

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

March 3, 2015

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Willard Hurd
Frank McIntosh

Commissioners Absent: Andy Hegedus
Edgar Johnson
District 1 (Vacant)

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Supervisor
Polly Sierer, Mayor
Mark Morehead, Councilman, District 1
Robert Gifford, Councilman, District 3
Marge Hadden, Councilwoman, District 4

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

1. THE MINUTES OF THE FEBRUARY 3, 2015 PLANNING COMMISSION MEETING.

The minutes were accepted as received.

Mr. Silverman: This meeting is going to be a little different than the usual Planning Commission meetings. We have two items on our agenda. One is 60 N. College Avenue which will be handled in the usual judicial manner that you are most used to when we deal with issues. The second item involves definitional changes in the Zoning Code for accessory uses and adding a definition of neighborhood to the Code. Given the potential for public turnout tonight, and we do have a good turnout, we would like to reverse the order of business. The official agenda had 60 N. College first on the agenda for item of business and we would like to switch the order around to move into the discussion of accessory uses and neighborhood.

The meaning of accessory uses and neighborhood played a role in the STAR Campus Data Center hearings. The City Council has asked us for recommendations in defining those terms and remanded effort back to the Planning and Development Department as well as the Planning Commission. Tonight's hearing will be more like a workshop format. Mike Fortner will give a brief presentation and, for those of you who have sat through Mike's work, this will be brief. The presentation will create a framework for public discussion and offer some solutions that have come up as the result of reviewing the work of over 60 communities in Delaware and around the region. The role of the Commission will be one of listening and discussing as well as participating in the public discussions working toward a consensus as to the meaning of the definitions. This is more casual, but we are going to keep an orderly approach. This is occurring during a formal Commission hearing so that participants' comments can be on the record as well as transcribed. We do a verbatim set of minutes and these minutes will be

available to Council so they will know who exactly is making the comments if they want to refer back to them, and the words that they are speaking for the transcription. What I would like to do is set a total time limit on total discussion, perhaps a half hour to 45 minutes rather than a time limit on individuals. We will have to be self-policing. Participants will be asked to use a microphone. Do we have one to pass around? Mike says we can pass one around. The microphone is connected to the recorder. At workshops, the recorder usually runs in the background and when the discussion is more like a round table, people talk over one another. People move in and out and away from microphones and you can listen to it, but it doesn't make a good transcription. So, what we are going to do is to ask you to use the microphone and that way Council will have a clear flowing transcript for their reference. The information and, hopefully, the consensus that we arrive at tonight will be provided on the record of the hearing, then will be drafted in Zoning Code format. At a future date, there will be a second Planning Commission public hearing dealing just with the information that comes out at tonight's meeting and the format of the Code, or it will go back to City Council. City Council has the option of continuing the discussion or City Council has the option of looking at our zoning proposals and remanding it back to us as it would any other zoning proposal or text change. In either event, there will be additional opportunity for public hearing and public input. In conclusion, our goal today is to arrive at a consensus for the definition of "neighborhood" – a new definition - and building on the existing definition of "accessory uses," which already exists in the Code. So, Mike if you would like to take over.

I was just reminded that since the agenda has been posted, the Chair entertains a motion to formally switch the order of business.

MOTION BY HURD TO SWITCH THE ORDER OF BUSINESS, NUMBER 3 FIRST AND THEN NUMBER 2 AFTER, SECONDED BY CRONING.

Mr. Silverman: Is there any discussion? All those in favor signify by saying AYE.

VOTE: 4-0
AYE: CRONIN, HURD, MCINTOSH, SILVERMAN
NAY: NONE
ABSENT: HEGEDUS, JOHNSON

MOTION PASSED UNANIMOUSLY

2. DISCUSSION OF OPTIONS FOR ZONING CODE DEFINITIONS OF "ACCESSORY USE" AND "NEIGHBORHOOD."

Mr. Fortner: First, I am going to run through a report on the different definitions that Maureen and I found during our research for "accessory use." We will go through the process and then I will do a "neighborhood" presentation after that.

[Secretary's Note: Mr. Fortner, the Planning Commission and public referred to a PowerPoint presentation that Mr. Fortner brought to the meeting for his presentation to the Planning Commission].

For "accessory use" we looked at over 60 communities, both counties and municipalities, college towns, towns we considered progressive on internet searches, and we looked at what their definitions of accessory uses were. We found that most of them defined accessory use like we do. **Accessory Use:** "A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. Accessory uses shall be permitted only on the same lot with the building to which they are accessory, except for the parking space as required in Article XIV of this chapter. All accessory uses shall be such as to not alter the character of the premises on which they are located or impair the neighborhood." **Accessory Building** is also defined. It says, "A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot." With this definition, especially when it came to the Data Center Power Plant location, one of the things that was identified in this definition was "neighborhood." The attorney argued that the neighborhood was the STC Campus and it didn't include anything outside of that zoning

district. That is one of the reasons why we are being called to look at our definition for accessory use, to kind of examine those and to see if that is the kind of language we want in this definition.

We basically have three things to consider. 1. We can consider changing the definition of “accessory use” in Sec. 32-4 to be more restrictive. Or we can leave the definition of “accessory use” as defined in Sec. 32-4, and consider changing the permitted accessory use in zoning districts, like the STC Campus or in industrial-like zoning. We can address that specifically rather than changing the overall definition and leave the residential uses alone. 3. Leave the definition of “accessory use” as defined in 32-4, and recognize that interpretation will continue to be necessary in the future. As we said, most communities use the definition that we currently have.

On the first course, changing the definition to make it more restrictive, the first alternative that we have come up with is Accessory Use. “A use customarily incidental and subordinate to the principal use or building and located on the same lot with the principal use or buildings.” So it keeps the same wording as our current definition, but here is where we make the change. “. . . and serves only the lot on which the principal use is located. Such use shall be subordinate in height, area, extent and purpose to the main structure or use, and shall only be erected after the primary use exists.” There are lots of parts of that. It does sort of address the Data Center controversy, things like height, area, extent, maybe, for example, a barn. There could be things where we don’t want to limit it to that. Things erected after the principal use exists may not be useful in all situations. For example, if an apartment complex is building a gym, recreation area as part of the use, we want them to build that along with the rest of the apartments.

In Alternative 2: “A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building, except for parking spaces as required in Article XIV of this chapter. The term “accessory use” shall not include commercial uses but may include professional offices. Such accessory uses shall not generate excessive noise, smoke, dust, or odor detectable at the property line nor shall a use generate other conditions detrimental to the character of the surrounding area. So, that would address some of the issues of anything from a helipad, for example, if the University of Delaware was to build a hospital and they wanted an accessory use helicopter pad, it may not be allowed as a by-right accessible use. Something like that may have to have a provision to go to Council for a special use permit.

Alternative 3 is the same definition except we take out the word “excessive.” So, we have said, “Such accessory uses shall not generate noise, smoke, dust, or odor detectable at the property line nor shall a use generate other conditions detrimental to the character of the surrounding area.” So, we take out the word excessive. The issue with the word “excessive” is that it is too broad, too vague for interpretation. So, this was a preferred definition for people who want very strict guidelines that would not enable a lawyer to manipulate our Code because it is very exact. No noise, smoke or dust detectable from the property line.

Alternative 4 was based on Dr. John Morgan’s proposal. “A use customarily incidental and subordinate to the principal use or building and located on the same lot . . .” So, it has a lot of the same language as the first, and then, “. . . will not impair the neighborhood or any property within 300 (or 1000) feet.” Or whatever policy we go with. Accessory uses may also not generate noise that is outside the given property from normal hearing. If you had normal hearing, you shouldn’t be able to hear the noise. Odorous emissions would be regulated from someone with a normal sense of smell and harmful air pollution from a current or proposed activity, or you wouldn’t get any from scientific measuring devices.

Alternative 5 and 6, we are considering changing the definition of accessory use in industrial zones and the STC Campus. So, in this proposal, we could amend the STC Zoning District, where it currently says accessory uses and accessory buildings and with that you would add, “except for any accessory power generation facility that converts fossil fuels into electric energy or steam through a combustion process shall provide such electrical energy or steam solely and exclusively to the principal use of building to which

the power generation facility is accessory. If a data center wanted to build a power plant under this definition, they could only provide the power to the data center and not sell it outside. That wouldn't be considered an accessory use under this definition. They would have to get a special use permit from Council if they wanted to do otherwise. This continues, you add to the MI zoning where we have our current definition of the MI zoning and then you would add on "In addition any accessory power generation facility that converts fossil fuels into electrical energy or steam through a combustion process shall provide such electrical energy or steam solely or exclusively to the principal use or building to which the power generation facility is accessory." This leaves open the opportunity for solar panels to be installed but if they are doing a fossil fuel, again, that would not be permitted as an accessory use. If desired, it would be possible to create legislation to require that they get a special use permit from Council for that.

Then we get to definition 7, which is to maintain our current definition, which I have read and this is our current definition as I have said most municipalities use this definition and it is an alternative that we just recognize that these kinds of things need to be discussed and need that kind of flexibility. That is the kind of proposal we have generated through the research and discussion with members of the public. This is just a start to get out some ideas for you. These aren't exhaustive. We can come up with new different ones. We can combine them however we would like. This is just a start to put a framework to the discussion.

Mr. Silverman: Normally the commissioners would now ask questions, however, since we are going to maintain a workshop type forum, I would like to invite individuals to come to the microphone and express their opinions. Again, please state your name and some kind of residence locator, whether you want to use councilmanic district or your full home address. Does anyone have any comments?

Mr. Roy Lopata: 404 Briar Lane. I just want to comment briefly. First, Mr. Chairman, I want to commend you on an outstanding summary at the beginning of the meeting explaining what we are doing here tonight. I thought you did a very good job with that and I think you should be commended. On that note, I will move to the main comments I wanted to make. First, and most importantly, those of you who may be familiar with military history know that generals are famous for fighting a current war using the successes and failures from the last battle, and unfortunately, I'm afraid that is part of what is happening here both at the Planning Commission and, perhaps, at the Council level is in light of the Data Center controversy, the power plant controversy, we are now fighting the last war, and, therefore, perhaps, taking a sledgehammer to an issue that doesn't really need this type of approach. As some of you may know, I served with the City for 37 years. I don't recall any issue with the accessory use definition save one and that is the one that brings us here this evening. So, I think we should have that in the back of our minds of being careful that we don't overdo it. Secondly, and somewhat analogous to the situation, when I started working with the City our biggest single political controversy that Commissioner Cronin will remember, was the Gino's on Main Street-fast-food restaurants downtown. There may be no one else in the room who remembers that except the two of us. Alan remembers. When I became Planning Director, I was given marching orders to solve that problem so we would have no more fast-food restaurants downtown. So, we drafted a very simple direct amendment to the Zoning Code targeted at the issue which was fast food restaurants, fast food sit-down franchise restaurants downtown. We haven't had one since 1977 – not a one, and that wasn't with any large major change. And, that ordinance has been in effect ever since. So, I suggest that as the process goes forward that people try to think of, whether or not we are fighting the last battle. Let's be sure that the bullets we are using are targeted at the enemy we are trying to defeat. Thank you.

Mr. Fortner: I am not trying to speak as or for the public. Bruce Herron reviewed the memos and he said he didn't see any red flags with the different alternatives. He says, "The City has a wide legal latitude in coming up with definitions and terms to use in our Code as long as they have some reasonable basis." And, he has given some practical but not legal counsel here. He is saying, "Do we want to be so restrictive as to prohibit all commercial uses from being considered accessory?" that is one of his comments. The second one, he prefers to use the word "excessive" after generate. "The absolute

prohibition of any noise, smoke, dust or odor detectible from the property line seems highly restrictive. As you point out, with the definition there would need to be some uses which are specifically permitted.” So, we might permit residential grills or power generations like emergency power generation. We would have to put that in the Code as an exemption, otherwise, they would have to come back for a special use permit. And then he says, with respect to 300 feet or a 1,000 feet that is just a policy and he has no views on.

Mr. Silverman: Are there any other comments? Are there any comments from the commissioners?

Mr. McIntosh: If I was correct in understanding, I don’t know if 37 years covers it all. Mike are you familiar with any problems with the accessory use definition as defined?

Mr. Fortner: As it is defined currently?

Mr. McIntosh: With the exception of the Data Center.

Mr. Fortner: No, there were just scenarios that were brought up. Specifically, what I remember is if the University was to build a medical center on the STAR Campus and perhaps they would want a helicopter pad and the argument even goes to residential units, which I think is more of a stretch, but a hospital, for example. That would create noise and would that be an accessory use to a hospital? Would we want to have some sort of oversight going to Council? So, the answer to your question is, no, we haven’t had any issues that I can think of. When we talk about accessory uses, 99% of the time what we are dealing with is a shed in the back yard, or a fence, patio or swimming pool. Part of the goal is not to change it so you would make a shed illegal or need a special use permit. You want to be careful how you change it so that you don’t create unintended consequences, but we had an instance with the Data Center. It is a big instance and it was calling for review that maybe we should look at this. There was a frustration that it was ruled as an accessory use.

Ms. Feeney Roser: You are right. We did do some research on how many accessory uses or structures had to go to the Board of Adjustment and there were only two over a ten year period.

Ms. McIntosh: So, what that says to me, and by-the-way, if I were in the helicopter, I would like to have a pad wherever they were taking me. Be that as it may, if we have had two instances in ten years or virtually none in 37 years, I don’t even know why we are dealing with this. You’ve got something that seems to have commonality across the country and has worked in our own community. I don’t think we should define Newark by the Data Center. I think that is a dangerous thing to do. If there is something that needs to be addressed vis-a-vis that, then let’s address it, but to change the definition for something that has worked for a long, long time and has not been challenged hardly at all in that time makes no sense to me.

Mr. Fortner: An argument that should be made, I guess, is – again, this is the Data Center case – when there is vagueness in a definition or a law that the courts have ruled, at least here in Delaware, and probably in many states and municipalities, a tie goes to the land owner. So, there is a desire in the community to maybe make it more restrictive. Some of the definitions have very restrictive language so that there is no vagueness to it. So, that is why instead of having excessive smoke, there is an advocacy to just say, no smoke, and then make some exceptions like a residential grill, for example. We don’t want everything, necessarily, going to Council. It is trying to anticipate problems that might come. Things are changing all the time. People come up with new things. It is trying to think ahead about what kind of problems and does our Code adequately address those things.

Mr. McIntosh: In my experience, it is probably impossible to figure out all the new things that are going to come down the road. Again, I just find it difficult to accept that one or two instances over a four decade period of time require a change, even though the

hurt is fresh and it is still healing. That doesn't mean that you have to overreact to it and I would recommend that we leave it as it is.

Mr. Bob Stozek: District 1. I kind of agree with the discussion that is going on here, and I am going back to the STAR Campus and the power plant issue, which is why we are probably talking about this. What I see is not so much the definition of 1,000 feet noise, but it's what is going to be the interpretation of the phrase "customarily incidental and subordinate to the principal use." That is where I think we had a problem with the power plant. We heard a lot of cases where a power plant is not necessarily customary to a data center. There are a lot of cases where it is not the size of the power plant, especially to me, wouldn't be an issue in that I could not see how a 275 megawatt power plant was subordinate to the principal use of that site. It is far bigger than the data center needed to operate. I don't know how you can split hairs on all these things and cover every possible case, but it goes back to how these words are interpreted when the ruling is made, and that's what you are talking about.

Ms. Feeney Roser: Do you have a suggestion for which of the alternatives makes sense to you?

Mr. Stozek: I would have to look at them again, but I think maybe #4 or #5 or something like that. I think there needs to be something that talks about the issues of noise, and again, this gets into the neighborhood definition. The other big issue with the power plant was, what was the definition of neighborhood, that it was just the STAR Campus. I think some of these things can have an effect on other areas that are close by. Whether it is the 300 feet or the 1,000 feet, I would have to look at some maps to determine what makes sense there. I think, certainly, somehow bringing in major roadways as defining a neighborhood, but we are not talking neighborhoods yet.

Mr. Lopata: I just wanted to make sure it is understood why I was waxing poetic about bullets and whatnot. I think alternative #5 or #6 whichever one it is that was directed specifically about power plants as an accessory use very much parallels the fast food restaurant example I was giving. I am not suggesting we don't need to make a change. I think that that issue was big enough and caused enough angst in the community that it is worth, certainly, doing something about the fact that we have this huge piece of land smack dab in the middle of our city and the accessory use definition as it stands now can be open to interpretation, as Bob said, in a way that may be used detrimentally to the community. So, I think, why not just say exactly what we mean. We don't want fossil fuel burning, theoretically, at least that's what I think people feel, plants that would sell energy to uses outside the site. Now, if people want to modify that, that's fine, but that is a bullet right at the real problem.

Mr. Silverman: Since this is a discussion, I am going to get into this. I have done some research also and there is a term the courts have identified in dealing with nonresidential accessory uses. Actually, there are two terms. One is auxiliary use. An auxiliary use is auxiliary to a principal use – the main use – that produces goods or services not intended for use outside of the enterprise or parent activity. An example of that would be a manufacturing production line plant that had a true machine shop on its site and all that machine shop did was maintain the equipment that was in that plant. They didn't sell their services to anyone else. They didn't bring in outside work. It is very different, an accessory, but it keeps the main plant operating. That is an auxiliary use. And then, there is what we are describing with the data center called an ancillary use, and in that case there is the main operating unit, the production facility, but the machine shop would produce services that are for sale for both the parent activity and other uses. So, when the plant shut down the machine shop takes in outside work. Does that make sense to you? Another example would be a clothing manufacturing facility where they bring in raw cloth, people convert it into clothing. That is their principal activity, but they also have a retail shop and show room that sells directly to the public. That is not related to their primary activity. Over time those support uses have been internalized and, generally, if they are under one roof we don't pay a lot of attention to it. I'm going to use the old Chrysler plant. They had a medical facility. They had a personnel office which is a service. They had their own maintenance staff, which is a service. They had their own guards, which is a service. Nobody really gets upset about those being part of what we

understand as being part of an automobile production facility. So, if we want to put a word in where we are going to confine an accessory use to a site and prevent that accessory use or prohibit that accessory use from selling its service or providing its service to anyone other than the principal use on that site, we have a word that will stand up in the courts. Now, I agree with Roy's approach. Both he and I have been doing this for a long time, and I found in looking through both the American Planning Association literature and a very nice document produced by Pace University Law School and I found some additional information. Both zoning ordinances and courts have used a wide range of tests in reviewing the limits of accessory uses. So, unless you want to say, no power plants, no smoke, it is kind of a local thing. The courts also routinely use a temporal test to determine whether the use is an incidental use and, therefore, accessory. They look at the size and the mass of the thing. So, it comes back to a local decision again. In establishing what is customarily incidental, the courts have often looked at the location and not how often such an accessory use occurs in the community or in any particular zoning district. The American Planning Association states that standardizing accessory uses as a list would be ineffective because any specific list of accessory uses is going to be either too limited or too large encompassing all (inaudible) or be too exhaustive and even rival the entire land use classification system. That is one of those things, where do you begin and where do you stop when you say you can permit this, but you can't permit that.

In short, what an accessory use constitutes is highly dependent on local circumstances. As Roy mentioned and as the staff found, the vast majority of accessory uses deal with residential. If we lived along the Chesapeake in a community no one would have a problem about my trailered very large boat sitting in my driveway. That is the fabric of the community. Try doing that where I live in Fairfield Crest. If we lived in New England and I burnt wood to heat my house nobody would complain about the open wood cover shed all the way across my back yard. It wouldn't fly in my neighborhood today. So, there has to be this latitude for City Council and others to make individual judgments based on local conditions. I kind of like performance standards and fixed references. There is guidance already in the law. Now, I haven't gone through Delaware law yet. For example, if we were to choose 1,000 feet, where would you measure from? The property line? But, what if that one use that is unpopular were proposed is sitting in the middle of 200 acres, literally in the middle of 200 acres and is a quarter to half mile away from anybody, who do we notify or who's included, and this kind of laps over in the neighborhood, if that parcel is irregular in shape. An example that I use is the freezer plant on Elkton Road. Their original subdivision plan comes out to Elkton Road. So, if you look at it, it is a T. They site way back off the road. If we use the property line to start measuring, then Mr. Mayer's Animal Hospital is affected by it, but that really doesn't make any sense. If we are going to talk about ancillary and auxiliary uses, maybe we want to think of splitting the accessory use into accessory use residential and accessory use nonresidential because there is a big difference if I have a little 5K generator under my deck to power my house when the electric may be out as compared to an industrial site, and let's say a hospital or a large buildings. If they have a 75 or 100 KW generator that sits on their property and that generator is exercised, it is run periodically, and the higher the life hazard or the more critical the use like the sewage pumping stations, the more often they get exercised. So, I kind of lean toward, maybe we tinker with the wording we have now and put in some of the definitions that are used in the planning community and the law community.

Ms. Feeney Roser: To follow-up on what you said about auxiliary and ancillary uses, it seems to me that from how you described them, auxiliary may be okay but ancillary would not? And, if we went to Alternative 1 where we added, at least in the first sentence, "and serves only the lot on which the principal use is located," that would be an auxiliary and not an ancillary use. So, I don't think we need to add extra words that we will have to then define again for that. And I think, if it only serves a principal use, it may have gotten to the size of the power plan that we were talking about because part of the argument against it was that they were building it that big so they could sell electricity off-sight. That might be it. It is something to look at.

Mr. Fortner: These are some comments about the neighborhood. In our definition, it will not impair the neighborhood. Part of the problem is we didn't have a definition of

neighborhood. That is why we are here next, but something like that word can be changed or we can opt to create a definition of “neighborhood” that will meet our needs, or you take that out and say a surrounding area or of a 1,000 feet.

Ms. Feeney Roser: Your idea was that we would measure the distance from the property line in any direction, right?

Mr. Fortner: When we used the google definition it was from any person, place or thing. Whatever the object is, it is a 1,000 feet. That was one of the definitions for neighborhood. Wherever you are, 1,000 feet around you is your neighborhood, but the property line was Dr. Morgan’s suggestion. He thought it should be the property line.

Mr. Mark Morehead: District 1. I am going to be very careful not to make a recommendation here, but I would like to ask a question, and that is, building on Mr. Silverman’s comment about possibly separating commercial from residential accessory uses, would it be possible to also consider a commercial accessory use coming before Council, whereas a residential accessory use handled as it is now?

Mr. Silverman: I prefer residential and nonresidential rather than giving it a category of commercial or office or industrial.

Mr. Morehead: Sure. We are thinking along the same lines.

Mr. Hurd: I just had a few thoughts to add. I was, obviously, hoping for more comments to react to. I’m torn between the not messing with it because it has not been a problem and splitting it a little bit between the residential and the nonresidential because I would imagine that most of the accessory uses that we haven’t seen that have been gone through have been residential and, obviously, those are administrative approvals almost, but yes, I think, nonresidential is where you get into the issues of something that is like a business or like another facility that serves the primary one and then you get into issues scale and appropriateness and such. So, I’m leaning towards, if we did anything, to sort of say a nonresidential use and putting in the auxiliary definition or it serves the principal use only or just getting right to it and saying no fossil fuel burning facilities and saying if that is the issue before us, then that’s the thing we are pushing down unless we want to sort of say that popped up but there could be other things that pop up that are of a similar nature and we want to make sure we push it down with the same thing and say, we want only uses which are auxiliary to the primary use on a nonresidential property. I think if I had to go anywhere that is where I’m leaning in terms of language.

Mr. Silverman: Mike, if I could ask you to approach the microphone. Do we have enough that you can perhaps propose a consensus?

Mr. Fortner: One of the things I’m getting is having an accessory use residential and an accessory use nonresidential and maybe fleshing that out. Do we want to look at that at least and then have a nonresidential that might be more restrictive that is more inclined to go to Council? Something that we might want to explore. Help me out and give me some more framework that I can work with and flesh out more. So, we are talking about just really focusing on one of the middle options which was focusing on industrial and the STC zoning so you just can’t do a power plant there because that was the main thing – no power plant – just to tweak the industrial and leave the rest of the definition alone.

Mr. Silverman: One man’s annoyance in a power plant that is 75K to generate two buildings down vs. the big facility that was proposed at the STAR Campus. So, we have to be careful when we get into that and we need to be careful when we start talking about fossil fuels that we don’t accidentally exclude electrical generation that is done in other than a power plant for distribution.

Mr. Fortner: All the definitions, I think, were talking about emergency backup generators, as has been brought up have to be run 25 hours per year or whatever the schedule is and we would have to have regulations on that.

Mr. Silverman: And, I believe they are pretty much covered in the building codes on how they are installed and literally the amount of noise. There is something called a hospital style muffler that really keeps the noise down and that is administrative within the system of the building department.

Mr. Fortner: Of course, not limiting solar.

Mr. Hurd: A hospital backup generator falls into an auxiliary use. It serves the hospital only so, I think if we broadened it slightly to say the use is auxiliary to the principal use. Okay, it is a fossil fuel burning generator but it serves only that use. Now, you might still get people who say it is too large.

Mr. Fortner: A power plant that just provided power to the data center, would you want a definition that would not allow that? Some of the language says the hospital would have their own plant that they use all the time, they are off the grid because they don't run on city electric, but they can't make excess of it and sell it. Or, do you want to say that they can't even do that, they can only do emergency backup power generation.

Mr. Hurd: I wouldn't want to get into that as a zoning issue. I think that is the thing that we have to be careful about. If we say it is auxiliary use for the principal use, someone could bring the data center back and say, here is my power plan, I really need all those megawatts for my building. Same size, same whatever, but they say it is serving my building only and we'd be stuck because we defined it such that as long as they say we are not selling the power it's not going out.

Mr. Fortner: It would make it less feasible. Why would they produce all that power?

Mr. Silverman: Then we would have to look at that particular proposal on its own merit and its own mass and "sell" is a bad word to put in there because of the way corporations set themselves up today. I may own ABC, but A sells to C, at least on the books.

Mr. Fortner: Any language providing for that specific use on the site. If you limit it to that, then there would be no incentive to create more power than they needed. So, the issue is, do you want people to create a power plant for their own use that they run 24/7. It is fossil fuel. No one seems to have an opposition to solar panels.

Mr. Silverman: That is the one time kind of circumstance that Mr. Lopata brought up in his opening statement and you deal with it at the time.

Mr. Fortner: I have an idea of exploring residential accessory use. I don't think we have come across something quite like that, but our Zoning Code is sort of like that anyway.

Mr. Silverman: That is correct because it mostly deals with residential problems and issues.

Mr. Fortner: We can flesh that out more and then it sounds like focusing on how to best limit power plant, but I got some indication that we might want to look at other things that might come up, though.

Mr. Hurd: The problem is, we are trying to guess, but if the power plant is the symptom of people bringing in accessory use that turns out to be a service that goes beyond the boundaries of their property, if this is a symptom of an issue that might be coming, then we might say, we don't want that. We don't want people, basically, backdooring a facility onto a property that they already have something set up.

Mr. Fortner: What about the hospital scenario of a helicopter pad on a hospital near residential areas?

Mr. Silverman: My cynical comment on that, if a Governor can come to a University of Delaware football game in a helicopter, someone who needs a hospital facility can fly in the same general area.

Mr. McIntosh: I have no objection to there being a residential and a nonresidential, but I would caution that we also want to not be anti-business here, and I'm starting to feel that way just by the discussion and the community will only exist if we can continue to bring in businesses to us that provide jobs and help build the economy so the non-fast food joints downtown can exist, and so on. Somebody has to have a 275 megawatt power plant to take care of what they are building, then that is what they need. Clearly, in this case, that wasn't the point. It was overdone, but if that was what they needed then the next question would be do you want that business here? You can still say no. It doesn't matter.

Mr. Fortner: Not if they are permitted.

Mr. McIntosh: If it is permitted, you can still say no, can't you?

Mr. Fortner: No, not necessarily, no.

Mr. McIntosh: Then put a little asterisk in there so you can say no. I'm just saying, let's not get into so much minutia that we tie our hands about something we have no idea what is going to happen. None. And anybody that suggests that they do, I would like to talk to them about going off to Vegas or someplace, but we don't know what that might be. So, we do know that we don't want large polluting kind of activity going on beyond the need that it requires for that particular business and leave it at that. That is where I am coming from. Years ago I worked in the insurance business and a big company had issued a very large insurance policy to a gentleman who had a bad heart and he died very shortly after the policy and it cost the company a lot of money. If you were bringing in a person who wanted insurance and somebody said this guy had a lot of heart, speaking about his character, they would still reject him because we weren't dealing with hearts any more at all in this company. Frankly, if I were a business and I was examining coming to Newark, Delaware and I had a power plant need, I would go to Newark, New Jersey where they don't care. Who's going to come here? Based on what just happened, they are going to come here. Why would they go to that extreme? So, restrict it so that they can use it if they need it and if they don't, as I think you said yourself, they aren't going to build excess power that they can't use or sell.

Mr. Silverman: There is even an elasticity built into the Code for interpretation with the special use permit. If someone had a large tract of land and desired to put an additional use on that property, they could apply for a special use permit to say, service someone else off that property if they could show good intent.

Mr. Fortner: That is part of the intent to create areas where special use permits would be needed.

Mr. Silverman: Not necessarily needed, they could be gotten. I would rather have it the other way. I agree with my colleague.

Mr. Fortner: But, the point would be that they would come to Council. They wouldn't get it by-right. They would have to come to Council and explain the need and then Council would have the option of determining it rather than, we can have a power plant because we are allowed to.

Mr. Silverman: Let me give you an example. When I go to Philadelphia Airport, I park in the parking lot of one of the hotels for long-term parking. Now, they saw an opportunity. They had the extra land. They put in a gravel parking lot. Their primary business is a hospitality business. Under our scenario, if the hotel was there and they saw that there was a need for that parking and they could accommodate within the codes and they wanted to run a long-term parking service then they could come back to the City and ask for the special use permit as a use alongside their hotel.

Mr. Fortner: Some of those uses are permitted like a parking garage is permitted in a commercial zoning. You see a hotel and it has a parking garage and the public can park there as well. They buy it.

Mr. Silverman: But, I'm talking about Newark. I'm talking about somebody who wants to expand, take advantage of building on the business they have.

Mr. Fortner: If it was permitted, and they wanted to do something in addition to what was permitted, I think we would look at it that way. So, a public parking garage, okay, that is what it is or a jewelry store that wants to sell ice cream or a restaurant that wants to sell jewelry like Home Grown. Those are two uses that are permitted.

Mr. Silverman: But, we tolerate internally and my research has said that one of the things you keep an eye on is all of a sudden the jewelry business begins to grow and there is no kitchen left that it is completely changed.

Mr. Fortner: Under that scenario, I think that would be fine if they decided that the jewelry end was better than the restaurant end and they could buy out the restaurant end.

Mr. Silverman: But, do they still meet the parking requirements and everything else?

Mr. Fortner: Yes, they would have to make those adjustments in terms of those things, but where it gets into conflict is a use that is a permitted use and then they want to do something that is not permitted in the Zoning Code like, for example, the STC. The data center was specifically permitted but a power plant wasn't permitted as a permitted use, only as an accessory use.

Mr. Silverman: That is the war you fight at the time. Let's wrap this up. We have some people that are very patiently waiting. Are there any other questions?

Mr. Robert Gifford: Councilman, District 3. Like Mark, I will be careful not to make any recommendations. I wanted to respond to a point that Frank brought up and also my impressions before I joined Council. I think the one thing that did come up here was some of the discussion around a special use. We consider daycares and things like that as a home-based business and we spend an hour on that, but the community didn't see that there was an avenue for Council to discuss something that was much larger and affected them even more than a home daycare would be even at their neighbor's house. I think we want to be cognizant that if there is a use that comes up, we don't want to try to make a list of all these uses that we are limiting, but we want to give the community an avenue to feel that they can be represented by their councilperson. It is a very long process to go through all the way to the Board of Adjustment. I know that Pilgrim Baptist Church went through the Board of Adjustment for their issue. The community, obviously, went through the issue with the power plant. It is not a quick or easy or painless way to go about making decisions. So, I would say if there is a way to give Council a way to look at some of these larger issues maybe with a nonresidential, those suggestions seem reasonable for the community to feel represented.

Then on the topic of power generation, before I joined Council, I looked at a lot of different power generation facilities, and I believe, if I'm remembering correctly, there is a 600 megawatt plant that was going in, I believe, either Camden or Newark, New Jersey. I think it was Newark, New Jersey. And, there was, like here, opposition to large power generation facilities, and the local community does have trouble trying to get their voice heard about how they feel about those facilities. Now, in Newark, New Jersey it was the power plant always represented as such. So, this was a special case. This is not just here. Power facilities are often contentious and I think it was 50% of new power generation facilities actually aren't successful in the municipalities where they are brought up. Every year 1,000 are brought up, 500 make it. The other 500 don't. It's not terribly unique, except that we had a data center attached to it.

Mr. McIntosh: I am aware of that.

Mr. Silverman: We will close out our discussion on accessory uses. We have heard some good thoughts. With the transcript and other resources you have, we will look forward to seeing the proposal you come up with, Mike. Okay, let's move on to "neighborhood."

Mr. Fortner: The same amount of research went into “neighborhood” as “accessory use.” We looked at the same 60 communities and the same kind of criteria was used. This came about because in our accessory use definitions at the end of it, it will say, “not impair the neighborhood.” The attorney for the City argued that the neighborhood for the data center power plant was the STC Campus and the things outside of the STC Campus was outside the neighborhood. No one in the STC Campus was complaining. So, what is our definition of neighborhood? What is a neighborhood? Of course, that is a thing that means different things to different people. It is not defined in our Zoning Code. We used the Merriam-Webster’s Unabridged Dictionary. I won’t read it, but it is a dictionary definition of what a neighborhood is and it covers it in a very vague way because it means a lot of different things to a lot of different people and it covers kind of a grand scope of what a neighborhood can be. So, the challenge is, do we keep that kind of definition or do we go for something that is more specific that we can defend and can maybe eliminate some of the unintended consequences. Of course, very few zoning codes have a definition of neighborhood in them. So, most of them don’t define it and rely on the dictionary definition. We did find one in Wichita Falls. Neighborhood: “A contiguous area containing residences which are of similar size, age, and construction style and sharing a common street system. Neighborhoods are defined by major streets, natural boundaries, subdivision boundaries or zoning districts.” It is very similar to how other people, I think, would define a neighborhood. Some of the issues with that are, I think, I don’t think houses necessarily have to be the same size or the same age. You can have a mix of older houses and newer houses in the neighborhood. The same with construction styles. Those are some of the unsatisfying things about that definition. It doesn’t necessarily meet our needs even though it seems like a logical definition of neighborhood.

Alternative 2 is, along with the definition of neighborhood in Alternative 1, adopt the following definition of “Surrounding Area:” So, we would adopt the definition of Alternative 1 and then we’d have another definition called “Surrounding Area.” “Properties immediately adjacent to thereto, and extending 300’ in any direction from the property in question.” Or, you could use 1,000 feet.

Ms. Feeney Roser: Excuse me, I don’t mean to interrupt you, Mike, but the 300 feet came from the Code. There are thresholds in the Code for that, right. That is where it came from. If we are rezoning, the notification area is 300 feet around the property? So, there is precedent for using 300 ft. as the impacted area.

Mr. Fortner: That is correct. That is where we got that standard. It was in John Morgan’s original standard as well because we use that for a special use permit as well as rezonings. We notify 300 feet around. So, it is a standard that we’ve used so we adopted that. And, then Dr. Morgan suggested that maybe 300 feet wasn’t enough, maybe 1,000 feet would be better. So, in this case, we would keep a standard definition of neighborhood but also have something called surrounding area. So, maybe we would amend accessory use. Instead of saying neighborhood, you would say the surrounding area or you say the neighborhood and the surrounding area. So, that would capture a greater circumference than just the neighborhood.

You get into Alternative 3, which is a very convoluted definition of neighborhood. I don’t know that I will read the whole thing but basically, any property within 300 feet or 1,000 feet of a given property. Any property from which any current or proposed structure on the given property is visible or will be visible from ground level. So, if you can see it from ground level and, from an existing habitable structure on another property. What if you are on top of a hill or the reservoir, everything you see is your neighborhood. Any property in which noise from the current or proposed activity is audible to a human being with normal hearing. Any other property on which odorous emissions from a current or proposed activity on a is detectible or will be detectible by a human being with a normal sense of smell. And any property on which harmful air pollution from any current or proposed activity on a given property is detectible or will be detectible by scientific measuring devices. This goes right towards the data center case. If you create an accessory use or a use and it is detectible, it means you can see it, you can smell or it creates a pollution or you can hear it, then it is in your neighborhood no matter how far it is. If you get pollution from it, it is in your neighborhood.

In working, we came up with another definition of neighborhood. This came from just a Google search. We came up with a district, especially one forming a community within a town or city and the surrounding areas of a particular place, person or object. Wherever you are, the surrounding area is your neighborhood. We adjusted that some for Alternative 5. Neighborhood: "An area that forms a community within the city and includes the surrounding area extending 1000 feet of any particular place, person, or object." It is probably the most expansive of the definitions, besides 3. It is whatever you consider the community or subdivision, but it also goes beyond that by 1,000 feet. It goes to the concern of if there is a commercial development across the street from you, then maybe that is not in your neighborhood or the STAR Campus is just a stone's throw away, it is still in my neighborhood because it is 1,000 feet away from Devon/Binns.

Definition 6 was revised from that. Neighborhood: "The neighborhood of a given property includes all other properties within 1,000 feet of the given property. I think we meant there at the property line. So, whatever property you go 1,000 feet around that is a neighborhood. It is very exact, 1,000 feet which is one of the benefits of it. It gives an exact boundary. There is no problem with interpretation and it is a legal definition. It may not be what you necessarily think of what a neighborhood is, but maybe for a zoning code what you want is something more exact. You may consider your neighborhood as Nottingham Green or Oaklands, but we are trying to create a legal definition rather than just a dictionary definition of neighborhood, which is very subjective. Again, these are proposals we got from working from a group and collecting feedback and research and to spur more discussion on the definition of neighborhood, and address if we need one.

Mr. Silverman: Are there any comments or questions from the Commissioners at this point? Seeing non, I will open the floor to public comment.

Mr. Bob Stozek: Again, we are here because of the STAR Campus and the power plant. Can somebody remember what the distance from the power plant was to the closest houses that started this?

Ms. Feeney Roser: I can't tell you the exact distance. I can tell you that the 300 feet measurement would not have reached Devon. The 1,000 feet probably would because it was Dr. Morgan who was talking with us about 300 feet is not enough because it doesn't reach it, but then he was good with 1,000 feet. I haven't actually done the measurement. I can, if that would be helpful.

Mr. Stozek: Somewhere in the back of my head I thought it was 750 feet or something like that. Even if you used 1,000 feet to put a limit, which I am not proposing, you might pick up two or three houses, but not the residential area that is immediately adjacent to the building.

Mr. Silverman: I think a key item was just hit on here that we need to focus our thinking that neighborhoods are residential. They are people, they are houses, and they are residents. When was the last time you heard of an industrial neighborhood? There are industrial districts. There are industrial parks. There are industrial estates. There are apartment complexes. I view a neighborhood, unlike Michael, as being insular. It looks inward. It doesn't worry about what is going on the next block. One of the reasons, I believe, we have a hard time in this area to finding neighborhoods is most of us didn't grow up in places that had townships, wards, ethnically identified areas, Little Italy, Browntown, Trinity. I find that neighborhoods are generally self-identified and they often depend on the context. When I am talking to somebody and I am away from here on vacation, I will say, I live in Delaware in the neighborhood of Newark. That is good enough for that conversation. They've got an idea of where I live. Self-identification often comes our way because it was self-determined when our subdivision was built. I identify myself with Fairfield Crest. And, depending what is going on with block parties and all, I identify myself with the street that I live on. For that particular instance that is my neighborhood. So, similarities and commonalities. One of the definitions talked about like houses. You can have a neighborhood that is made up of a variety of architectural types developed over a long period of time. That is the characteristic of that

particular neighborhood. My father had a dental practice in Old New Castle. There is kind of a consensus of where that was. The building it was in was built in the 1880s or 1890s. So, the neighborhood can be: I live in the apartment complex along with the other people and we have pool parties and there is somebody who runs a daycare out of one of the apartments, and that is what I identify with. Most commonly with neighborhoods, people assign physical boundaries. A neighborhood can be linear. Those of us that remember Baltimore Street in Baltimore. It was a particular kind of neighborhood. When I was at Fort Sill there was the impact zone and that is self-described. That is where people look to take money out of GIs pockets. A very defined neighborhood, but it was facing on a single street. It can be a series of streets. It can be areas that are served by public sewer and public water. They are identified as urban neighborhoods, and more often (I am going to be very careful, here) common mores. At one time Fairfield Crest and Fairfield were occupied primarily by people who worked for the DuPont Company and that was identified as a DuPont community kind of thing. And, that definition of neighborhood obviously changes over time. Common mores, if you go into a Hispanic neighborhood, the restaurants change. The holidays that are celebrated change. A particular religious congregation may play a dominant role. There may be parochial schools in that area that support that neighborhood, and those people can tell you exactly where that neighborhood is. So, I look at neighborhoods as being insular, that they look in on themselves. I kind of like the Wichita Falls definition with some work on it. I believe that is Alternative 1, because it specifically talks about residences that we can change the residential uses.

Ms. Feeney Roser: Do you think, Alan, and I may be jumping ahead here, but I have a thought and that is if we get the accessory use definition right is the neighborhood definition that important?

Mr. McIntosh: That was my very thought. Instead of trying to define something which is really undefinable because it is in the eye of the beholder. I grew up in Boston and when people in Boston talk to each other they talk about what parish they were in. So, that is their neighborhood. I'm the one that said don't touch the accessory use, but seeing the greater problem why don't you take neighborhood out of accessory use because where I live now or where I lived before or where I've ever lived, if you take 1,000 feet, I have neighbors who live further away than 1,000 feet. Again, what we are trying to do here is attack something that has already been decided and we are going to make darn sure it never happens again. There are other ways to do it besides trying to define something that you can't define. Take neighborhood out of the accessory use and be done with it.

Mr. Fortner: We will replace it with something because you can't impair something so you need to replace it with something. What we are dealing with is do we want to create a legal definition. We can't create a definition that encompasses neighborhood but we create a . . .

Mr. Silverman: Adjacent properties?

Mr. Fortner: You could say surrounding areas or you define neighborhood as a certain scope.

Mr. Silverman: You don't even define neighborhood.

Mr. Fortner: You don't, then you say surrounding areas. So, the accessory use, you would take out neighborhood and you would say surrounding area of a certain distance.

Mr. Silverman: Forget distance. Surrounding area.

Mr. Fortner: Surrounding area is very vague.

Ms. Feeney Roser: Then you are going to have to define surrounding area.

Mr. Silverman: How about adjacent properties?

Mr. Fortner: Adjacent properties might not cut it in a data center type case either. The railroad would technically be adjacent and Route 4. It wouldn't be as satisfying. Accessory use could impair beyond that. So, you could still do that by getting accessory use right by saying it can't cause noise or smoke and things. Period. You can't do that beyond the property line and then if it does you need a special use permit or you keep neighborhood in the accessory use definition and then you need to have a more expansive definition.

Mr. Hurd: I would say that in the examples when you pulled out all the times that we use neighborhood, the bulk of them are about residential, self-identified areas, and it is perfectly fine there to talk about your landscaping has to be in condition. It is when you get into the accessory in the special use about adversely affecting the neighborhood. That is where I think the definition fails. I think I am agreeing with Frank that that is where we shouldn't be calling it neighborhood. That is where we should be saying surrounding area with a sufficient radius so that we are really talking about areas that would be affected by uses on that property.

Mr. Silverman: And, we have to come up with a standard where we are going to measure that 1,000 feet from.

Mr. Hurd: Yes, we do.

Mr. Fortner: 1,000 feet or whatever the distance might actually be.

Mr. Silverman: From the generation of the annoyance or from the property line.

Mr. Fortner: There is that and then how far, too.

Mr. Hurd: I think the problem is that different annoyances have different distances because I think one of the early definitions you are talking about smell or air pollution. If we count smell, I can smell the farm some mornings. That is way more than 1,000 feet away, but it is getting to me. Does that count?

Mr. Fortner: It is a farm.

Mr. Hurd: But, if I can smell it from there they could be doing something and I would say that is too far away to sort of fit into that definition. So, you start from that is an incidental exposure to how far does sound normally travel before it diminishes enough and how far does air pollution travel before it diminished enough, and I don't want to say we need different definitions for each thing, but there may need to be gradations to sort of say, if it is about noise, it is at this level and if it's specifically pollution that is a bigger radius.

Mr. Silverman: We also live in an urbanized area and there are certain things we just need to tolerate. When FMC is doing whatever it is they do when they have a huge steam release down there, it is noisy for all of about 30 seconds. Depending on how quiet it is, sometimes the air horns from the railroad tracks out here wake me up in Fairfield Crest. Other times when there is the slightest background, I don't even hear it, but that is a minor annoyance.

Mr. Fortner: With the accessory use we have trains that make a lot of noise and highways. We are talking about accessory use. So, we have permitted uses, and ideally we would have thought about whether or not we wanted that permitted use. We know when we allow an industrial place it is going to have noise and pollution, but when we get into accessory uses, how do we want those to have noise and pollution and that is what we have to keep our eye on, at least on this discussion.

Mr. Howard Smith: I live in District 4. I think we are tripping over the TDC for sure, but I think, in this case, the word neighborhood probably isn't even appropriate because we all have our own idea of personal neighborhoods. What I think is more appropriate is what has been with the TDC that we identify difficulties from any use by the area to which it is affected. For instance, with the TDC, everybody thought pollution was going

to go forever. Well, there are State regulations on pollution. Noise, yes, noise might have been a problem but it would only go so far. Would it go into Devon? Somewhat. Would it go all the way to Arbour Park? I don't think it would have gotten that far. So, it ought to be based on what is the issue that the use is creating or the problem the use is creating. Forget the word neighborhood, just wherever it goes and light pollution is not going to go as far as air pollution. So, I think we ought to focus on what the problem is that it is causing and how far does that problem go, and that is the limitation we can put on it, which will probably be different for every project.

Mr. Silverman: We are back to a case-by-case basis.

Mr. Smith: Forget the 1,000 feet, forget the 300 feet, the 752.65 feet. I don't think we will ever get there with that kind of definition. I know it sounds good to make it a defined limit, but I don't think we will ever get there.

Ms. Feeney Roser: This I offer just for talking purposes. It will be very difficult for someone to call the Planning and Development Department and say, I would like to do X. Can I do that? I will need full plans before I can tell you whether or not it would be an allowable accessory use because I would need to know exactly what they are going to do and how and anticipate what an impacted area might be. You know what I mean? If you say whatever you want to do cannot have a negative affect for 1,000 feet, I can tell you that, but I can't tell you based on the potential impacted area for a use, particularly if it is some kind of technology that Mike or I or anyone else in the Department might not be familiar with, and tell them how we are going to measure whether or not they are allowed.

Mr. Smith: It would be up to whoever is proposing the project to tell you what the problems would be – how far the pollution would go, how far light pollution would go as far as who it affects.

Mr. Tom Fruehstorfer: District 1. I think a lot of the things you are talking about we already have restrictions on. We have limits on what noise can be at property lines. State regulates pollution. The City has regulations on light. I think most of those are taken care of and I think with the power plant most of those were taken care of. We hadn't gotten as far as what the State was going to say. It may have been an answer people did or didn't like, but noise seemed to be the one obvious thing to me that may have extended into the neighborhood that our existing regulations may not have been strong enough to keep people happy. Anything else that I have heard, seems like there are regulations that are covered already.

Mr. Silverman: Even with the noise issue, the project didn't become ripe, didn't go far enough to even listen to engineering solutions. There was a large mountain of concrete rubble down there. Money and engineering can solve a lot of problems and if it said yes, you can have that but it has to be buried forty feet in the ground and this mound of concrete debris has to go over top of it and it will have four feet of top soil and grass planted on it, there is a pretty good chance that noise would have been attenuated, but it never really got that far for that kind of discussion. I do understand exactly what you are talking about where other regulations beyond the codes of the City of Newark would come into play. I understand what Maureen is saying that there has to be enough information presented, particularly on something that is very new and very different, for the department to really say, yes, come on down. It is going to be, we will give you a definite maybe providing you provide the following things kind of thing. Are there any other questions or comments?

Mr. Gifford: District 3. Something just popped into my head because we were talking about land use the other day. We have defined districts and planning areas in the City and I would just be interested to hear if we still have a problem with accessory use definition because it still says neighborhood even if we do nothing. How do we define the neighborhood? Would it be better to replace it with something we already have defined and I wondered if there would be any ideas about that – a district or a planning area or we even have downtown districts. We have a number of different districts usually

enumerated in 6, for some reason. We have 6 districts, 6 downtown districts, and 6 planning areas, too, but they are letters.

Mr. Silverman: What Councilman Gifford is talking about is we are reviewing collectively – the Commission, the working staff and Council – are going through the Comprehensive Plan and he was suggesting that there may be a geographical description in there that we could use, and that is something we can take a look at.

Mr. Hurd: I guess something that I am starting to see as sort of a connection here is that in the issue of the accessory uses, I think Councilman Morehead pointed out, sometimes this is an opportunity for those accessory uses in non-residential uses to come to Council so that residents have a chance to discuss it. If that is the path that we go, the mechanism of surrounding area has to be such so that enough affected residents would be notified so that they could come and be involved in the process. So, I think the two start becoming interlocked because if we say this is an accessory use that is going on, well, it is almost like noise and pollution aren't really important any more, it is just what is a big enough circle that covers people in the immediate area enough so that they can come in and be a part of the process.

Mr. Silverman: The courts do say that an accessory use cannot come before a primary use. And, there is a crazy court case that it hinged on and it sounds really nutty. A guy had a large lot in a residential subdivision and wanted to put a horse stable on it. He argued that it is a residential accessory use and it is permitted. The neighbors didn't like the idea of an open lot being turned into a horse stable and the court said, we happen to agree with your neighbors that until you build your house on the lot, you cannot have your horse stable. So, we get into the kind of thing that you are talking about.

Mr. Hurd: I was more talking about the non-residential.

Mr. Silverman: In the non-residential.

Mr. Hurd: So, in that case, when the data center came in and said the power plant was accessory, if we have a new definition that would trigger a notification of everyone within 1,000 feet that this was happening instead of going, oh, it is limited to zoning. I think I am in agreement that neighborhood or surrounding areas shouldn't be limited by zoning area or zoning district because I am on the corner of one. My neighborhood is a different zone so I would never want to say that that is the line that we work within, but I think planning districts have a lot of value because it fits as sort of a somewhat contiguous and similar area of similar things.

Mr. Fortner: The problem with those kinds of defined things is that there is always someone on the edge of a planning district and then if there is something going on the other side of that line then they are going to have a problem with it. That is why the 1,000 feet from wherever you are is an appealing thing.

Mr. Silverman: And, I live 1,001 feet away. Where do you stop?

Mr. Fortner: We talk about notifying everyone, but some accessory uses generally just affect the adjacent people, but some of them are broader.

Mr. Silverman: We have gotten spoiled. The law says we have to, with the exception of what is required in Code, post all this stuff in a publication of general circulation so it is the people who are interested in what is going on in their community. They are the ones who have to read the Saturday or Tuesday paper in the legal column. We can't hold their hands.

Mr. McIntosh: If you come back to surrounding area, there isn't a defined line. You could be 1,001 feet if there is a surrounding area. The point is that you have taken the whole circumference of whatever is going on there and if you are a mile away, then it's too bad. I don't know how you define surrounding area or if you even need to define it, what is reasonable? A lot of times that is a standard. What is reasonable? And, if you

have a standard that acts upon reasonableness, then it is subject to interpretation, but that is what you get paid for.

Ms. Feeney Roser: Can I just add something? I know that Mr. Morehead wants to speak. This is going to be quick. One of the things that we keep talking about is, it may affect me. I may be a foot over whatever boundary we decide on. That doesn't mean that if it came to Council we wouldn't listen to what your concerns were because you are not within the boundary. What we are talking about who had standing to bring the suit to the Board of Adjustment, and that was the argument. It is not impairing the neighborhood. You don't have standing to do that only to bring the legal action, but that doesn't mean that if it were to come to Council that Council wouldn't care what a resident thought if they weren't in the "neighborhood."

Mr. Morehead: District 1. I was going to ask a question earlier but the conversation went such that I didn't come to the microphone. One of the things that became very clear in the environmental study that the City paid for was that the potential impairment wasn't necessarily based on adjacency in that the potential pollution would stay airborne for quite some distance and then drop further. So, I would ask that that concept be included in that some things are very regional and based on local affects dissipate in a different manner than we may be expecting.

Mr. Silverman: Mike, do you have enough to work with?

Mr. Fortner: I don't really know where to go with it.

Ms. Feeney Roser: I think, though, that we can work with what has been talked about because when we come back we are going to come back for another conversation at this table, public comment and then to Council as well, unless of course somebody has something different to tell us.

Mr. Silverman: I concur with my colleagues in that, do we really need to define neighborhood?

Mr. Cronin: I think it is sufficient the way it is.

Mr. Silverman: Do we need to remove the word neighborhood?

Mr. Hurd: I think what we are getting to is that when they are talking about in the sense of accessory uses or special use permits of those things affecting the neighborhood, that is where the word neighborhood should come out and be replaced with, if the consensus is there, surrounding area. So, maybe we need a breakdown also in the Zoning Code about when is it using neighborhood in the sense of our common definition of neighborhood as a collection of a self-identified community and when are we using neighborhood in the sense of the areas being affected by the use taking place because I think those are two different things. If my lawn is tall that doesn't affect people 1,000 feet away. It affects my neighbors.

Mr. Fortner: It is in the original report. Most of the time it is used in a generic sense. In this one instance it has common impact. It can impact neighborhood. We are trying to create a legal framework of how we judge how far something is affected. The surrounding area is one way to go. It is probably the only place where we would have to take out neighborhood. The other places I think we could keep it in.

Mr. Hurd: When I was reading this, it wasn't entirely clear that I was suddenly in a section dealing with non-residential zones that have uses affecting the outside area. They are all kind of lumped together. So, if there is a way to pull it out and say, this zone is about this piece.

Mr. Gifford: District 3: One last comment. I was talking with a gentleman in the audience and I was thinking, what if you are somebody who lives up in District 6 and something is happening downtown and you are concerned about that, could you visit downtown? Would you want to have your comments heard? What if neighborhood, just

as a thought, is the City? Everyone seems to love the City of Newark. What about if you are still in the City, can't you have standing because you pay taxes to the City and you care about the City and care about downtown?

Mr. Silverman: As Maureen said, there is no effort to exclude a resident from the City coming before either this Commission or Council.

Mr. Gifford: Right, but I was just thinking of the standing piece that Maureen was talking about.

Mr. Silverman: Lawyers spend a whole lifetime doing that.

Mr. Gifford: So, I was just thinking is the neighborhood really the City of Newark?

Mr. Silverman: Hearing no further discussion, let's close out the open discussion we have been having on neighborhood, and thank you very much for the comments and the nods that we saw. We will stand in recess until the call of the Chair.

3. REVIEW AND CONSIDERATION OF THE REZONING OF 60 N. COLLEGE AVENUE FROM BC TO BB, AND THE MAJOR SUBDIVISION AND SPECIAL USE PERMIT TO DEMOLISH THE EXISTING BUILDING AT THE SITE AND BUILD A FOUR STORY, MIXED USE BUILDING WITH 5,500 SQ. FT. OF COMMERCIAL SPACE AND PARKING ON THE FIRST FLOOR, AND 36 APARTMENTS ON THE THREE FLOORS ABOVE.

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

"On August 14, 2014, the Planning and Development Department received an application from Lang Development Group LLC on behalf of College Realty Group LLC for rezoning, major subdivision and a special use permit for the 1.074+/- acre property located at 60 N. College Avenue. The applicants are requesting approval to rezone the parcel from BC (general business) to BB (central business district), and major subdivision approval to demolish the existing building at the site and build a four story, mixed use building with 5,500 sq. ft. of commercial space and parking on the first floor, and 36 two and three bedroom apartments on the three floors above. The required special use permit for apartments in the BB zone is also sought for this development, proposed to be known as North College Crossing.

The Planning and Development Department report on North College Crossing follows:

Property Description and Related Data

1. Location:

The property is located on the east side of N. College Avenue between the CSX Railroad Line and the rear yards of properties fronting on Cleveland Avenue.

2. Size:

The parcel is 1.074 +/- acres; .026 of which is dedicated right-of-way, leaving 1.048 acres of developable land.

3. Existing Land Use:

The site presently contains a commercial building with a restaurant on the basement floor and businesses on the ground and second floors. The building is served by an asphalt parking lot and associated access ways.

4. Physical Condition of the Site:

The property contains a 20,000 +/- sq. ft. masonry and frame commercial building which is two stories in height but has a full usable basement for three full floors of commercial space. It is a relatively flat property with a slight slope from southwest to northeast. The site is mostly paved with a landscaped area in front

and along the north side, and also contains a patio seating area for the basement floor restaurant.

Regarding soils, according to the subdivision plan and the US Department of Agriculture's Natural Resources Conservation Service, the site consists of ErB (Elinsboro-Urban Land Complex) and UzC (Udorthents) soils, with 0 to 10% slopes. The Conservation Service indicates that these soils have only moderate limitations for the development proposed.

5. Planning and Zoning:

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

- A. Auction
- B. Automobile, truck, rentals, retail, and wholesale sales with special requirements
- C. Crating service
- D. Frozen food locker
- E. Ice Manufacture
- F. Sign painting and manufacture
- G. Warehousing with special requirements
- H. Wholesale sales with special requirements
- I. Photo developing and finishing
- J. Veterinary hospital
- K. Cleaning and dyeing plants
- L. Commercial laundries/dry cleaners
- M. Laundromats
- N. Outdoor commercial recreational facilities with special requirements
- O. Swimming club, private or commercial
- P. Social club, fraternal, social service, union and civic organizations, except on ground floor locations
- Q. Studio for artists, designers, photographers, musicians, and sculptors
- R. Offices for professional services and administrative activities
- S. Personal service establishments
- T. Finance institutions, banks, loan companies
- U. Retail and specialty stores
- V. Repair and servicing, indoor and off-site, of any article for sale, which is permitted in this district
- W. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district
- X. Accessory uses and accessory buildings
- Y. Restaurants, taverns, bakery-restaurants, and delicatessens
- Z. Public parking garage and parking lot
 - a. Parking off-street
 - b. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; station and depots
 - c. Street, right-of-way
 - d. Utility transmission and distribution lines
 - e. Water tower, water reservoir, water storage tank, pumping station, and sewer
 - f. Retail food stores up to 5,000 square feet in maximum floor area, limited to bakeries confectionery, candy, gourmet shops, small convenience grocery, and meat sales facilities. Goods produced on the premises shall be sold only on the premises.

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

- A. Automobile repair and/or service station, paint and/or body shop with special requirements
- B. Self-service car wash establishment with special requirements
- C. Automobile/motor vehicle repair with special requirements
- D. Automatic car wash establishment with special requirements
- E. Used car lots

- F. Retail food stores
- G. Fast-food and cafeteria style restaurants with special requirements
- H. Drive-in restaurants, with special requirements
- I. Drive-in and curb service for other than eating establishments.
- J. Substation, electric, gas, and telephone central office with special requirements
- K. Tower, broadcasting and telecommunications with special requirements
- L. Police and fire stations
- M. Library, museum and art gallery
- N. Church, or other place of worship, seminary or convent, parish house, or Sunday school building
- O. Instructional, business or trade schools
- P. Motels and hotels
- Q. Commercial indoor recreation and indoor theaters
- R. Adult bookstore/adult entertainment center with special requirements
- S. Restaurants with alcoholic beverages

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

1. *Minimum lot area.* The minimum lot area is 5,000 square feet; or 3,000 square feet in the case of a row of attached business structures on separate lots.
2. *Maximum lot coverage.* Buildings or other structures may occupy the entire lot, with conditions.
3. *Minimum lot width.* The minimum width of a lot is 50 feet.
4. *Height of buildings.* The height of a building or structure shall not exceed over three stories or 35 feet, with exceptions for hotels/motels.
5. *Setback.* No setback is required.
6. *Rear yards.* Minimum rear yard is 10 feet.
7. *Side yards.* No side yard is required unless adjacent to residential zoning, and then the minimum side yard for that residence district applies.
8. *Parking.* As required in Code Section 32-45.

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

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

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

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and 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.

A summary of area requirements in the BB district is provided below:

Area regulations.

- 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 all structures three stories or 35 feet in height or less. A 20 foot setback shall be required 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 required in Code Section 32-45.

Please note that in terms of area requirements, the North College Cross project meets or can meet all BB zoning area requirements.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for light commercial (local shopping) uses at the site. Light commercial (local shopping) uses are defined as administrative and professional offices, personal services and retail stores, restaurants and similar kinds of neighborhood shopping uses that may be found in limited business, business-residential, or neighborhood shopping districts. Please note that the Comprehensive Development Plan indicates that residential development can be accommodated satisfactorily along with, or adjacent to, light commercial uses areas with appropriate landscaping and site design.

In addition, because of its proximity to downtown and the applicant's request for the BB zoning designation to do mixed use at a site that was previously exclusively commercial, it seems appropriate to include the Comprehensive Development Plan's cautions concerning downtown mixed use redevelopment projects with housing components in that, it is the Comprehensive Plan's ". . . intent is to make it abundantly clear that the City seeks positive impacts from residential uses." And further that ". . . any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of developments; the contribution of the overall project, including proposed apartments, to the quality of downtown's economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. 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 lands to the north and east of the site are zoned RM and contain single family dwellings fronting on Cleveland Avenue. Immediately adjacent to the south is the MI zoned CSX Railroad Line. Beyond the railroad to the south and to the west of the site are UN zoned properties owned by the University of Delaware.

Regarding gross residential density, please note that the North College Crossing rezoning, major subdivision and special use permit plan calls for residential uses at a density of 34.35 dwelling units per acre. By way of comparison with recently approved BB zoned projects, 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
One South Main	37.27
58 E. Main Street	44.28

As noted above, the Commission should weigh this requested density against the overall contribution of the project to the quality of the area’s 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 87 bedrooms proposed for the North College Crossing plan calculate to 83.01 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
One South Main	83.6

Status of Site Design

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

Be that as it may, as you can see from the North College Crossing 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 5,500 sq. ft. of retail space, and 36 two- and three-bedroom apartment units on the second, third and fourth floors. The apartment mix proposed is: 21 two-bedroom units and 15 three-bedroom units for a total of 36 units. Parking is proposed underneath the building on the first floor and in the surrounding surface parking lot. A total of 97 parking spaces are provided, which meets Code for the uses proposed.

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, the site is not located within the boundaries of the Downtown Newark Partnership, however, because of its proximity to downtown and the nature of development, the applicant requested that the proposed architecture be reviewed by the Downtown Newark Partnership's Design Committee. The Committee liked the building and thought that it would fit well into its surroundings, replacing a less attractive building. In particular, the Committee liked the variation in the roof lines/types and the cornice treatments. In addition, the variation of the building materials and color variation, articulation in the facades as well as the balconies were considered positive features. In addition to these standard review criteria comments, the Committee suggested the following:

- All garages should have operating doors which fully close.
- Trash compactors are the preferred choice to handle refuse.
- Awnings or some type of sun shade should be used on south facades where practical.
- Noise attenuating construction techniques and materials should be used on facades exposed to railroad track.
- A green roof should be considered.

Special Use Permit

Please note that the applicant needs a special use permit for the 36 proposed apartments in downtown. Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate the proposed use will not:

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

Fiscal Impact

The Planning and Development Department has evaluated the impact of the North College Crossing project on municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the North College Crossing development plan's fiscal impact; that is, the total annual municipal revenues generated less the cost of municipal services provided. Based on the Model's estimate, we project the annual North College Crossing net revenue to be \$11,940.00.

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 year's estimates because the applicant already owns the property, and therefore, there is no anticipated real estate transfer tax in the first year from the North College Crossing development.

Traffic and Transportation

At the request of the Planning and Development Department, Delaware Department of Transportation (DelDOT) has reviewed the North College Crossing rezoning, major subdivision and special use permit plan. The Department of Transportation indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which is 400 trips per day and 50 peak hour trips. Further, the Department notes that the proposed uses (5,500 sq. ft. of retail space and 36 apartments) should generate less traffic than the existing commercial uses (20,000 +/- square feet) at the site. Having said that, DelDOT provided a series of comments, including the need for the clarification of right-of-way and permanent easements, and suggestions for curbing and sidewalk along N. College Avenue. These changes have been incorporated into the plans. The revised plans were submitted to DelDOT for review and no further comments were provided.

Subdivision Advisory Committee Comments

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed North College Crossing 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. If the building interferes with the City's smart metering system, the developer must pay to remedy the issue.
2. The developer must pay \$16,000 towards transformers, meters and onsite materials. One half or \$8,000 of this fee will be due before the first building permit is issued. The remainder will be due prior to the first C/O. In addition, there will be a \$300 fee for commercial meters. All prices are subject to CPI adjustments.
3. The Developer must install all high voltage conduit and cable to the pad mounted transformer.
4. Meters must be grouped in one location and switch gear must be approved by the Electric Department. Keys must be provided to access the electric meter rooms if meters are inside.

Planning and Development

Code Enforcement Division

1. All buildings shall be designed and constructed in accordance with the current IBC, as amended, in effect at the time of submittal for review. Likewise, the building will be required to meet the IFC and Delaware State Fire Prevention Code (whichever is more restrictive).
2. The building will be required to meet the LEED-like requirements of the City of Newark (25 points).
3. Knox boxes shall be installed in the front of the building.
4. Because of the number of units proposed, an onsite property manager will be required.

Planning

1. Considering all adjacent properties on the north and east sides of the site are zoned RM (multi-family dwellings – garden apartments) with the maximum allowable density of 16 units per acre, and because the proposed development is outside the limits of downtown Newark, the department believes the proposed density (34.28 units per acre) of the development should be significantly reduced.

2. Likewise, the height of the building proposed (4 stories or 50 feet) should be reduced to minimize the impact of the proposed structure on the two story residential units along Cleveland Avenue. Reducing the height of the structure by a floor will also address the concern for density at the site noted above. Specifically, removing the fourth floor will remove 12 units at the site resulting in 24 units, for a density of 22.34 units per acre.
3. Considering the site now has no residential component, and adding any units there will, therefore, dramatically increase site density, the Department recommends that the occupancy for each unit, regardless of bedroom count, be limited to 4 unrelated individuals. The RM zoned properties adjacent are similarly restricted.
4. Regarding parking, the Department has previously noted that the 97 spaces provided meet Code for the uses proposed. Having said that, double stacked parking is only suitable for residential uses, and should be assigned as such. A parking assignment plan should, therefore, be presented as part of the CIP, should the project be approved.
5. During recent Commission meetings, the proximity of new buildings with residential uses to the CSX Railroad line has been a concern. While it appears that the new building will not be any closer to the tracks and the at-grade crossing than the existing structure, the Commission may wish to discuss this matter with the developer at the meeting.
6. Trash pickup will be private. The dumpster should be fully enclosed and screened from view. Compactors are strongly recommended.
7. 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.
 - The 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.
8. Finally, the Planning and Development Department notes that questions may arise during the Commission's review of this matter regarding the impact of the redevelopment of this site on existing commercial tenants and plans to incorporate their businesses into the redeveloped site.

Public Works

Water

1. Individual meters will be provided for each dwelling unit. The developer will be responsible for the cost of the meters. The City will determine the size of the meters in coordination with the developer.
2. The meters shall be located in one or more centrally located meter room(s) that must be readily accessible to the City of Newark. A locking ball valve will be associated with each meter in a meter bank setup.
3. All fire and domestic water services shall have individual valves located at the edge of the right-of-way.
4. The developer will pay the Sewage Treatment Plant (STP) fees prior to receiving the Certificate of Occupancy (CO) for a unit or building of multiple units.
5. The developer will need to add existing and proposed sewer flows to the cover sheet of the plan. The developer shall investigate the capacity of the sanitary sewer system to determine if sufficient capacity exists to handle the proposed development and provide the report to the City for review and approval prior to City Council review.
6. The developer shall investigate the capacity of the water system to determine if sufficient capacity exists to handle the proposed developer and provide the report to the City for review and approval, before Council review.

Recommendation

Because the project conforms to the land use guidelines of the Comprehensive Development Plan IV, because the proposal meets all applicable Code requirements, and because the rezoning, major subdivision and special use permit plan, with the Subdivision Advisory Committee conditions, will be compatible in terms of scale, design and intensity of recent developments and should not have a negative impact on adjacent and nearby properties, the Planning and Development Department suggests that **the Planning Commission take the following action:**

- A. Recommend that Council approve the rezoning of the 1.074 +/- acre property from the current BC (general business) zoning to BB (central business district) as shown on the attached Planning and Development Department Exhibit A dated November 4, 2014; and,**
- B. Recommend that City Council approve the North College Crossing major subdivision and special use permit plan as shown on the Karins and Associates engineering plans dated August 14, 2014, with revisions through September 24, 2014, with the Subdivision Advisory Committee conditions.”**

That summarizes the report. Of course, I will be happy to try to answer any questions you may have for the department.

Mr. Silverman: Do any Commissioners have questions for the Planning and Development Director? Hearing none, will the applicant come to the microphone?

Mr. Jeff Lang: 29 W. Park Place, Lang Development Group. It is my pleasure to be here this evening. With me this evening is our engineer, John Mascari of Karins and Associates, Chris Locke of Lang Development Group and Todd Breck and his wife. Todd is the present property owner and also the architect of the project. We are excited to be working with Todd on this, given his many years of architectural experience as well as his involvement in the property.

As many of us know, and depending on how long you have been around Newark, this is a property that many of us know as the Down Under property. Many of us have fond or unfond memories based on that. When we actually came to Maureen the first time to talk about the project, we started reminiscing a little bit about our Down Under experiences. As I met with Todd similarly, he thought that it was a great opportunity to continue to possibly redevelop the property but maintain the existing structure and the ambience of the lower level restaurant. I kept saying, Todd, what are you thinking about? How can we redevelop this property and keep this down here? We actually had a design many months ago where we were keeping the majority of the lower level area, taking out part of it, creating a patio down there and building the building around it. As we started thinking about it, walking downstairs to an establishment that you don't want to be walking back up out of later on because of the potential opportunities for bad situations, which could be serious. So, we really started over with a new building.

So, to give you a new framework on how this all worked, Todd and I have known each other for a number of years. I have been aware of his ownership of the site. He has talked to me off and on for a couple of years about the potential redevelopment and what to do with the building. Obviously, there are existing tenants, one of which is here this evening, who we have had continued conversations with, and we would like, obviously, to maintain the businesses in Newark. So, part of our plan is to move our businesses out and move them back into the facility in some form be it not exactly the same form. But, we have had ongoing discussions and we are continuing to have ongoing discussions and, hopefully, the result of this process will be a timeline that we can actually work on to assist in their orderly relocation and then habitation of the facility.

From a site planning perspective, maybe Chris, you can show us the site plan. When we started thinking about the building, obviously the property has varying angles to the road, and what we thought about was straightening that out. We have actually pushed the building back from the road more to give it a better streetscape and making it linear to the road. What we have done now is created a nice landscape area, a nice patio

area outside directly in front the building instead of on the side of the building, which presently exists. We are also very cognizant of the large Sycamore tree, which I like a lot and I think Todd shared that thought and even though the one rendering of the new building does not show the Sycamore tree, we fully intend to keep that.

Ms. Feeney Roser: They removed the tree from the elevation to keep me happy so I could see that side of the building.

Mr. Lang: It was deleted from one of the elevations so that you could actually see what that side of the building would look like, but we plan on keeping that tree and we think that that tree is a very important cosmetic piece of the puzzle because it does buffer the building a little bit from you when you are walking down the street. That did drive a lot of the site design, and as we started working with John and Tim from his office, how do we maintain circular flow around the building, fire lane access, and that kind of drove us to the ultimate design of the building which ended up being kind of an L-shaped building. The site is an acre, so from a site density it is very similar to the N. Chapel site that we looked at last meeting. That was .3 of an acre, a little bit more. It had 12 units proposed. We are three times the size and we have 36 units proposed. Our site density numbers are almost exactly the same as what was proposed at Chapel Street. I think 34 vs. 33 and 83 and 84 are the bedroom numbers. So, from a design perspective and a density perspective it is exactly the same. It just happens to be a little bit differently configured. We could have modified the design here, made a larger footprint and still accomplished the same exact density numbers, which we did at N. Chapel. Because of that we ended up with a four story building. We thought the four story fit better in context here because there are really no adjacent buildings. On N. Chapel as we have discussed at our meeting, there were adjacent buildings that are 15 ft. away. Here we are talking about the closest building is a two story relatively older house probably 75 to 80 feet away that fronts on Cleveland Avenue. The other adjacent structures are Old College that is across the railroad tracks probably 75 or 80 feet that direction and Willard Hall coming down N. College from Main Street. So, you are really abutting a lot of larger buildings as you come off of Campus. This building slopes away. It will be buffered a little bit from one side by the big tree and, obviously, the distance from the side of the building to the adjacent houses is a relatively large area. So, we didn't feel that the four story nature of the structure was going to be atypical to what eventually could be on the other side of the street if the University ever develops their parcel and how does this link really to North Campus. This has become an increasingly larger corridor for student traffic as the University continues to invest in their North Campus, and, therefore, we thought that if there was a logical place to do a mixed use project this really is screaming for some form of nice orderly redevelopment from what it is presently shown as.

When Todd was starting to think about it, he started thinking should I reinvest in the existing structure or should I start thinking about a redevelopment? He, obviously, has a tremendous amount of expertise in the architectural area, and we think he has designed a very, very nice building. It has individual garages and, as Maureen pointed out, they are designed for two spaces for every residential unit. There are enough garage space for every unit. Every unit has its own two car garage in almost all cases, but that is actually a good selling point from our perspective. We think that the long-term utilization in this facility, and as you see what it looks like, it could end up being a condo building. It kind of has a lot of what I see as a DC condo building. It kind of has that urban Washington, DC kind of look with individual garages. Every unit would have its own garage for storage, one or two cars and the peripheral spaces on the outside of the lot are dedicated more for the commercial uses.

The building does have a number of balconies. We think that is a nice feature. We think that is a good long-term feature. It is a feature that we have used at One South Main (one of our recent projects) and even at North Chapel we have a number of balconies. We feel that outside space is a very attractive space for the long-term viability of the building. Obviously, if you build a building with no balconies, it is kind of dedicated more for one use, and obviously, we are thinking about the long-term reuse. We do have the floor-to-floor ratio here. 14 feet on the first floor gives you a lot of flexibility with your retail tenants – restaurants and any other type of uses on the first floor – and your 12 foot floor-to-floor on your upper floors allows you to have the

mechanical areas and also the high ceilings that are necessitated in a lot of the residential uses now to be to be competitive, not only for today but long-term.

We used a number of different materials. We have brick, we have some stucco and we have incorporated a lot of different features, or Todd has, in his window details and his trim areas, and we think it is a nice, very attractive building. Tying back into the front, the streetscape we think is really improved. We have buffered the street with a lot of landscaping and then the patio area. So, the building is about seven or eight feet further back from the closest point that it is now. So, as you walk down the street even though the building structure will be a little bit taller you won't be dwarfed by a building that overwhelms you as you are walking down the street.

Obviously, we are here for any comments and questions and we appreciate the time.

Mr. Silverman: The only substantive question I have on this site is the 24" reinforced concrete pipe that seems to intercept drainage from the former Hollingsworth lot at the University which is many acres. I would guess 6 to 8 acres of asphalt. It comes across the street and looks like it also intercepts two public inverts in N. College Avenue and then goes down across your property. Do you have any idea of the origin of that pipe? Where I am headed with this is there is no utility easement across. It would be a question in my mind whether that is there at the convenience of the City and they are to maintain it. It will eventually wear out in time. The University with the way they deal in a minimal kind of aspect with surface runoff has a tremendous discharge coming across there, even though they are water gardens and they're small retention basins and if there were to be a problem, a spill of some kind in their lot, who would be responsible for cleaning out the pipe and cleaning up on your property? I would think you would want to identify that as somebody else's problem. I don't want it to suddenly become the City's problem because somebody says because it takes the storm sewer rates from the City controlled street, it must be a City storm sewer.

Mr. Breck: Todd Breck, owner and the architect and structural engineer. The property I have maintained. There were some issues with it a couple of years ago and I repaired it. When we redid the parking a year ago, we redid the catch basin top. If I had known you would have been interested, I would have come and asked you to do it yourself. I maintain the property.

Mr. Silverman: Can there be a note on the plan that the storm sewer system across the property is privately maintained?

Mr. Breck: Sure.

Mr. Silverman: We know the status of it but 35 years out when something happens everybody is going to be scratching their head and saying who owns it.

Mr. Lang: Similarly enough, this happened with Chinese Alley, remember, when we worked on 132, but at the time it was dedicated to us as part of the redevelopment of that site and we then worked with the City in an orderly manner to reposition it so that it discharged correctly from Main Street to Delaware Avenue. So, we do have a maintenance agreement with the City to maintain a portion of that pipe. I don't know if we have to maintain the entire pipe. So, what we could do is have a similar arrangement on this with regards to this pipe that would be memorialized in the subdivision agreement or some form.

Mr. Silverman: It keeps it clean for future generations.

Mr. Lang: I agree with you. That a good point. When we do our entrance plan approval, I think what we are going to do is eliminate the inlet that is in our entrance and we are going to modify the access because what we are going to do is push it farther down so that you don't have three inlets all within X amount of feet. So, DelDOT will ask us to do that when we do our entrance plan approval, which happens quickly and sometimes not so quickly. We did have a nice meeting out there to discuss part of that pipe. We haven't

actually had a conversation with the University, but we have advised them and they are aware of what we are doing here. I sent the plans and the site design to the Facilities Department. Andy Lubin has reviewed it. He has no concerns presently over the design of the project and, obviously, we will continue to discuss with them the stormwater discharge issue as it evolves through the Public Works Department in the normal process.

Mr. Silverman: Are there any questions from the Commission?

Mr. Hurd: I really do appreciate the resiting of the building and its relationship to the street and I think you have done a good job with sort of pulling it back and making that a better thing. In the application, you talked about it being a 20,000 sq. ft. building. Is that total across all three floors?

Mr. Lang: It is hard to measure that building exactly, but it is about 20,000 feet. There is easily 5,000 or 6,000 feet downstairs. So, we ball parked it at 20,000 feet.

Mr. Hurd: Because it seems that if we are going from 20,000 sq. ft. of mixed commercial to 5,500 sq. ft. several people, it seems, are not coming back.

Mr. Lang: Obviously we have a variety of tenant needs but the restaurant user doesn't need as much space as he has on the lower level, and he can better utilize a smaller space on the first floor. Obviously, when you rebuild the building, the lower level space is not as attractive and is, obviously, less expensive. So, when he reevaluates his need on the first floor, he ends up being probably 2/3 the size he used to be. The other larger tenant that is in the building that isn't here this evening (Unique Impressions) has a small retail facility and then also has a pseudo manufacturing facility. I'm not sure if it is an ancillary use. But, she is going to move her production area off-site and intends to possibly reuse a portion of the retail space. We are meeting with our hair salon user to possibly rehabilitate the portion of the site.

Mr. Hurd: What is the new building's square footage?

Mr. Lang: I think the footprint is about 13,000 feet.

Mr. Hurd: 13,000 feet times the four stories.

Mr. Lang: The first floor has about 8,000 feet of parking. The building gets about 2 ½ times the size of the building is now. Kind of like on N. Chapel. As a comparison, when we did the project before it was a 6,000 foot footprint and the building went to about an 8,000 foot footprint and the building ended up being 24,000 feet from 6,000 feet. So, this building could have been a 16,000 foot footprint and we wouldn't have had a drive lane around the whole building. We would have probably eliminated the tree. We thought the tree was important. We met with the Building Department and the Fire Department and thought the circular access was nice in keeping the building farther away from the railroad tracks, we thought was a logical reuse also. The building is also now a little bit farther away from the railroad tracks.

Mr. Hurd: So, by essentially keeping the same three main commercial tenants you are not expecting a change in the traffic flow in and out.

Mr. Lang: No, we will actually decrease the traffic flow probably.

Mr. Hurd: That will be good because I have some experience with that building and trying to get out of there during the class change is almost impossible because you are so close to the light. I used to time it for when the train came by.

Mr. Lang: If we actually redesigned the building and was here with a 20,000 ft. commercial building, which we in fact could have done without even going through the approval process because we would have been able rebuild the same building, but we would have actually created more traffic issues with the same size building in a commercial format. The residential format as noted by DelDOT and as we all know, we

don't have as much traffic. So, actually by adding that component, even though it is a larger component square footage-wise, it creates less traffic.

Mr. Cronin: I just want to clarify my understanding here. It looks like you are proposing a four story building. The recommendation from the Planning Department, if I am reading it correctly, was to include Subdivision Advisory Committee conditions, which takes it down to a three-story building and change the density and things like that. Is this what we are talking about here or are we talking about what we see here at four stories.

Mr. Lang: What we are proposing to construct is the building that's on the plans that have been submitted.

Mr. Cronin: So, you are still proposing that and we are still dealing with the recommendation that Maureen has in her report.

Ms. Feeney Roser: That is for you to consider.

Mr. Cronin: I have a certain amount of appreciation and respect for the Subdivision Advisory Committee's recommendations, particularly those from the Planning and Development Department, and I guess I am curious as to whether or not the applicant will be content with those recommendations.

Mr. Lang: I think that we are much happier with the project that has been proposed on our end of it and we feel that even though we respect the Planning and Development Department Director's opinion, we feel that it doesn't necessitate that dramatic of a change in the project. We also feel that the limitation per the units on the occupancy should be more in line with what we discussed at length in our most recent meeting on N. Chapel Street where we would limit the density to 4 people in a 2-bedroom and 5 people in a 3-bedroom and we think that has some logical correlation to ultimate potential use. So, we would respectfully request to be reviewed as a four story building with the proposed site layout. Now, if we discussed the three story building, we could modify the footprint of the building as I discussed a little bit with Will and we could make the building footprint larger and accommodate a similar amount of unit type whether it is 30 or 32 or 36, it would necessitate a redesign of the site, possibly a loss of the tree, but that is an opportunity to discuss if there is a concern over the height. We don't feel that the height is that dramatic of a change for the adjoining areas, and we really think the neighborhood of this site as being the parking lot across the street, Willard Hall and Old College more so than the dynamic that exists on Cleveland Avenue which is ever changing. And, many of those two story houses that were two story houses will end up being three story or four story townhouses as we have seen some of those other structures on that street which are much higher than the present height that they exhibit. I don't think that that should be the standard for our project, the old 1940 or 1950s house on Cleveland Avenue which won't be there probably in the next five to ten years. So, where do we want the direction of this street to go, and that is what we are proposing, the direction.

Mr. Cronin: Refresh my memory, what is the height and stories of the buildings across from Herman's that are the new construction there? Are they three stories or four stories?

Ms. Feeney Roser: The owner is here. How high is your building, Hal?

Mr. Hal Prettyman: They are three stories. (Inaudible – Mr. Prettyman was not at the microphone).

Mr. Lang: A lot depends on where you measure from, too. Depending on if there is a chimney or not. Is the chimney integral to the height of the building? Where is really the flat roof? Where is the real measuring point? We tend to have a couple of peaks because we have a flat area behind because we have mechanical up there. Some of the recent developments have the mechanical hanging on the back of the building, which I don't think is a good look. I think it is better to have a flat roof and have the mechanical hidden, which makes more sense to us from a design perspective.

Mr. Silverman: Are there any other questions from the Commissioners? Are there any questions from the public? There being none, let's move on. Are we ready to discuss and take a vote?

Mr. Hurd: My concern, I think, goes to the Comp Plan's definitions and the area of being local shopping and a transitional zone. I struggle with the idea of extending the downtown core up College across the railroad tracks and into the Cleveland Avenue area. While I agreed with it on Chapel, I think that serving as a bridge to the Newark Shopping Center and such it made sense. I think here I'm not feeling it the same way. So, for me to support the rezoning because I understand about the need to bring in the residential component, I would really need to see it as a three story. I think bringing down is more in line with the neighborhood and saying we are in a lower density, lower height, lower area. Unless Cleveland Avenue significantly changes there is not much else in this area that would go BB and be a neighbor to you. That is where I am leaning sort of looking at the building in the area and the Comp Plan's recommendations as it stands for the area.

Mr. Lang: In response to that, obviously the University is a big player in this puzzle because they own the entire other side of the street and we have had kind of off the record conversations about what they would like to see happen in that corridor. And, part of our motivation in designing a building is to make it more pedestrian friendly. Obviously, size and scale are in everyone's own particular opinion. We ran it by them. Obviously they are a major player in that area over there and they felt comfortable with the size. Is it more of the size from the street? If you look at the way the recent Klondike Kate's building was built, three stories from the front, four stories from the back, is that a compromise where we lose the front of the building and make it three stories or is it a redesign of the footprint to make the building a little bit more a mass of a footprint and knock the building down to three stories or is it just chop the floor off because, really, when you look at the building you are going to look at the front. You do look at one of the sides potentially from Cleveland Avenue as you are pulling up onto the street, but you really can't see it from Cleveland Avenue, depending what happens with those houses. They have the railroad tracks on the other side, which you really aren't going to see that. So, the building became more of a triangle instead of an L. We would be able to have a three story building there and fill in that little L. We didn't fill that L in because then the density would have gotten too high, if it was a four story building. A three story building we would probably 30 units, 15 on a floor, if we filled that L in, and probably no one would even know we had that L filled in because no one would ever see that L.

Mr. Hurd: I am less concerned with the density numbers but more about the scale. While I would say that my first instinct was take a floor out because that is the simplest and just drop the whole thing down, I would probably say that my general reaction is to the four stories that is along College. If that came down so that when you come over the hill it is not looming as much. Now you are a gateway to this neighborhood. It is sort of saying welcome to the three stories neighborhood. You just left the four story neighborhood and we are in the three story neighborhood now. I think you are probably right that the long leg could be four stories because you are going to look over the roofs of what could potentially be three story buildings so that might mitigate my concerns.

Mr. Lang: The other thing is the majority of that back area is parking so it doesn't need 14 feet floor to floor. Now, the reuse of the building is better if you build it higher floor to floor, but you could actually make that back area four stories and reduce the height by having a step in the building, meaning the back would be four feet less than the front. So, the front would be 14, 12, 12 would be 38 feet and the back would be 10, 12, 12, 12 would be 46 feet but you really wouldn't notice it. It is only an eight foot differential, it is not a 12 foot differential. From an architectural perspective if you manage that transition well, you could, obviously make it a softer building. We will have to rely on Todd's expertise. I think the tree, even though we don't have a picture of the tree there other than the original elevation, the tree is probably 90 feet tall. The tree would buffer the building immensely from the Main Street side.

Mr. Hurd: Visually at first, but you are still going to, certainly, walk next to the building at some point. I think if you can take the front down a story and then kind of squeeze down the back L, because you are right, garages don't need to be 14 feet.

Mr. Lang: Actually it is awkward being 14 feet.

Mr. Hurd: Because what do you do with all that? How do you hang the garage doors? It's things like that. That might help bring the overall scale down and still keep your density, still keep your units.

Mr. Lang: I'm sure we would lose probably four units so we would be down to 32 units, which would reduce the density and reduce the bedroom count and a number of other items that were of discussion.

Ms. Feeney Roser: I don't want to take away from this conversation because I know you need to finish it, but when we look at the occupancy, what Mr. Lang has suggested is only 15 people difference from what I was suggesting. So, if the Commission wanted to go with that, my concern is that there is some type of occupancy limit.

Mr. Hurd: I think I made a note that it seemed to make sense to use that same calculation that we have come up with before. How many two bedroom units do you foresee?

Mr. Lang: Originally, it is proposed as 21 two-bedrooms and 15 three-bedrooms. Maureen is right, the three-bedrooms would have one more so it would be 15 people maximum.

Ms. Feeney Roser: My concern is that BB doesn't give you a limit on the number of unrelated individuals who can reside per unit like we have in single family homes zones. So, I think it is important that we talk about density and get that out there, but for 15 people more I don't think the department is going to be concerned about that. We can talk about that, but let's go back to the other discussion. You are talking about taking off part of the fourth floor in the front only.

Mr. Lang: It would be the whole front. Part of the L wouldn't be there. The first 55 feet of the front elevation wouldn't be here.

Mr. Silverman: And, there would be some kind of fascia treatment.

Mr. Lang: Yes, you would have a fascia detail, so when you stood on the street you wouldn't even notice the back part of the building from the street. You would have to standing in the parking lot across the way to notice that it actually stepped up.

Mr. Hurd: Yes, bringing that front down a story is the easy thing and then squeezing the back starts to bring the overall mass so it doesn't pop up otherwise it would pop up 12 feet.

Mr. Silverman: What is the word I can use in pulling this motion together? A bi-level?

Mr. Cronin: No. A varied level.

Mr. Silverman: Maureen help me here. Do you or do you not want the occupancy restriction?

Ms. Feeney Roser: I want you to put an occupancy restriction on it. I am not wedded to the 4 per unit. If you wanted to do 4 for two-bedrooms and 5 for three-bedrooms, I think the Department is satisfied with that.

Mr. Silverman: Okay, so we will condition your recommendation on an occupancy limit and a varied level building height, the architecture to be worked out through the process.

Ms. Feeney Roser: I think you are going to have to say that that occupancy limit is based on two and three bedroom units as opposed to a total aggregate at least at this point

because we don't know if you are going to lose a unit or two whether that would be a two or a three bedroom. So, I don't want you to give them an aggregate total.

Mr. Silverman: Okay, and we are talking about 4 people in a two-bedroom and 5 people in a three-bedroom. There has been a call for the question.

Mr. Cronin: Mr. Chairman, one point of order. The Exhibit A, the copy I have before me is dated November 2nd whereas the recommendation has November 4th and if we are going to make this official maybe we ought to have those dates concur.

Mr. Silverman: Good point.

Ms. Feeney Roser: You say it says . . .

Mr. Cronin: My copy says November 2nd on Exhibit A.

Ms. Feeney Roser: Yes. Sorry.

Mr. Silverman: What do we need to change in the recommendation?

Ms. Feeney Roser: When you make the recommendation, instead of referring to November 4th, say November 2nd. It says, the Planning and Development Department Exhibit A dated November 4th. It should say November 2nd.

Mr. Silverman: Okay. Are there any other word changes in paragraph B?

Ms. Feeney Roser: That would be, with the Subdivision Advisory Commission comments except, like you did for 52, you said, except for the 4 unrelated tenants per apartment occupancy restriction and instead, you come up with what you are proposing.

Mr. Cronin: With some reference to that varied height.

Ms. Feeney Roser: And, also, except that instead of three stories there can be varied height as long as the front part – and how far back are we going to go with that?

Mr. Lang: It would be part of the front out.

Mr. Hurd: You can't really define it.

(Inaudible from audience).

Ms. Feeney Roser: We don't want to come up with a recommendation that you are not going to be able to architecturally hit.

Mr. Silverman: Let's do the easy part first. Let's do paragraph A.

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

A. RECOMMEND THAT COUNCIL APPROVE THE REZONING OF THE 1.074 +/- ACRE PROPERTY FROM THE CURRENT BC (GENERAL BUSINESS) ZONING TO BB (CENTRAL BUSINESS DISTRICT) AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A DATED, NOVEMBER 4, 2014; AND,

VOTE: 4-0

AYE: CRONIN, HURD, MCINTOSH, SILVERMAN

NAY: NONE

ABSENT: HEGEDUS, JOHNSON

MOTION PASSED

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

A. RECOMMEND THAT CITY COUNCIL APPROVE THE NORTH COLLEGE CROSSING MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS EXCEPT FOR THE PLANNING AND DEVELOPMENT DEPARTMENT COMMENTS 1, 2, 3 AND INSTEAD PUT A RESTRICTION ON THE NUMBER OF UNRELATED INDIVIDUALS TO BE 4 PER TWO-BEDROOM AND 5 PER THREE-BEDROOM UNIT; AND THAT THE HEIGHT OF THE FRONT SECTION OF THE BUILDING BE REDUCED TO THREE STORIES AND THE REMAINDER OF THE BUILDING BE FOUR STORIES AS SHOWN ON THE KARINS AND ASSOCIATES ENGINEERING PLANS DATED AUGUST 14, 2014, WITH REVISIONS THROUGH SEPTEMBER 24, 2014.

Mr. Lang: May I have one point of clarification?

Mr. Silverman: Yes.

Mr. Lang: With regard to the ultimate unit count, are we looking for a number or are we going to redesign the building based on losing that we end with what we end up be it 32, 33 whatever in the numbers?

Ms. Feeney Roser: That is the only way it can be.

Mr. Lang: I just wanted to make sure we discussed that so that there is not a number memorialized.

Ms. Feeney Roser: You haven't done the architecturals to be able to tell us.

Mr. Lang: We would lose somewhere between three and four units. So, we will redesign the building.

Mr. Hurd: And keeping the tree, of course.

Mr. Lang: Yes, we are not modifying the site. We want to keep the tree.

Mr. Cronin: And, these will be designed for future conversion to condominiums? That's still part of this?

Mr. Lang: Yes.

VOTE: 4-0

AYE: CRONIN, HURD, MCINTOSH, SILVERMAN

NAY: NONE

ABSENT: HEGEDUS, JOHNSON

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 9:46 p.m.

Respectfully Submitted,

Elizabeth Dowell
Planning Commission Secretary