

Ms. Feeney Roser: Yes.

Mr. McIntosh: I like this better. I think having the two color bricks come up against each without a break is not a very good idea.

Mr. Lang: I agree with you on that.

Mr. McIntosh: Beauty is in the eye of the beholder. If that is what you like, it is your property. I think it looks much better now than what you had.

Mr. Cronin: You mentioned about an access point to the shopping center as some folks might like to see New Street coming straight across into the shopping center at some point. There is some logic to that. If this were approved, how would this allow for that possibility?

Mr. Lang: What happened, to give you a little more insight into that, is when the shopping center was controlled by a different developer before the more recent guys got involved, they came to Tom and came to me because we controlled Pomeroy Station. They were trying to work with Tom and myself to get an access way from Chapel Street to the shopping center further up from where it is. They had discussions with DelDOT and preliminary discussions with people at the City – I'm not sure exactly who – about the ability to get a light there. So, there was the opportunity to get a large super market at that time in the shopping center and the super market was dictating this access point for people coming from Hockessin, but they weren't going to go there if we weren't going to have people allowed to turn at the light. So, they started approaching Tom who approached me, and we came up with a plan to give them access through our site and really redevelop this property at that time as part of the entire redevelopment of the Newark Shopping Center. Given the fact that that didn't happen and the shopping center developers are happy with their present access point, it doesn't make sense for us to facilitate one. Due to the fact that there is an easement between Tom's property and the adjoining property owner, we happen to own the property behind it. We could easily modify that access point with all the representative parties to have one at this point right here, if we wanted to, but it would take a lot of other people to get involved, which we really can't control. So, at one point we were trying to help, but it didn't happen. I don't see it happening presently because the biggest driver behind it is the shopping center guys and they don't really want to work on it anymore because they are already approved. I think Tom and Patty have moved on and that is how we got to this point.

Mr. Cronin: I still think it is something that in the long range should be allowed for or provided for because you talk about growth and how things have changed. We know what things are today and current thinking is, but at some point in the future, perhaps distant future, a decade or two away or more, I think there still is a lot of advantages to having that access be opposite New Street.

Mr. Lang: I agree with you and if we owned the shopping center, we would have approached a little bit differently than even the shopping center people did, but we can't control what they want to do. That is part of long-range planning and other people getting involved. There are other properties along Chapel Street that are a logical place to try to access that you could still access now even if we built this building you could still access directly off of New Street. You just have to work with the adjoining property owner. If you gave him the other side of the access, his property is still the same size, you could still create an easement through there, which makes a ton of sense because you already have an easement on this side of his property. So, if you think about the site plan, if the shopping center people would have to do it or they would have to be enticed to do it by the people that are higher above me in the process.

Mr. Cronin: Maureen, if you could refresh my memory. I know we are working from Comp Plan IV, but does Comp Plan V envision properties along N. Chapel Street becoming BB. When we looked at it earlier in the year, I know it is not fully approved yet, but do we have any growth for BB contemplated in Comp Plan V for this site and along N. Chapel?

Ms. Feeney Roser: I do not believe so, but I am going to defer to Mike for that. Mike is our Comp Plan Principal Planner. I don't think there were any proposed changes for BB going down the street, but we have a mixed urban designation.

Mr. Fortner: It wasn't part of that mixed urban use.

Mr. Silverman: My recollection was, there was no discussion one way or the other. There was no one here to support changing and there was no one here to maintain what was existing.

Ms. Feeney Roser: I think it is important to note that this property is already zoned business.

Mr. Cronin: It is zoned business, BL. I know that. In fact, probably when it was converted to BL or business use originally, there might have been a certain amount of clamor over that at the time, but that is water over the dam. Mr. Hall, what is the present square footage of the present Cardio-Kinetics operation now?

Mr. Tom Hall: I own both Cardio-Kinetics and my wife and family and I own the building as well. Right now we have 6,300 sq. ft. of office space. I actually built the building because Carol Mulford built Chapel North about 12 years prior to that and he was one of my first cardiac patients. The idea was that if we built another building adjacent to it on property that he currently owned, hopefully, the street would gradually develop. To this point, I actually celebrated my 30<sup>th</sup> birthday about 4 days after we moved in and I will be 60 this month. There have been 4 changes to Chapel Street that I know of. One was the guy next door has a concrete wall that goes to the sidewalk. I think it is supposed to be a vegetable garden (planter). Another gentleman put faux stone on the front of their house. We also did away with Chapel Fest, which I was very happy about. And fourth, the people across the street got new pillows for their outdoor furniture which they stole from my waiting room. Those are the changes that I have seen other than what happened at the Main Street end of Chapel Street, which is awesome. I would also like to commend this committee. As a business owner since I was 24, I started that company and when I was 29, I built the building. I am tickled to death with the direction that we are going in in Newark. I know it is a daunting task sometimes for you guys to continue to develop and develop and it seems daunting, but to be honest with you as a business person to be here every day of my life for 30 years, I have spent at North Chapel Street for the most part, and I am thrilled as to what is going on in the City.

Mr. Cronin: Would you be gaining more space in the new building or about the same space?

Mr. Hall: What happened to Cardio-Kinetics was, we had a fitness center when I opened and that was about half of my building. The other half was for cardiac rehab and cardiac diagnostic services. At one point, we had 350 members in the preventive center and I was seeing approximately 138 patients a day in that building. What happened was, most of my fitness center members had been prior to that cardiac patients. So, they were a little bit older and most were on Medicare. The Newark Senior Center came to me and asked me if I would run their facility, which I agreed to do. Unbeknownst to me, they were going to charge them about a third of what I was charging so, I basically took all my members and gave them to the Newark Senior Center and our staff continues to run that facility. I still own the fitness center there but nobody uses it. Occasionally, some of our patients come in and I allow them to use it for free, but half space is still open at this point. I don't need 6,000 sq. ft. any more.

Mr. Cronin: So, you will have something less than that in the new structure.

Mr. Hall: I will have 3,400 sq. ft.

Mr. Fortner: We have an existing land use map and we have this property in the Comp Plan as commercial as an existing land use. When you go to our future land use since it was already zoned commercial and in the downtown area, we did have a mixed use possibility for that. The rest of the street is high-density residential so we didn't envision necessarily all the way down the street. But, those properties since they were already commercial we certainly envisioned that that could be a mixed use.

Mr. Silverman: Both sides of Chapel Street?

Mr. Fortner: No, just those parcels because they were already commercial. The rest of Chapel Street is either high density or low density based on what it was – existing and then there is the future. Of course, the Comp Plan V has not been approved yet, as you know.

Mr. Johnson: When we talk about the density of the project, 33 dwelling units per acre, we've approved much larger roughly in the same area, so I really don't see a problem with 33. I really don't.

Mr. Silverman: Something that has not come up in commentary. I'm referring to the suggestion from the Department that the uses be deed restricted on page 9 of the Department's report. Does the applicant have a problem with those specific deed restrictions?

Mr. Lang: To some extent there is some logic behind the parking rationale in the restriction. I think a deed restriction is a little bit limiting for the long-term use of the property forever, but you need to remember that if you don't have the restriction, you still have the ability to dictate a revised use due to the parking requirement. So, if we happen to put a restaurant or retail use in there you would actually need more parking, which means you need to get a parking waiver, which means we would have to come in front of you anyway. So, I don't necessarily see the benefit of a deed restriction associated with use when I have parking which is dictated by the lowest use permitted, least dense use, meaning office. So, in theory, if I wanted to do a restaurant there, I would have to come in for a parking waiver because I'd have more parking required.

Ms. Feeney Roser: Depending on the size of the restaurant. You could do something small.

Mr. Lang: To some extent you are already limited by Code in that you can't do these uses because they are not permitted by the parking component of your Code. We don't really see the need for them. Obviously, you can interject your own perspective.

Mr. Silverman: Very similar to what Andy described as you take your area, you take parking and then you see what uses can be accommodated by the parking.

Mr. Lang: Right. So, if we were going to do a restaurant here we wouldn't be able to do anything else because the restaurant would need every bit of parking we would have unless the City built a parking garage across the street on top of the cemetery. Then you guys would say, we have this big parking garage, we need somebody to use the spaces, why don't you put a restaurant in there? I would say, I'm deed restricted, I can't put a restaurant in there. We have to lift that deed restriction. So, we have to think about what deed restrictions really do. You are already restricting the property due to parking so you don't need to have a deed restriction to also restrict it, in my opinion as property owner.

Mr. Silverman: Specifically, do my fellow commissioners have any thoughts on the Department's recommendation on limiting to unrelated individuals or reduction in density of occupancy units also on page 9.

Mr. Hegedus: It seemed like you addressed the issue of deed restriction for use of the commercial space. What's your thoughts about deed restriction for the apartments?

Mr. Lang: Obviously, apartment occupancy is related to bedrooms, which is related to the size of your unit, which is related to market conditions. As people do or don't like these units based on how attractive they are, how many people you want to put in them, a two-bedroom unit typically has a maximum of 2, 3 or 4 people. You aren't going to put 6 people in a two-bedroom unit. In a three-bedroom unit typically you may have somewhere between 2, 3, 4 or 5 people. Trying to limit a three bedroom unit to four people doesn't necessarily make a lot of sense from my perspective, from a market perspective. If I was looking at a restriction, I would look at a restriction on the two-bedroom units of four people and three-bedroom unit of five people, and then that makes more of a market driven logic behind saying two per or four per, or whatever. There has actually been a lot of other people talk about this as it relates to what the typical occupancy is. We have a lot of units that have historically have had two people in a bedroom and now they only have one person in a bedroom because the market is driving people to individual bedrooms. That's how it eventually happens. That is the market condition. That doesn't mean it doesn't change some day in the future. So, it gets back to the whole deed restriction, again, as to why you need a deed restriction to limit

occupancy. The market limits occupancy. So, I don't understand the logic behind it other than it is just a number and then it is an enforcement issue which, how do we enforce some of that stuff anyway, which that gets back more bureaucracy of you need people to enforce the deed restriction which is enforced automatically by the market. The market dictates this, in my opinion, and that is what we have seen in all the projects we have. We know how many people are going to live in each unit based on how many people are living in other units and the price point of the units, the attractiveness of the units. To circle back to where we were, if we were actually going to talk about a number, we would talk about an aggregate number of four people in the two bedrooms and five people in the three bedrooms would make sense from a design perspective, which would be 54 occupants not 4 per randomly, and then we have to figure out how to manage it, you and I.

Ms. Feeney Roser: Since it was the Planning and Development Department's recommendation, I would like to address that. We have done aggregates before to say no more than X number of people can reside in this development. The reason we selected 4 is because the area to the south and across the street is already restricted to 4 tenants per unit, and it seemed a reasonable restriction. The Commission can do what it feels best with that. As far as the deed restriction of commercial uses that was not just driven by parking but more by the intensity of the use. A bank may have many more in and out trips on a fairly congested street. So, they were suggestions for limiting impact, and that wasn't just driven by the parking requirements. For example, if you have a take-out food restaurant, there are no parking requirements there, but it may generate a lot of traffic. They were the things we thought about when we made the recommendation and, certainly, we are interested in hearing what the Commission would like to do.

Mr. Lang: We are in agreement that we don't need a bank, nor do we need a drive-through or that type of use here. I'm just saying, in general, you have control over that in many instances, other than the couple that Maureen pointed out. So, the deed restriction on that commercial component of it makes sense for drive-in, banks, those type of uses. There is also an issue with DelDOT and what the traffic pattern is. The present building actually generates, by DelDOT standards, more traffic than the new building, and that is what the DelDOT numbers show, which Maureen commented on, based on its presently approved use – office and apartments. Tom told you, back in the day 130 some people were in and out of that building every day vs. now you are going to have 40 trips. So, it is half of what it was approved for originally.

Mr. Silverman: Maureen, the applicant talked about potential review with a change in use, that statement was part of the notes in the record plan.

Ms. Feeney Roser: I'm sorry, I don't understand.

Mr. Silverman: If there was a change in use on the property, Cardio-Kinetics, 15/20 years from now goes out. The owners want to sell the building for another type of occupancy, it would have to come back before the Commission.

Ms. Feeney Roser: No. If it meets the Zoning Code, and it's not deed restricted, they could sell the property and a new business could move in, provided that it meets parking requirements and whatever it required.

Mr. Lang: If it is office, it's okay. If it would be a more intensive use we would need to come back anyway because of the parking requirements.

Mr. Silverman: Can we reflect that whole idea on the record plan as a note in lieu of a deed restriction?

Ms. Feeney Roser: I'm not sure I understand.

Mr. Silverman: What would require them to come back?

Mr. Lang: A more intensive parking use would force us to come back. So, if there were any retail or any restaurant type use that would dictate more parking.

Ms. Feeney Roser: Not necessarily. You would have to look at the parking requirements and see what they are for office as opposed to other uses.

Mr. Silverman: I was trying to look for a middle ground other than a deed restriction which gets very cumbersome in lifting a restriction or having it reviewed.

Ms. Feeney Roser: They would have to come back for a meeting with Council to determine if Council agrees to lift the deed restriction, and then it's just a matter of paperwork. I don't think it is that difficult. If there are uses here that are listed that the Commission feels the property should not be deed restricted against that is a possibility, too.

Mr. Lang: How about a use that would require a special use permit? Would we have to come back?

Ms. Feeney Roser: You would have to go to City Council for a special use permit.

Mr. Lang: Any use other than office we would need a special use permit rather than a deed restriction. I don't know how to lift a deed restriction, so I don't what I am committing or not committing to.

Mr. Silverman: You can take a minute to confer with your colleagues.

Mr. Lang: The restrictions that I think are logical are motels, hotels, financial institutions, commercial indoor recreation areas. The other ones would be subject to a normal special use permit and parking waiver requirement based on the Parking Code, wouldn't you think?

Ms. Feeney Roser: They would, except for take-out food restaurants which is a restaurant with less than 25 seats. If we can take that out, then I would be comfortable with the uses Mr. Lang suggests.

Mr. Lang: Then we will agree to no take-out food restaurants also. The other three would be subject to special use permit and a parking waiver review by Code anyway. So, we wouldn't need to restrict them.

Mr. Hegedus: We were looking at what requires a special use permit and doesn't at the same time that you were. So, what was what you were talking about?

Ms. Feeney Roser: Special use permits are not necessarily required for banks. They are required for banks with a drive-through service.

Mr. Lang: I think we would agree to 4, 5 and 6 and no take-out food, which is part of 3. And, that would make sense.

Ms. Feeney Roser: And, the rest of it we would check the parking requirements on. That is fine with the Department.

Mr. Silverman: And, that was 4, 5 and 6 as listed on page 9 in the Director's Report.

Ms. Feeney Roser: And, no take-out food.

Mr. Silverman: With respect to item 3.

Ms. Feeney Roser: Right.

Mr. McIntosh: What I am wondering about is, if you have a restaurant every time I go to Harry's Seafood Grill, I get a meal there and I take home a lobster roll for my wife because she loves lobster rolls and doesn't get them anymore because we live in Delaware. That is take-out.

Ms. Feeney Roser: A take-out food restaurant is a restaurant that has less than 25 seats in it. That is what we refer to as take-out and that has no parking requirement associated with it.

Mr. McIntosh: I'm just wondering if a patron of a restaurant wants to take food out, a doggy bag.

Mr. Lang: It is a store that primarily does take-out is what Maureen is alluding to.

Mr. McIntosh: I don't know what that means. It depends upon how technical you get around that, I guess.

Mr. Lang: I think Maureen has a handle on it, which is good.

Ms. Feeney Roser: So, no fast food restaurant, no restaurant that is primarily take-out.

Mr. Locke: I remember years ago when there was a discussion about fast food places being on Main Street. I believe there are definitions in the Code about what a take-out is. One is seating availability, whether they use paper products or plates, china. So, there's a whole bunch of elements years ago.

Ms. Feeney Roser: We may be looking at definitions very soon.

Mr. Silverman: Are there any other commissioners that would like to speak.

Mr. Cronin: Mr. Chairman, I have some more things to discuss. First, as nice of an idea to share the trash arrangement with Pomeroy Station because the owners are very compatible now, but if a sale should happen sometime in the future and they aren't good friends and good neighbors, how would that work out, perhaps for this site?

Mr. Lang: I think we would have to create a recordable access easement for the benefit of both property owners so that one property owner could not terminate it without the consent of both. It is not something that we are just going to talk about how we are going to do it. It seems to be a continuing trend in downtown development areas is how are we going to deal with trash compaction, how are we going to handle trash. It happens in our municipal lots a lot and now that we are trying to address that there, I think it makes sense to start addressing it in joint properties that have similar ownership. Obviously, we should work with the adjoining property owner on his long-term plans for trash compaction and location. It just makes a lot of sense. So, we would memorialize it in an agreement which we would probably have to present to Council or present to the City Solicitor at some time in the approval process, either before we get a building permit, before a Certificate of Occupancy, something, I'm sure, Maureen and Bruce are working on.

Mr. Cronin: That sounds good to me. Going on, I see a certain parallel between this project and what was proposed very recently for the west side of Center Street, given the sector of town that it is in. I think to approve this is really going to be the foot in the door, so to speak, for that whole sector of town to unfold much as this is, but more on a piecemeal basis. This is the first shoe to drop, so to speak, and without some sort of more careful discussion, vision, long-range plan, maybe in the Comp Plan, or a broader overview of what is appropriate for growth and development, and when you look at page 4 the bottom seven lines that talk about specifically, the mixed use district verbiage cautions that any new apartments 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; apartments the quality of downtown's economic environment; potential significant negative impacts on nearby established businesses in residential neighborhoods. This street is residential to the south and across the street. I don't see how, as nice as this looks, and it is a very attractive structure, I think it is going to be overwhelming for what is there and rather parallel, maybe not quite as big, but the concept is pretty much the same as what we looked at on Center Street, in my judgment, and I find it at this point, subject to further comment, hard to look favorably upon.

Mr. Silverman: I do support this project. Even though the area is designated residential for all practical purposes, the properties adjacent to this property and within several hundred feet are commercial properties. They are there for profit as rental units. They are not residential units as most people think of them. The housing along there, for the most part, is also obsolete. It was built a hundred to hundred and fifty years ago. It is being occupied generally by more people than the houses were ever designed for. I'm sure the systems are overtaxed, the Code compliance is minimum, a lot has been grandfathered, they are unsprinklered units with rather mobile populations in them, and they have a very poor safety history. The applicant's drawing does conform to the BB requirements along with the bonuses. One of the requests from the Department was to continue the exterior finish façade around all visible sides by virtue of where this property is located. The applicant has complied, and has shown us cut sheets for a 360° finish on the building. The property is already zoned commercial. As the owners represented, it is 30ish years old now. A building of that nature has a design life of about 50 years, so it is on the downhill slope, particularly with the LEED kind of things we are looking for in our Comprehensive Plan on energy conservation. The new building will replace a building that from an energy point of view is probably functionally obsolete. I'm sorry that the party could not come together on aligning New Street to go straight across because that is an opportunity that only comes by once every 50 years. It would make a significant difference in the entire traffic flow in that area. The existing Comp Plan designates it a mixed use. That's carried through to the Comp Plan under consideration and I do believe this is a mixed use. With respect to compatibility of buildings downtown, this building is located relatively remote from downtown. It is within a commercial district, as I said earlier.

With respect to design and scale, we mentioned an earlier project which, I believe, is overbuilt for the site and very tight for the area. With respect to the area, even though this building seems to be relatively large, approaching the building from the Paper Mill Road side, it is substantially obscured by the railroad so it not going to be a tower on the hilltop. It benefits from the open space of the cemetery across the street which gives a feeling of openness plus the green that exists along there – trees. The Pomeroy Trail contributes to openness. The design and setback of the addition to Pomeroy Station so this is not a building that is standing shoulder to shoulder with another building as we see on Main Street. So, I think, visually that will compensate for the existing mass of the building.

Continuing, I've used the term gateway building in another project. This is another entrance to Newark. As people come from Paper Mill Road and off Cleveland Avenue, this is the building they are going to see. It is supported by the Downtown Newark Partnership's Design Committee and they can be rather a rather critical group. So, there is a consistency in the design effort along there. I mentioned the New Street intersection.

With concern about parking, I think we correctly identified that there is a demand during daylight hours for the more commercial activity and a demand at nighttime hours when the commercial activity is dampened down. There was a discussion that there would be control of parking spaces with respect to who can use them, and like some other landlord and property owners in Newark, I heard the reference to, we police our properties. So, it is in the owner's interest particularly at this site to make sure the parking is appropriate. In addition, there were the two shared parking spaces within the cross access agreement designated area that may be available to service this particular use. Parking is an enforcement issue.

We have worked through the deed restriction idea so the future uses on the site will be restricted, getting at the deed restriction idea. With respect to the units per acre, we are dealing with a site that is 1/3 of an acre. I kind of look at that as saying that if you go from the number 2 to number 4, you have a 50% increase, but it is still only 4 out of 100. It is not a big number to work with. So, I don't view the occupancy of the units as an item to hold this particular project back and there is a saying in planning that the code and the local jurisdiction are not here to deal with a business man's, potentially self-created economic hardships. There were some comments about what the market will tolerate and if there isn't enough room to park, people aren't going to park there. If the

units are too overcrowded, new tenants coming in aren't going to want to live there. So, I believe that there is a self-adjustment that takes place. So, that is generally my position.

We have a recommended action by the land use department on page 10 of the report. Are we ready to call the question? There are two recommended actions in A and B. A deals with approval of the rezoning and B deals with the special use permit. So, let's consider them as separate actions. The Chair entertains a motion for item A.

MOTION BY JOHNSON, SECONDED BY MCINTOSH THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE REZONING OF .36 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 3, 2015.

Mr. Silverman: We are ready for discussion.

Mr. Hegedus: I have been thinking about this and I do share Mr. Cronin's concern. Moving from limited business to BB is precedent setting for the entire street and means that we could potentially move away from residential zoning on the rest of the street and then that opens BB zoning for office and other BB uses up and down the street. When that happens with our current process of individual unit development coming through and looking at traffic impact and not an aggregate impact on Chapel Street overall that move away from residential to allow office or restaurant or other uses on that street that is already very narrow, one lane in either direction instead of two lanes like Main Street BB moves us in a precedent that I am not comfortable with. I share Mr. Cronin's thought that we need to carefully consider what zoning on Chapel Street will look like in the future. I believe that the Comp Plan V contains zoning continuing as it has in the past in that area and that process would be the place to talk about how to make the change and what the implications of those changes are. So far, no one brought that to the table and everyone that has done the reviews is comfortable with where it is. So, I think there is a large risk in setting precedent of moving this to a BB zone with the thought that the rest of the street is going to go that way, too.

Ms. Feeney Roser: Not to contradict you, Andy, but in the Comp Plan the recommended land uses for it are mixed urban at this site. The Comp Plan doesn't address zoning.

Mr. Hegedus: Right. And, I understand that at this particular site you can go mixed use. So, where I am going with that is, if this site can go mixed use but really moves to a BB zoning which is first floor retail, second and third floor apartment and then the rest of it stays residential and then that gets us, potentially, to either very large residential buildings on the street to match the scale of this building or it gets us to four BB type units if we decide to change the zoning. So, I'm okay with the mixed use urban here, but at a scale that would match more the residential nature of the rest of the street because I am not ready to move the rest of the street to this scale, if that makes sense.

Mr. McIntosh: I would comment that I would like to see the rest of the street do something with itself. It is old. It doesn't look particularly attractive when you are driving down there. I never felt that it did, including, I'm sorry, your own building. I think this is a positive thing for Newark. I think, the building, particularly with the new drawings, is a pretty attractive building for that street and maybe a trendsetter for that street. And, I think, no one over a 30, 50, 100 year period has thought that anything needed to be done to that street, and I think it is time that something be done, or at least somebody sets a new standard. My own reflection on Cleveland Avenue, a lot of very old houses in not really great repair, and somebody said let's build something that looks nice here that will attract mostly college students that would want to be there, and so slowly but surely Cleveland Avenue is changing, which is what happens with redevelopment. I see no reason to stop this particular redevelopment. I think a lot of work has gone into making it an attractive building and setting a standard and a tone for

what might look nice there. But, I really do think that street needs help. So, I am very much in favor of the project.

Mr. Johnson: Let me echo what Frank said. I agree with him and this is one of the most unattractive areas in the City of Newark and to put a building that looks as nice as this there despite the fact that it is three stories, I think it might be a trendsetter for the future. And, in the residential area instead of having homes that are 100 years old, we may have townhomes that look very similar to this building, look very similar to Cleveland Avenue. So, I think this will be the first step in reclaiming Chapel Street, if you will, to make it bright and new as an entrance point off of Paper Mill Road, it's what people will see. Now, if we could just do something about all the damn electrical wires, we would have something.

Mr. Hegedus: Let me make myself clear. I am a thousand percent in favor of redevelopment on Chapel Street. I want those houses to be redeveloped and turned into something new as well. My main issue is the scale of the building and, if there was a way to allow redevelopment of this property in a way that the owners and Lang Development Group could make it financially workable for themselves and reduce the scale of the building so that it still was a very attractive property and kicked off redevelopment, that is the ideal for me. So, I am torn with, not redevelopment, I'm torn with redevelopment at this scale on this site knowing what the rest of the street may turn into.

Mr. Silverman: Are there any other comments.

Mr. Johnson: I just want to ask a history question. Going back into the 1960s and 1950s, did the City of Newark have a restriction on the height of buildings?

Ms. Feeney Roser: Roy is here. He is old and he is saying yes.

Mr. Johnson: I came to Newark in 1962 and I was under the impression that in 1962 that there was a restriction that buildings couldn't be taller than three stories. And, in 1962, I was an 18 year old person and I thought that was the dumbest thing I have ever heard of because it is cheap to build up and when you go up and down and up and down, I think it makes the landscape look better, and buildings look better, and the City look better. So, the scale of the building doesn't bother me. If it was 10 stories, I would be bothered, but it is three stories and it looks good. It is a good looking building. And, after it is built it will fit in perfectly and everybody will say, what a wonderful building.

Mr. Silverman: Is there any other discussion? I want to add a comment that I think this application and an earlier application should precipitate a discussion of what I am going to call the three Cs – Center Street, Choate Street and Chapel Street. We all agree that Chapel Street does not function as a main artery and maybe it is time for some of those people over our paygrade to start looking at that whole area and maybe the shopping center side of Chapel Street doesn't get redeveloped. The road gets widened and it gets redeveloped around the road widen. A lot of things have to happen before that can happen, but somebody has to plant that seed. Are we ready for the question?

Mr. McIntosh: Call the question.

Mr. Silverman: All those in favor of recommendation A, please signify by saying aye, opposed, nay.

VOTE: 4-2

AYE: HURD, JOHNSON, MCINTOSH, SILVERMAN

NAY: CRONIN, HEGEDUS

MOTION PASSED

Mr. Silverman: With respect to recommendation B, the Chair entertains a motion. This is the special use permit and major subdivision.

Mr. Hurd: Is this item going to include the deed restrictions?

Ms. Feeney Roser: Yes, because it says, the Subdivision Advisory Committee conditions. You can say as revised during discussion so we don't have to go into specifics but it needs to be revised from what it says here. This for B. B is the major subdivision and special use permit that is with the occupancy restrictions and the deed restrictions. The things that you don't want in there that the Subdivision Advisory Committee suggested you need to take out.

Mr. Johnson: Point of clarification, Maureen. You said the occupancy restriction of 4 unrelated individuals is up and down that street?

Ms. Feeney Roser: RM zoning, because they are single family homes there and not apartment type dwellings, they are restricted to 4 unrelated.

Me. Johnson: We have had this discussion before on a couple of other properties. Where does City Council want this to be?

Ms. Feeney Roser: You are advising City Council. City Council over the years has invoked occupancy restrictions. Generally when the developer agrees to one per bedroom, they go along with that. Sometimes there have been discussions about the aggregate number, which we have done on a couple of other projects, so you could say that the aggregate number will not exceed a certain number and it is up to the developer to determine whether or not the one per bedroom is how you want that to go or you want to go a little higher in one apartment and lower in another, but it does put a cap on how many people can live there. Because it is BB, occupancy is done by the Building Code, not by the Zoning Code. So, if you want a restriction, it has to be placed on it.

Mr. Johnson: it doesn't make sense to me to have a two-bedroom apartment with 4 people and a three-bedroom with 4 people. It seems to me that the numbers should change as the size of the unit increases and the recommendation was 4 for the two bedrooms and 5 for the three bedrooms.

Ms. Feeney Roser: If that's what the Commission feels appropriate; so, the aggregate would be 54 tenants rather than 48.

Mr. Silverman: Are we clear in forming the question that we are going to add the statement, as revised per the discussion?

Mr. Hegedus: I am clear on the changes we made to the office space use. That part is clear. The deed restriction on 4, 5 and 6 and no fast food, that part I am clear on. I'm still not clear on what the agreement is on 4, 5 or total.

Mr. Johnson: It hasn't been determined because no one has made a motion.

Ms. Feeney Roser: What was suggested as opposed to doing the one per bedroom or the four per unit which I suggested was that you limit them to 4 people in a two bedroom apartment and 5 people in a three bedroom, which would give them an aggregate of 54 tenants. If you just do the aggregate, no more than 54 people unrelated who reside there; and the developer assigns them as he feels appropriate.

Mr. Hegedus: I understand both options. The Chair had said we would add words as decided in the discussion and we hadn't decided. So, that was my point, which is we need to get clear on that if it is going to be in a motion.

Ms. Feeney Roser: Had you decided, Alan's words would have been fine.

MOTION BY JOHNSON, SECONDED BY MCINTOSH THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- B. THAT CITY COUNCIL APPROVE THE 52 N. CHAPEL STREET MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE CDA ENGINEERS INC. PLAN DATED, AUGUST 1, 2014 WITH REVISIONS

THROUGH OCTOBER 20, 2014, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS, EXCEPT THE PLANNING AND DEVELOPMENT DEPARTMENT CONDITIONS THAT:

- THE DEVELOPMENT BE RESTRICTED TO OCCUPANCY OF FOUR UNRELATED INDIVIDUALS PER UNIT; AND,
- THAT THE PROPERTY BE DEED RESTRICTED TO PROHIBIT:

- (1) RETAIL AND SPECIALTY STORES
- (2) RETAIL FOOD STORES
- (3) RESTAURANTS OF ANY TYPE
- (4) FINANCIAL INSTITUTIONS, BANKS AND LOAN COMPANIES
- (5) MOTELS AND HOTELS
- (6) COMMERCIAL INDOOR RECREATION

INSTEAD, THE COMMISSION RECOMMENDS THAT THE PROPERTY BE DEED RESTRICTED TO ALLOW A MAXIMUM OF FOUR PERSONS PER 2 BEDROOM UNIT AND FIVE PERSONS PER 3 BEDROOM UNIT, BRINGING TOTAL MAXIMUM OCCUPANCY TO 54 UNRELATED INDIVIDUALS; AND,

THAT THE PROPERTY BE FURTHER DEED TO PROHIBIT:

- (1) FINANCIAL INSTITUTIONS, BANK AND LOAN COMPANIES
- (2) MOTELS AND HOTELS
- (3) COMMERCIAL INDOOR RECREATION
- (4) TAKE-OUT FOOD RESTAURANTS

Mr. Silverman: We are open for comments.

Mr. Cronin: In light of the recent Rental Needs Assessment Study, I have seen some summaries of that talk about already having sufficient number of units on hand for a period of time without adding new units to the mix, would you care to comment on that, Maureen.

Ms. Feeney Roser: Mike was actually the Chairperson of the Study's Phase I Technical Advisory Committee, so if we need more information, I know he will be happy to assist us; but I believe what the report says is that in the last few years we have kept up with demand, but prior to 2011, we were not building enough units to keep up with demand and that we should be building 50 units per year to keep up with demand, and if we wanted to have different kind of housing offered as opposed to just student housing that we would have to build more units. Have I reflected that accurately, Mike?

Ms. Katie Gifford: I'm glad you asked that question. My name is Katie Gifford and I live in District 3. I did hear references to the Rental Housing Needs Assessment and they said that we had built enough and had enough in the pipeline to have sufficient capacity to accommodate UD's growth of 50 units needed per year through 2019 or 2020 was the statement that they made. So, to keep up with UD student growth demand they said that the capacity was sufficient as far as what had been already approved and they said that the dearth was in more affordable housing or that if the housing was concentrated in the Main Street downtown area that that may reduce demands for rental in the suburbs, for instance, by students and might change the, sort of, economics of what was profitable for the developers and that was a contentious point of discussion, as I recall, at the meeting a little bit, but that is what they had concluded. They didn't make any policy recommendations because Phase I was just an assessment of the current occupancy and the current market not policy recommendation. That's what they had said.

Mr. Silverman: If you would like to add to our knowledge base.

Mr. Chris Locke: I was also at that meeting. That was the headline, but that really was not what was said and, I quote Mr. Hartling who was part of the Urban Partners. "Newark vacancy rate is compared to places in general around the country is an

extremely tight housing market.” He is talking about student housing. “When a vacancy rate of 5% is seen, developers begin to build even more units because they feel the market is there. Newark’s vacancy rate is 1.9% right now.” I actually asked him a question to comment about the 2019 comment and he said, “Not all approvals that we are aware of are in targeted, attractive locations and housing type of students. The sum of the units in the pipeline will not even hit the student market. An average vacancy rate of 1.9% for rental housing in a community is really tight. Even without UD growing, builders would want to build student housing because they could making money at a 4% and 5% vacancy rate and newer units would get the higher rents. A 1.9% vacancy rate is pretty tight for a community and there will be people who will not find housing.” He was saying a minimum of 50 units a year would have to be built, and if you count in the growth that the University has done over the last seven years and you count in the ELI growth, we are not even going to hit the tip with even the 50 units being built each year. So, we do not have enough housing. And, if one wants to expand the housing for other people, other than students, you really need to build the student housing so it takes the pressure off of the other housing that young professionals and young families can use to either rent or purchase.

Mr. Silverman: By pressure, you mean lowers the rents that can be charged to make it more affordable for other households.

Mr. Locke: Exactly right.

Mr. Lang: The comment about 2019 was really brought up, not by the Rental Housing consultants or the panel, but by a concerned resident who voiced his perspective on the numbers and said that basically means we already have enough housing for 2019. Then we extrapolated those numbers to determine that the vacancy factor actually is too low in the community. And, actually, if you took the 200 units, it actually raises the vacancy factor from 1.9% to around 4% or 5%. So, actually, all those 200 units do is actually broaden the market a little bit and by building additional units, especially in our downtown area, it allows the opportunity for students to move out of our residential community (single family housing market) around the University, which is what we’ve always been endorsing. We think that the development of apartments downtown lessens the likelihood of students wanting to live in single family houses. Not on Chapel Street. Single family houses on Sunset, Beverly, Kells, and Kevin Mayhew even stood up and said that he had a house in Nottingham Green that he used to be able to rent to students and he can’t rent to students anymore. He is in the process of either renting to a family or selling it. So, we are actually seeing the real effect of the continued development of the apartment market downtown and how vital it is to continue to do this because if we don’t do it, we are going to have students wanting to continue to grow and move into our true single family neighborhoods, which are the ones that, I think, we need to continue to protect. So, that is one of the other reasons why we continue to development is (inaudible). So I want to be aware of who and how our downtown works.

Ms. Feeney Roser: I would also add that the report has not yet been presented to Council for their review and endorsement.

Mr. Silverman: Are there any other comments? Are we ready for the question? All those in favor signify by saying aye. All those in opposition say nay.

VOTE:4-2

AYE: HURD, JOHNSON, MCINTOSH, SILVERMAN

NAY: CRONIN, HEGEDUS

MOTION PASSED

### **3. REVIEW AND CONSIDERATION OF AN ADMINISTRATIVE SUBDIVISION FOR 1119 SOUTH COLLEGE AVENUE.**

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

“On December 4, 2014, the Planning and Development Department received an application from Landmark Science and Engineering for the administrative subdivision of the property located at 1119 S. College Avenue owned by Shri Swami Naravayan LLC, and also known as Candlewood Suites. The subdivision is requested in order to dedicate approximately 653 sq. ft. for right-of-way and a 15 ft. permanent easement along S. College Avenue to the Delaware Department of Transportation (DelDOT). Pursuant to Subdivision and Development Regulations, letters were sent to all adjacent property owners explaining the application, the opportunity to review the proposed subdivision in the Planning and Development Department and further, to object in writing to the proposal and request a public hearing before Planning Commission and City Council regarding the matter. As a result of notification, neighboring property owners, Richard and Kim Ramsey and Gail Botluk objected and requested the administration subdivision be reviewed by Planning Commission and Council. (Please see attached letters.) Therefore, the plan is before you for your review.

Please see the attached administrative subdivision plan submitted by Landmark Science and Engineering dated November 14, 2014 for 1119 S. College Avenue.

### **Background**

On February 22, 2010, City Council approved the request of SSN Hotel Management, LLC for the major subdivision of 1119 S. College Avenue, in order to construct a six story, 101 room Candlewood Suites Hotel. The required Special Use Permit for a hotel in the BC zone was also granted. Agreements were signed, but for some reason construction was delayed. Activity began in earnest again in early 2014 and the Construction Improvement Plan has recently been approved by the Public Works and Water Resources Department and the applicant can now apply for a building permit. However, in order for a building permit to be issued, the dedication of the 653 sq. ft. and 15 ft. permanent easement along S. College Avenue to DelDOT is required. In other words, the administrative subdivision plan must be approved and recorded prior to the issuance of the building permit. Because of the objection to the administrative subdivision and the time delay associated with it, through consultation with the City Solicitor, the expiration date of the subdivision has been extended from the date of objection receipt (December 17, 2014). The clock (for expiration) will, once again, commence after Council consideration of the administrative subdivision plan. Therefore, if the project is to move forward, the applicants will be returning to Planning Commission at a later date to request an extension of the expiration date beyond the delay time.

### **Subdivision Advisory Committee**

The Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the 1119 S. College Avenue administrative plan. The Committee has no concerns or comments regarding the proposed administrative subdivision.

Therefore, the Planning and Development Department suggests that the Commission review the plan, hear from the applicant and the public and make a recommendation to Council on the administrative subdivision.”

Ms. Feeney Roser: I will be happy to try to answer any questions you may have for me and I know the applicants are here.

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

Mr. Silverman: Are there any questions for Maureen?

Mr. Cronin: I can read the black and white but why is the easement required? What is DelDOT going to do with the easement? I understand what I read but I don’t understand the reason behind it.

Mr. John Tracy: Young, Conaway, Stargatt & Taylor here on behalf of the applicant. I don't have much of a presentation to make because Ms. Feeney Roser took my entire presentation. We are not here because we made any changes to the plan. There are no changes to the substance of the plan that has been previously approved. The only thing changing is the dedication of the 650 +/- square feet of two little pieces along S. College Avenue and the designation of the permanent easement 15 feet into our property along the three roads. DelDOT, essentially, requests those because they like to have a portion of your property that they can work within if they decide they need to do anything in the future. It could be maintaining clear zones for lines of sight. It could be for future drainage improvements. It could be for future walkway improvements. I am looking at Bruce Tease who is our engineer. There is nothing specifically that I am aware of.

Mr. Bruce Tease: Landmark Engineering. I'm the project manager for the project. During the process when we were dealing with DelDOT, which is quite lengthy as you all know, they changed some policies on how to define right-of-way and right-of-way width in situations such as Rt. 896 where we have a constantly changing road cross section. So, it is not like you can just say, I want the right-of-way to be 200 feet wide. The cross section of the roadway almost continually changes so they set new definitions of measuring from the inside of dividers or the center of dividers depending on the situation of the roadway. We had to do a study and show them what the right-of-way was at exactly all these points along the frontage of the site. And, there are these two little slivers with very minor square footage that don't meet that criteria so, I think, at its greatest depth it is 5 feet deep and they are almost triangular in shape. So, they are standing by the rule of what it says in their book for the policy so, we are dedicating this very small right-of-way. It is like John said, there is absolutely no impact at all on this site or the record plan that was previously approved by Council.

Mr. Hegedus: That policy change by DelDOT happened in the time between when you submitted the plan originally and then all these years of waiting.

Mr. Tease: When Council approved the plan in 2010, DelDOT just commented that they were okay, generally, with the location of the entrances. Then there was a downturn in the economy and the property kind of sat for a while and then a few years later we came back and DelDOT had a new set of rules that we had to abide by. In the end, everything worked out fine. It is just this technicality we have to get through.

Mr. Silverman: Is there anyone here from the public that would like to speak?

Mr. Richard Ramsey, Jr.: I live at 1204 Old Cooches Bridge Road. I have been going back and forth with Red Roof Inn/Howard Johnsons, whatever you want to call it, for the last 18 years. Before that, my father-in-law, Dale Botluk, went through it with them for about 15 years, maybe even 20 years. The biggest problem I have with their whole plan isn't that they want to build a hotel. I have no problem. Let them build a hotel, but there are improvements to the existing property that need to be done, starting with the drainage that comes off onto my property. I have lost 15 trees in 17 years because of the water that comes off their property onto my property. It has killed my property. It has killed my grass. There are big ruts all over the place. They want to build the hotel. I really don't have a problem with that, but before they do any kind of building, they need to address the problems with the existing hotel. I know for a fact that the Red Roof Inn purchased Howard Johnsons last year. They just turned around and skated right through. They didn't bother doing any improvements except to their site. There has been a drain over there for 30+ years and now that has been broken and steadily runs water down onto our properties.

Mr. Silverman: Is that drain is on the applicants property? It's not within the public right-of-way?

Mr. Ramsey: It is on the applicant's property. It is on the far side of where they would like to build the hotel. When this originally came about, I had no problems backing them up to do what they wanted to do, but they also said they were going to do something with the drain. I have yet to see anything at all except for a drawing back in 2009 stating their plans to come through there. That is fine if they want to come through there, but at the

same time on that plan, they also wanted to come over onto my property, which I am not allowing them to do because I don't see any reason for them to do that. Since they have turned around and reapplied and want to move forward because the economy has gotten better, I would like to request that they do the fixes around the adjacent property before they even consider putting this hotel up. It is not a big request. There are a lot of other residents right there and I would like to see trees go in there before the hotel goes up, and it's going to be on DelDOT's property so I guess it would be on DelDOT to take care of trees, but they don't even take care of the trees that are along 896 that they own.

Mr. Silverman: They meaning DelDOT.

Mr. Ramsey: DelDOT was supposedly supposed to put trees around the adjacent area of the hotel or some kind of trees of sorts to hide the hotel from that street there.

Mr. Silverman: I understand what you are saying, but that is considered during the construction that is in final review no. Maureen, is that the way it is?

Ms. Feeney Roser: The Construction Improvement Plan has been approved. Bruce, do you want to address some of the drainage questions? From what I understood, you need to do some work on adjacent properties.

Mr. Tease: In June of 2009, Councilman Clifton and I met Mr. Ramsey out at his property. His property and his mother's property are on this side. Everything that was proposed for construction with the new Candlewood site and the work that is going to be done on the Friendly's to share the parking – we have a cross access parking agreement – is all being done over here. There is no work of any kind being done over here. However, when we met, Mr. Ramsey did show us the drainage problem and all this area that is shown in this deep purple here drains down, including part of the roof of the building, runs along the curbing to a catch basin that has failed and curbing has failed in here and that runoff now runs down through his property. So, the agreement, at the time, was that this situation be repaired when all this construction is done. So, the current Construction Improvement Plans that have been approved by the City have a separate drawing just for this area, even though it is not an area of the prime construction, and what we are doing is we are putting in new curbing, putting in new paving where it's required, putting in a new catch basin and rebuilding and grading this whole area.

Mr. Silverman: Where is that catch basin going to discharge?

Mr. Tease: It is going to discharge down to a pipe in the DelDOT right-of-way. But, that is a good question because this area does not drain to that pipe today. So, to be able to do that with DelDOT, we had to show them the range calculations that the net runoff from here on their system was not going to increase. So, therefore, we had to go and over design the stormwater management that takes place here on the site to compensate for picking up this area and tying into that pipe. All this is going to be built at one time so that none of this pavement or rooftop runoff will run off on Mr. Ramsey's property and the net runoff here will not increase to make DelDOT happy. This will be built in concert with the construction but it cannot be built first because we can't add to the runoff here before we reduce the runoff here. So, it is all going to have to be built concurrently.

Mr. Silverman: It is phased and you have to do the larger portion first before Mr. Ramsey's side of the parking area.

Mr. Tease: And, there is a landscape plan, of course, part of the Construction Improvement Plan's landscaping is being put in in accordance with the Code - perimeter landscaping. All the landscaping is on private property and none of it is maintained by DelDOT.

Mr. Hegedus: This doesn't get to the approvals at all, but just curious, how long is the construction expected to be? Is it a year project, two year project?

Mr. Tease: There is a construction manager onboard now and I think we are looking in the neighborhood of about 18 months. It is protracted a little bit by the necessity to keep

that main access entrance that is used by the Friendly's also open and the close proximity of the new building. We have a cross access easement agreement with the Friendly's, and what our current plans are is to go in and do all the improvements to the Friendly's parking lot and their sidewalks first and there will be an opportunity to relocate these spaces just randomly over here while it is being done. And, incidentally, we are picking up drainage in the Friendly's and putting it in our stormwater management system that now goes out to 896. So, it is a big improvement for the whole area. This will be done first and then we will start phasing this one here. While all this is going on, all these businesses have to stay operational and earning income so it protracts it a little bit.

Mr. Silverman: When you are doing your sediment and control early on, you will at least relatively crudely take care of some of that drainage issue because you won't be permitted to drain on someone else's property.

Mr. Tease: That is what happens today so we can't increase it.

Mr. Silverman: No, I am saying that once you put up your sediment and erosion control barriers and do your rough grading, you will probably be able to take care of some of that earlier than 18 months.

Mr. Tease: Oh yes, it will be in concert with building the stormwater management. This is all underground so this will have to get built pretty early in the project. Yes, right. I misunderstood your question.

Mr. Silverman: Because it will be built earlier in the project, you will be able to deal with the water issue much earlier than 18 months when you expect to build out the project.

Mr. Tease: You are correct.

Mr. McIntosh: Does this mean that Mr. Ramsey's concern is going to be addressed?

Mr. Tease: Yes. All that runoff will be piped directly so there won't be surface runoff at all.

Mr. McIntosh: And, that is part of the building plan?

Mr. Tease: Yes, it is part of the Construction Improvement Plans that have just recently been approved by the City.

Mr. Johnson: Will it be completed prior to occupancy at the hotel?

Mr. Tease: Absolutely. We will not be allowed to get that occupancy permit from the City without them going out and verifying that we did everything per the plan.

Mr. Silverman: One more comment, Mr. Ramsey, because this is kind of off our topic dealing with the site specific.

Mr. Ramsey: If you are going to do work for the Friendly's what prevents you from putting that drain pipe in now?

Mr. Tease: Because they will be taking runoff that doesn't go into the DelDOT system and tying it in directly to the DelDOT system so we are increasing the runoff which DelDOT will not allow us to do. So, before we add at this point we have to reduce at this point so that the net of the two doesn't increase.

Mr. Ramsey: (Inaudible). Mr. Ramsey was not at the mic.

Mr. Tease: Even when we do this paving here in the drainage, we will be building catch basins that go to nowhere and we can't tie anywhere else until this stormwater management system is built, this underground system.

Mr. Silverman: Mr. Ramsey, the limitation here is DelDOT. They will only allow so much stormwater from this site to go into their storm sewer system, so as a result, the applicant needs to build all of his catch basins and infiltration and underground storage and everything else for the upper part of that system first because DelDOT will not allow that entire site to drain down and around into that catch basin.

Mr. McIntosh: The bottom line is that your problem will be solved.

Mr. Ramsey: That is my main concern that the problem is solved.

Mr. Tease: And actually, had we not been caught in the DelDOT vortex earlier it probably would have been solved by this time already.

Mr. Silverman: There is a motion to consider.

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

THAT CITY COUNCIL APPROVE THE ADMINISTRATIVE SUBDIVISION IN ORDER TO DEDICATE APPROXIMATELY 653 SQ. FT. OF LAND TO DELDOT FOR RIGHT-OF-WAY AND A 15 FT. PERMANENT EASEMENT ALONG S. COLLEGE AVENUE.

VOTE: 6-0  
AYE: CRONIN, HEGEDUS, HURD, JOHNSON, MCINTOSH, SILVERMAN  
NAY: NONE

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission adjourned at 9:20 p.m.

Respectfully Submitted,

Elizabeth Dowell  
Planning Commission Secretary