

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

July 7, 2015

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Willard Hurd
Edgar Johnson
Frank McIntosh
Robert Stozek

Staff Present: Mike Fortner, Development Manager

City Officials Present: Mark Morehead, Councilman, District 1
Robert Gifford, Councilman, District 3
Stu Markham, Councilman, District 6

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

1. THE MINUTES OF THE JUNE 2, 2015 PLANNING COMMISSION MEETING.

Mr. Silverman: Our first order of business is to adopt the minutes of the previous meeting. They have been posted on the internet, the Commissioners have gotten electronic copies. If there are no additions or corrections, the minutes will stand as distributed. Hearing none, the minutes are approved.

Mr. Alan Silverman: This evening we have three considerations on our agenda. They are agenda items 2, 3 and 4. Agenda item 2 is a formal hearing and vote to consider amendments to the Zoning Code with respect to making recommendations on accessory uses and the definition of neighborhood. The second item is a minor subdivision plan with parking waiver and special use permit at 70 E. Main Street formerly known as the Newark Newsstand, for the people familiar with the area. And, item 4 is a review and consideration of a lapsed subdivision and rezoning plan located on S. Chapel Street to be known as Pike Park. Planning and Development Director Maureen Feeney Roser will not be here tonight due to a death in the family.

Item 2 on the agenda deals with accessory uses and the definition of neighborhood. They've been a topic of community and public discussions sparked by the STAR Campus data center activity for the better part of a calendar year. Three workshop-like hearings totaling more than five hours were held this spring to gather information. The recommendations presented tonight by the Planning Department represent the work of the interested public who contacted the Planning Department, hearing participants, including Council and other government officials; reviewed by the City Attorney, the thoughts and recommendations of the Planning Commissioners, and extensive background research performed by the professional Planning Department staff. The staff reviewed information for more than 60 political jurisdictions of all sizes, presented a number of recommendations based on consensus at the hearing. The Department personnel invested more than 100 combined staff hours in researching, servicing the Planning Commission and working with those in the community who contacted the Department. New approaches to defining neighborhood and accessory uses

will be presented tonight. And, in the past, for those who have participated in those reviews, we held them fairly informally. We let people speak as long as there were not other people waiting. We kept things to a reasonable period. Tonight we are going back to our more formal hearing approach with three minute limitations on presentations, hearing from those in favor and those against that you are more familiar with.

Item 3 on the agenda – 70 E. Main Street. The applicant is requesting to expand the use of the property by constructing two additional floors above the existing commercial use. That expansion will consist of four residential apartment units adding two stories in the building. In addition, they are requesting a special use permit for the residential uses and a waiver from all parking requirements.

Item 4, our last item of discussion, to be known as Pike Park. The applicant is seeking a rezoning from RM and RD to RA (high rise) and the conveyance of a parcel on Benny Street to the subject property. There are major revisions to the plans that were taken into consideration by this group earlier and also, a Board of Adjustment action. Their proposal is to construct a four story 16-unit apartment building and five three-story townhouses.

That is my overview of what we are going to be doing tonight. I would like to call on Michael to take us into Item 2 on our agenda, which deals with the accessory uses and buildings and neighborhood definition recommendations.

2. CONSIDERATION OF AMENDMENTS TO THE ZONING CODE REGARDING ACCESSORY USES AND THE DEFINITION OF NEIGHBORHOOD.

[Mr. Fortner referred to a PowerPoint presentation brought to the Planning Commission for his presentation].

At our last Planning Commission meeting, we reviewed this definition right here for accessory uses and accessory buildings. We had long discussions and heard from the public on this proposed change, which created six definitions where you had the main definition, accessory building, accessory use, and two subdivisions under, accessory building, no impact, accessory building, with impact, accessory use, no impact and accessory use with impact. One comment was to strike the sentence “All such accessory uses shall not generate conditions detrimental to areas outside the property line.”

[Secretary’s Note: There was technical difficulties and the PowerPoint presentation was not available during the discussion].

So, we struck that line from the sentence: “All such accessory buildings shall not generate conditions detrimental to outside the areas of the property line.” That is covered in Section 32-79 Special Use Permit. So, it is for no impact accessory uses. It is going to be in section b so they refer to that.

The second issue we discussed was “customarily incidental, and customary, incidental. The City Solicitor, Bruce Herron, reviewed this. He basically determined through a case, McKenley vs. Kent County, at the Board of Adjustments that they both are essentially the same. The focus is whether the purpose is common, habitually and long practice has been established as a reasonable associated with the primary use. Mr. Herron states that the customarily makes better grammatical sense since as a qualifier to the word “incidental” and changing the customary as a stand-alone separate third requirement serves no purpose and can create unnecessary confusion. Therefore, the term “customarily incidental” is used in the proposed definition of accessory use.

The third change we made to it is accessory buildings. We created the term “accessory building or structure, no impact” and “accessory building or structure with impact.” So, we added the term “structure” to building to clarify that it is both a building and a structure.

There was concern about the word “detectable” whether it was specific enough and what it really meant. So, based on a suggestion by Dr. John Morgan, we added some clarifiers to that. So, the word detectable in the definition, accessory building, no impact, we added the words above, normal, local, background, levels. Then we also added, additionally, to backup generation. We put in backup power generation used only during emergencies or maintenance conditions in accordance with the manufacturing specifications.

I am reading for the record. We have:

Accessory building or structure: “A detached or subordinate building on the same property as the principal building, the use of which is incidental and subordinate to that of the principal building.”

Accessory building or structure, no impact: “An accessory building whose use generates no noise, smoke, dust, odor, or pollution above normal local background levels detectable outside the property line. A no impact accessory building shall not be used for commercial purposes, but may be used for a professional office.”

Accessory building or structure, with impact: “An accessory building that does not meet the definition or requirements of an “accessory, no impact.”

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, except for parking spaces as required in Article XIV of this chapter.”

Accessory use, no impact: “An accessory use that generates no noise, smoke, dust, odor, or pollution above normal local background levels detectable outside the property line. Backup power generators used only during emergency or maintenance conditions in accordance with the manufacturer’s specifications, residential grills and fireplaces shall be considered no impact accessory uses.”

Accessory use, with impact: “An accessory use that does not meet the definition or requirements of an “accessory use, no impact.”

As we go on to the recommendation, we essentially, divided them into two areas. The Zoning Code is organized by Section A, which is your by-right uses and Section B, your conditional uses for a special use permit. So, in Section A, we added accessory use and accessory buildings – no impact – and we kept the same other regulatory language that was associated with that zoning district. And the second part of part B, we added the same language except instead of “no impact” we used accessory use or accessory building with impact. And, that theme is carried out through each of the zoning classification districts.

For neighborhood, we decided to keep the current definition of neighborhood which is in the Webster’s Unabridged Dictionary. We reviewed and decided that wasn’t what we wanted. Instead, we’ve created a definition for surrounding areas. Upon review, we are recommending 300 feet surrounding area which is surrounding 300 feet of the parcel and then we had a series of recommendations that we removed neighborhood from certain parts of the Zoning Code and we insert surrounding area where it is referring specifically to an impact to an area. We removed the word “neighborhood” and put surrounding areas.

That is my presentation and I will open it up for comments.

Mr. Silverman: Dr. Morgan, you put in a slip. Do you have any comments on this particular ordinance?

Dr. John Morgan: District 1. I just want to say that I really appreciate all the hard work the Planning Department and Commissioners put into this and I hope you are ready to move forward tonight.

Mr. Silverman: Is there anyone else that would wish to speak or comment?

Mr. Jim McKelvey: Winslow Road. I would also like to express appreciation for the work that has been done by the professional group, staff and this group as well, hearing, discussing and sorting out complex issues. As a member of the Board of Adjustment, I will speak in favor of these more clear and useful definitions. It is not easy to come by in legal documents sometimes. For us on the Board of Adjustment, to have solid definitions to work with, makes our work so much easier. I look forward to this being passed.

Mr. Silverman: I am getting a time out. The gods of technology are not with us tonight. Does anyone else have any comments? Do any of the Commissioners have any comments?

Mr. Willard Hurd: I don't know if it is a grammatical or a legal type thing.

Mr. Silverman: What page are you referring to?

Mr. Hurd: I am referring to the definition of accessory building or structure no impact and accessory use no impact on page 8. To my eye, it reads better if we say whose use generates no noise, smoke, dust, odor, or pollution detectable above normal local background levels outside of the property line. And, I think after our conversation last month that was how I was seeing it, to say we are modifying "detectable" not putting detectable sort of down the road in the sentence, but I don't know if there is a legal as a reason that is making it go in that position.

Mr. Fortner: I didn't do it for legal reasons.

Mr. Silverman: And, I am seeing a shaking of the head no from the City Attorney so, there is no reason that that wording has to be in there from a legal point of view.

Mr. Hurd: That was just my suggestion to shift the word "detectable" to follow pollution in both definitions.

Mr. Silverman: We've added the word detectable pollution above normal local background.

Mr. Stozek: When I read that, I think it is better to leave it the way it is because if you say detectable above local background conditions, it is not saying where it is detectable. It could be next to the building rather than outside the property line. The way it is written, I think, infers you detect it outside the property line.

Mr. Silverman: That was the intention.

Mr. Cronin: I agree with Mr. Stozek on that point. I have one other suggestion, which I think is a grammatical one more than anything else. Going down from the bottom, the second section from the bottom, the second line down, ". . . may create a nuisance or be dangerous to the public health, safety, welfare, or effect the quality of life in the surrounding area . . ." I think I would rather see it affect vs. effect. The verb vs. the noun, I think, was intended to be there.

Mr. Fortner: I don't know if I copied it wrong. Usually, I get it right from the Code.

Mr. Cronin: I think the Code had it wrong. I suspect it does because the same thing is present in earlier history of the particular thing. While we are making the change, we can recommend the change to affect vs. effect.

Mr. Silverman: It looks like there is a consensus of the commissioners up and down the table. We will change the work effect to affect.

Mr. McIntosh: Are you suggesting we make the first change?

Mr. Silverman: There was no support for the first one. So, the only change so far is the word change of effect to affect. There is still another bite at the apple if we approve this as recommended for the Council hearing.

Mr. Hurd: There are two more mentions later where it has used affect. So, that lends some support to that.

Mr. Fortner: All City Codes are going through codification, so maybe some of that will be picked up if we used it wrong.

Mr. Silverman: I believe we have met our responsibility by at least raising the issue. Are there other questions? The Chair entertains a motion to adopt this proposal dealing with definition of accessory use and neighborhood in the report of July 7, 2015 as presented by the Planning and Development Department for the City of Newark with the change of effect to affect.

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

THAT CITY COUNCIL AMEND THE CODE IN THE FOLLOWING WAYS:

Accessory Use

A. Delete Zoning Code Section 32-4(a)(1) and 32-4(a)(2) - Definitions, which read as follows:

- (1) *Accessory Buildings*: A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot
- (2) *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.

And replace them with new Sections 32-4(a)(1) and 32-4(a)(2) as follows:

32-4(a)(1) Accessory building or structure: “A detached or subordinate building on the same property as the principal building, the use of which is incidental and subordinate to that of the principal building.

32-4(a)(1) a. Accessory building or structure, no impact: “An accessory building whose use generates no noise, smoke, dust, odor, or pollution above normal local background levels detectable outside of the property line. A no impact accessory building shall not be used for commercial purposes, but may be used for a professional office.

32-4(a)(1) b. Accessory building or structure, with impact: “An accessory building that does not meet the definition or requirements of an “accessory building, no impact.”

32-4(a)(2) 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, except for parking spaces as required in Article XIV of this chapter.

32-4(a)(2) a. Accessory use, no impact: “An accessory use that generates no noise, smoke, dust, odor, or pollution above normal local background levels detectable outside the property line. Backup power generators used only during emergency or maintenance conditions in accordance with the manufacturer’s specifications, residential grills and fireplaces shall be considered no impact accessory uses.

32-4(a)(2)b. Accessory use, with impact: “An accessory use that does not meet the definition or requirements of an “accessory use, no impact.”

B. Delete Section 32-9(a)(13) – RH, RT and RS and Section 32-17(a)(19) - BN which read as follows:

“Other accessory uses and accessory buildings, excluding semitrailers and similar vehicles for storage of property.”

And replace both with the following:

"Accessory buildings or structures, no impact, and accessory uses, no impact, excluding semitrailers and similar vehicles for storage of property."

Delete Sections 32-10(a)(3) - RD, 32-11(a)(9) - RM, 32-12(a)(9) - RA, 32-13(a)(4) - RR, 32-13.1(a)(4) - AC, 32-16(a)(10) - BL and 32-16.1(a)(10) - BLR, which read as follows:

“Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.”

And replace with the following:

"Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property."

Delete Section 32-18(a)(10) - BB, 32-20(a)(6) - ML, 32-23(a)(10) - MOR, and 32-23.1(a)(13) - STC, which read as follows:

“Accessory uses and accessory buildings.”

And replace with the following:

"Accessory buildings or structures, no impact, and accessory uses, no impact."

Delete Section 32-19(a)(24) which reads as follows:

“Accessory uses and accessory buildings, and except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes.”

And replace with the following:

"Accessory buildings or structures, no impact, and accessory uses, no impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes."

Delete Section 32-21(a)(8) – MI which reads as follows:

“Accessory uses and accessory building, including the repair, installation, and servicing of any commodity distributed, manufactured, processed, produced, or warehoused in this district. Such repair, installation, and servicing must be provided totally within enclosed buildings; outdoor parking and storage of vehicles, products, or other related items in a state of disrepair shall not be permitted.”

And replace with the following:

"Accessory buildings or structures, no impact, and accessory uses, no impact, including the repair, installation, and servicing of any commodity distributed, manufactured, processed, produced, or warehoused in this district. Such repair, installation, and servicing must be provided totally within enclosed buildings; outdoor parking and storage of vehicles, products, or other related items in a state of disrepair shall not be permitted."

C. Add the following to the conditional uses listings in Code Sections 32-9(b) – RH, RT and RS and 32-17(b) – BN:

"Accessory buildings or structures, with impact, and accessory uses, with impact, excluding semitrailers and similar vehicles for storage of property."

Add the following to the conditional uses listings in Code Sections 32-10(b) - RD, 32-11(b) - RM, 32-12(b) - RA, 32-13(b) - RR, 32-13.1(b - AC), 32-16(b) - BL, and 32-16.1(b) – BLR.

"Accessory buildings or structures, with impact, and accessory uses, with impact to the uses permitted in this section and located on the same lot, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property."

Add the following verbiage to conditional uses listings in Code Sections 32-18(b) - BB, 32-20(b) - ML, 32-23(b) - MOR, and 32-23.1(b) - STC.

"Accessory buildings or structures, with impact, and accessory uses, with impact."

Add the following to the conditional uses listing in Section 32-19(b) - BC.

"Accessory buildings or structures, with impact, and accessory uses, with impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes."

Add the following to conditional uses listing in Section 32-21(b) - MI:

"Accessory buildings or structures, with impact, and accessory uses, with impact, including the repair, installation, and servicing of any commodity distributed, manufactured, processed, produced, or warehoused in this district. Such repair, installation, and servicing must be provided totally within enclosed buildings; outdoor parking and storage of vehicles, products, or other related items in a state of disrepair shall not be permitted."

D. Delete Code Section 32-53 – Accessory Uses which reads:

Accessory Uses shall be permitted only on the same lot with the building to which they are accessory, except for parking spaces as required in Article XIV of this chapter. All accessory uses shall be such as do not alter the character of the premises on which they are located or impair the neighborhood."

Neighborhood

E. Add a definition to Section 32-4 – Definitions of Surrounding Area as follows:

Surrounding Area: *"Properties immediately adjacent thereto, and extending 300 feet in any direction from the property in question."*

In Section 16-18.3(d) Authority of public works director to inspect property to enforce article, change "neighborhood" to "surrounding area" so that it reads:

"Due to the nature of refuse collection, the conditions resulting from violations which may create a nuisance or be dangerous to the public health, safety, welfare, or affect the quality of life in the surrounding area, the public works director, or his designee, at his discretion, may pick up the refuse or correct the situation under violation of code and shall invoice the property owner pursuant to the fee and payment basis established under Section 16-13 above without prior notification to the property owner."

In Section 32-11(b)(1) - RM Districts (Multi-family dwellings – garden apartments), change "neighborhood" to "surrounding areas" so that it reads:

"Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the surrounding area, subject to conformance with the following requirements:"

In Section 32-23(d)(8) MOR – Manufacturing Office Research, change “neighborhood” to “surrounding areas” so that it reads:

“All buildings and structures shall be so located on the lot and the open areas so landscaped as to maintain the character of the surrounding area.”

In Section 32-51 – Nonconforming Uses, structures and buildings, change “neighborhood” to “surrounding area” so that it reads:

“It will not impair the value of the adjoining property or adversely affect the character of the surrounding area.”

In Section 32-78(a)(1)a. Special Use Permit change “neighborhood” to “surrounding area” so that it reads:

“Affect adversely the health or safety of persons residing or working in the surrounding area of the proposed use.”

And finally, in Section 32-78(a)(1)b Special Use Permit, change “neighborhood” to “surrounding area” so that it reads:

“Be detrimental to the public welfare or injurious to property or improvements in the surrounding area.”

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

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF THE MINOR SUBDIVISION, PARKING WAIVER AND SPECIAL USE PERMIT FOR THE .043 ACRE PROPERTY AT 70 E. MAIN STREET. APPROVALS ARE SOUGHT TO ADD TWO FLOORS ABOVE THE EXISTING ONE-STORY RETAIL BUILDING AND THE ADDITION OF TWO RESIDENTIAL UNITS AT THE SITE.

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

“On September 6, 2013, the Planning and Development Department received an application from Bachu M. Patel for minor subdivision, parking waiver and special use permit approvals for a .043 acre property at 70 E. Main Street, formerly the Newark Newsstand. The applicant is requesting permission to add two floors above the existing one-story retail structure for two two-bedroom residential units. The applicant has also applied for a 4 space parking waiver to accommodate the apartments, as well as the required special use permit for apartments in the BB zone. Please see the attached Pelsa minor subdivision, parking waiver and special use permit plan, building elevation drawings, and the applicant’s supporting letter.

The Planning and Development Department report on 70 E. Main Street project follows:

Description and Related Data

1. Location:

The property is located on the north side of E. Main Street approximately 351 feet west of the intersection of Academy and Main Streets.

2. Size:

.043 acres.

3. Existing Land Use:

The site is currently a one story retail space housing Insomnia Cookies.

4. Physical Condition of the Site:

70 E. Main Street is approximately 14 feet wide and extends approximately 124 feet deep. The property is adjacent in the rear and to the east to 72 E. Main Street (Indian Sizzler). The applicant indicates that access to the proposed development is via a cross access agreement with the owner of the Indian Sizzler property (Mr. Kazi Samee). The National 5 & 10 property borders the parcel to the west.

Regarding soils, according to the US Department of Agriculture's Natural Resources Conservation Service, the 70 E. Main Street site consists of Urban Land (Up). The Natural Resources Conservation Service indicates that this is a disturbed soil that has been used for development purposes. No development limitations for the proposed use are indicated.

5. Planning and Zoning:

The 70 E. Main Street site is currently zoned BB. BB is our downtown commercial zoning and permits the following:

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

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

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

Summary of BB Area Requirements:

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 is required for three stories or 35 feet in height.
- 6) *Rear yards.* 15 feet.
- 7) *Side yards.* No side yards are required for buildings up to 35 feet in height.
- 8) *Parking.* As required in Code Section 32-45.

Regarding BB zoning area requirements, the building is an existing nonconforming structure, and the proposed addition will expand the nonconformity more than the 20% (3,120 cubic feet) permitted by Code. Specifically, the plan expands the cubical content of the building by 19,210 cubic feet, a 123% expansion, requiring a variance of 15,600 cubic feet (103%). Therefore, the applicant sought a variance from the Board of Adjustment for the proposed expansion. On March 19, 2015, the Board of Adjustment granted the variance to accommodate the expansion of the nonconforming building as requested. With this variance, other than the off-street parking waiver requested for uses at the site, the 70 E. Main Street plan meets all applicable Zoning Code requirements, provided, of course, that the special use permit for apartments in the BB zone is also granted.

Regarding nearby properties, the 70 E. Main Street site is adjacent on the east to BB zoned 72 E. Main Street which currently houses the Indian Sizzler restaurant, with a residential apartment above it. To the rear of the 70 E. Main Street property is land also owned by 72 E. Main Street, which serves as parking for its restaurant and apartment uses. To the west, the property is adjacent to the BB zoned National 5 & 10 property. A series of BB zoned commercial properties are also across Main Street, south of the site.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for “commercial (pedestrian oriented)” uses at the 70 E. Main Street site. Commercial (pedestrian oriented) land uses are defined as “. . . all types of retail facilities for the buying and selling of goods and services as well as administrative and professional offices, personal care establishments, eating establishments and shopping centers. Residential uses may be permitted under certain limited circumstances.” Please note the majority of downtown Newark is classified under this Comp Plan land use definition.

In addition, the Plan’s downtown economic enhancement strategy suggests, “downtown core district” land uses for the site. The strategy describes this district as:

“ . . . [The] center of Newark’s commercial business district is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of downtown’s economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods.”

Regarding gross residential site density, please note that the 70 E. Main Street minor subdivision, parking waiver and special use permit plan calls for residential uses at 46.5 units per acre. By way of comparison with recently approved BB zoned projects downtown, 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

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 4 bedrooms proposed for the 70 E. Main Street plan calculate to 93.0 bedrooms per acre. For comparison purposes, other nearby and recently approved multi-unit developments have the following bedroom densities:

<u>Projects</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5
Kate’s Place & Choate Street Townhomes	59.3
102 E. Main Street	62.5
108 E. Main Street	58.8
129 E. Main Street	105.9
132 Delaware Avenue	104.3
One South Main	83.6
58 E. Main Street	95.3

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

District Off-Street Parking Option Procedure

The applicants are requesting a four space parking waiver for the residential uses. The total proposed development requires 9 spaces, but the five required parking spaces for the retail use are grandfathered (existing, nonconforming), and only the new apartments require additional parking. Therefore, the parking waiver request is for four parking spaces.

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

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;

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

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

Also regarding the requested parking waiver, our procedures specify that applicants receiving such approvals must make a “payment in lieu of spaces” to the City used to improve downtown parking. The required payment, based on an estimate of the costs to construct one surface level parking space provided by the Public Works and Water Resources Department (PWWR) of \$6,272 may be found below. Please note that for this calculation, the 4 spaces to be waived are residential in nature.

<u>Number of Spaces</u>	<u>Payment Required</u>
First Five Spaces (4)	\$ 6,272 (25% of Cost)

Comments regarding this “payment in lieu of spaces” and related comments regarding this issue appear below under Subdivision Advisory Committee. The applicant’s supporting letter with comments regarding the parking waiver is also attached.

Status of the Site Design

Please note that at this stage in the Newark subdivision and review process for major subdivision projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features, must be included in the construction improvement plan. For architectural character, for major subdivisions, the applicants must submit at the development plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features and existing utility lines; and, in addition, contextual color scale elevations showing the front Main Street facades of all buildings immediately adjacent to the property. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related

recommendations that City Council could include in the subdivision plan and agreement for the project.

Please note that for minor subdivisions, such as this one, color elevation drawings are not required to show the proposed architectural design. However, the applicant has submitted elevations of the front of the building on the plan, and met with the Downtown Newark Partnership's Design Committee to review the building's façade. The Committee recommends in favor of the design as appropriate infill construction, with suggestions for using brick or other faced masonry on the upper levels and a less suburban designed roofline.

Be that as it may, as you can see from the 70 E. Main Street minor subdivision, parking waiver and special use permit plan and the elevation drawings attached to the plan, the proposal calls for adding two stories above the first floor retail space. If approved, the building will provide 1,568 sq. ft. of first floor retail space and two two-bedroom apartments, one on each of the second and third floor. The building will continue to front on Main Street.

Special Use Permits

The development proposal requires a special use permit for apartments in the BB zoned district. Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit providing that the applicants demonstrate that the proposed use will not:

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

Fiscal Impact

The Planning and Development Department has evaluated the impact of the 70 E. Main Street project on Newark's municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the 70 E. Main Street development plan's fiscal impact; that is, the total annual municipal revenues less the cost of municipal services provided. Based on the Model's estimate, we project the annual 70 E. Main Street net revenue to be \$581. Please note that the analysis does not take into consideration existing conditions. In other words, the estimate provided is for the total development completed as proposed, and not for the difference between the existing and proposed development. Also, please note that there is no difference between the first and future years' estimates because the applicant already owns the property, and therefore, there will be no impact from the sale of the property in the first year.

Subdivision Advisory Committee

The City Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed 70 E. Main Street development plan and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

Electric

1. The Department notes that the developer must pay \$150 per meter for the apartments and \$300 for any commercial meters. Final locations of meters are to be approved by the City.

Planning and Development

Planning

1. The Department notes that the proposed development is a minor subdivision with no direct vehicular access to Main Street requiring a Letter of No Objection from DelDOT, nor does it provide onsite parking, and therefore, the proposed development was not sent to DelDOT for comment.
2. The Department notes that access to the proposed development is anticipated via a cross access agreement with the property located to the east, 72 E. Main Street. The owner of 72 E. Main Street has previously indicated to the Department that the existing easement agreement is for the commercial use of 70 E. Main Street only, and does not extend to residential uses at the site. The applicant insists the easement extends to all uses of the property. This private matter must be worked out, should the project be approved, before the issuance of a building permit for the residential units. A copy of the easement agreement permitting vehicular and pedestrian access to the rear of 70 E. Main Street must also be submitted to the Public Works and Water Resources Department prior to building permit issuance.
3. In addition, the Planning and Development Department notes that because of the size of the parcel and its configuration, construction cannot be totally contained on the 70 E. Main Street property. Therefore, construction easements will be necessary with any adjoining property encroached. Said easement agreements(s) must also be in place and submitted to the City prior to the issuance of a building permit for the project.
4. The Department also notes that the roofline of 72 E. Main Street, which pre-existed the subject property, extends over into the air rights of 70 E. Main Street. Therefore, it appears that if the development is approved, the roof of 72 E. Main Street will need to be altered to accommodate the requested additional floors. This issue, again, is a private matter, which will have to be resolved prior to the issuance of a building permit for the 70 E. Main Street residential units.
5. Further, the Department notes that both 66 E. Main Street and 72 E. Main Street (adjacent properties) have existing windows which will be impacted by the construction of additional floors on the existing one story structure at 70 E. Main Street. The applicant has made some accommodations to address this issue with the property at 72 E. Main Street, but because of the proximity of the structure to adjacent buildings, impacts will persist. Also, ICC Code requirements for restrictions on openings at or near the property line will affect windows currently shown on the plan for the eastern wall of the new building. Its impact on adjoining property windows at 66 E. Main Street may also be an issue. The Commission may want to discuss this matter with the applicant at the meeting.
6. The Department also notes that the density requested of 46.51 units per acre, while meeting the Code for BB zoned two-bedroom apartments, exceeds that of all recent downtown development projects, with the exception of the Newark Shopping Center. In this regard, while recognizing the limits on number of bedrooms proposed by the applicant (two-bedroom units) will reduce, to a certain extent, the intensity of the project; and recognizing that Council actions regarding increasing BB zoning permitted densities to expand downtown housing choices for graduate students, young couples and unmarried singles by limiting apartment size; the Department cannot help but be concerned with the proposed density. As you will note, and based on the comparisons above, the requested density (46.5 units) is only one unit less than the Newark Shopping Center project (47.79) and; nearly 11 units more per acre than the Washington House (36.1), and 2.2 units more per acre than 58 E. Main Street, which represent our three most intensely developed downtown sites to date. In addition, all three of these developments received their densities at least in part due to perceived community benefit. Specifically, in the case of the Washington House, it promotes owner-occupancy

downtown and is deed restricted to no more than two unrelated individuals per unit. In the Shopping Center's case, there was community benefit in that the project significantly improved the aesthetic appeal of an aging shopping center in the heart of downtown. And finally, 58 E. Main Street dedicated a 23 space parking lot to municipal use. No such community benefits derive from this proposal.

Further, when one considers the average density approved in downtown over approximately the last ten years of a little more than 32 units per acre, and the caution reflected in the verbiage of the Comprehensive Development Plan IV regarding careful scrutiny of additional downtown apartments, the Department believes the proposed development to be too dense. This is particularly true because there is no parking associated with it. Therefore, the Department recommends, should the Commission make a favorable recommendation regarding redevelopment of the property, that the 70 E. Main Street project be scaled back to two floors, with first floor retail and a one two-bedroom apartment on the second floor.

7. Regardless of the number of apartments approved, to limit the intensity of the development, the Department recommends the applicant voluntarily deed restrict the property to no more than 4 individuals per unit. While the limitation of the site to a family or 4 unrelated individuals per unit is a Code requirement for the BB density bonus (max 50 units per acre) requested to develop the site, a deed restriction will make it clear to any potential future owner of the site that the restriction is in place and will run with the land in case of future Code changes. The applicant has voluntarily agreed to this deed restriction, which will have to be approved by the City Solicitor and recorded, prior to the issuance of a building permit.
8. In terms of the parking waiver, should the Commission agree with the Department's recommendation that the building be scaled back to contain one apartment, a two space parking waiver would be necessary. A two space waiver will require the owner to pay into the City's parking waiver fund an amount of \$3,136, which seems a reasonable donation for limited parking impact and in exchange for a brand new two story building, aligning in height and scale of the adjacent buildings. Regardless of the extent of the waiver, any lease for the residential unit(s) should clearly indicate that no parking spaces are associated with it; and any business occupying the first floor commercial space will be required to participate in the City's municipal parking validation program. The property should also be deed restricted to require this participation.

Code Enforcement

1. The Code Enforcement Division of the Department notes that the building shall be built in accordance with the ICC Codes, with amendments, in force at the time building permits are issued. In addition, the Division reiterates that there will be limitations of the number of openings permitted because of the proximity of the building to the property line, and in particular, notes the windows shown on the east side of the proposed building in the anticipated living area are not permitted.

Public Works and Water Resources

Water Resources

1. The Department indicates that individual meters for each dwelling unit will need to be installed at the owner's expense. These meters must be centrally located in a readily accessible area approved by the City.
2. The developer will be required to pay a Sewage Treatment Plan (STP) fee prior to receiving a CO for a unit or multiple units.
3. Public Works and Water Resources Department also notes that the developer must:
 - Investigate the capacity of the water system to determine if sufficient capacity exists and provide results to the City.

- Supply a set of water system drawings in accordance with the State Department of Health Drinking Water Standard for their review and approval.
- Pay the costs necessary to correct any issue with the City's wireless meter reading system should the new building interfere with coverage.

Newark Police Department

1. The Police Department notes the lack of parking as a concern for this proposed subdivision.

Recommendation

Because the proposed 70 E. Main Street minor subdivision, parking waiver and special use permit plan does not conflict with the purposes and land use recommendations in the Comprehensive Development Plan IV, because based on the required agreements with the adjacent property owners and subject to the Subdivision Advisory Committee conditions, the proposed development should not have a negative impact on adjoining properties and the nearby community, the Planning and Development Department suggests **that the Planning Commission:**

- A. Approve a two-space parking waiver for a residential unit above the existing commercial space at 70 E. main Street; and,**
- B. Recommend approval of the minor subdivision and special use permit plan as shown on the Pelsa Company plan dated December 12, 2012 with revisions through April 29, 2015 at a reduced density of one two-bedroom unit and further revised to meet all Subdivision Advisory Committee conditions.”**

Mr. Silverman: Do any of the Commissioners have any reviews or comments on the report from the Department?

Mr. Stozek: I have a couple of concerns. One is, potentially there are up to four people living on each floor of this building and the size of the sleeping area is small but I guess workable. My concern is you could have four people in a living space area of 252 square feet without even counting space for furniture. That is 64 square feet per person. I don't know that that is a quality of life issue that we can even talk about, but it really concerns me that this is being shoehorned in. The other thing is, I went over to the property the other day and the east side of the National 5 & 10 on the second floor has several windows and has a window air conditioning unit. I cannot tell from these drawings how this building slides into that space without interfering both with the air conditioning unit, and the ability of the people in the 5 & 10 building to access to see the sky through their window and does it interfere on their quality of life?

Mr. Silverman: If I am reading the plan submitted to us correctly, this shows a half of a foot, six inches, distance between the existing building and the proposed exterior.

Mr. Stozek: So, the window air conditioner won't even fit in that space. And then the parking waiver, as we have talked before, I realize that it is only two spaces we are talking about here, but we are already talking about not having enough parking downtown and now we are going to have two more waivers. So, I have real concerns about this project.

Mr. Hurd: I have many of the same concerns. I am also concerned about how it is going to interact with the 5 & 10 and with the Indian Sizzler and its roof and then that space there. I think, for me, in general, it was difficult to make a good evaluation of what was going on from the drawings that I had, not having the 5 & 10 on the other side of the property and understanding what was going on there and some other things. I think that the report echoes my concerns about egress and openings and parking and space.

Mr. Fortner: Mr. Chairman, I recommend we let the applicant speak.

Mr. Silverman: Based on Mike's suggestion, since we are getting into the substance of the drawings and the submittal, would the applicant like to address the Commission? Please state your name and address for the record.

[Secretary's Note: Mr. Dalby, Planning Commissioners, staff and public referred to visuals brought by Mr. Dalby for his presentation to Planning Commission].

Mr. David Dalby: I am the architect for the project. I would like to address some of the comments, particularly in relation to the density issue and the size of the project. This project is .43 acres. Any development of this project will substantially put us into any sort of density issue in terms of percentage. Even one story puts us into a percentage of 20, which puts us in the middle of some of the other developments. While I certainly understand and recognize the density, because of the size of the project, I think it is an unfair evaluation to use for this. If you go down Main Street and you look at this project, quite honestly, I looked at it as improving the neighborhood. Right now, it is a single story between two other stories. It is the only real one story building of any significance. Unfortunately, it is not significant. It is 14 feet wide. The best way to describe it is it is a gap tooth smile. So, the original intent was to improve the appearance along Main Street. The Newark Newsstand had been there for quite a while. Basically, over the years it had deteriorated to the point where it had to be torn down. We tore it down. We replaced it exactly on the property line and everything was built property to property. There is no variation. We can't put parking on the site. So, we wanted to use this opportunity to improve the appearance on Main Street. We have met with the owners and we hear your concerns. I would like to make a brief presentation.

The first plan is nothing more than the site plan and you can see how narrow the site is in relation to the neighbors. If we had the rest of the neighborhood, you could see that it is a significantly narrow site.

On our first go around was, in fact, two stories. We had an A framed roof, which we were doing primarily on the back end to conceal any air conditioning or HVAC units. Concerning the adjacent properties. We purposely held it back to miss any of the windows along here. We have been meeting with the people on the 5 & 10 in terms of what the uses are here and whether we have to relocate the air conditioning units.

These are residential units here, we have held it back to provide light to this unit, light to this unit and exit from this unit. This is a bathroom window, this is a kitchen window and this is an existing outdoor deck. We feel by holding it back, we've recognized the need for the emergency egress.

As far as the room sizes, I'll be honest with you, we meet the required Code, but in order to accommodate these other requirements we really can't make it any larger.

What I would like to move quickly to, though, is a compromise that we would like to propose on this. And, that compromise is instead of the two stories go to a shorter third story, which is held back even further which gets us a two-bedroom apartment on the second floor, a one-bedroom apartment on the third floor, allows for more direct light coming down over top. You can see from this small rendering here how we stepped back the floor lines. We were able to get a balcony then at each of these units with the upper unit being a single bedroom, a middle unit being a two-bedroom. Unfortunately, it doesn't help the density factors a whole lot. It helps the number of bedroom density. It gets us down into a 60, I believe. I did the calculation. But, it is still two residential units so it doesn't help that number as such. We feel, also, by doing this we have now come further back away from the roof line of the Indian Sizzler. We have provided some more light to come down. With this roof being lower now, this is not so much a large tunnel effect. And, we feel that it provides a very unique architectural character to Main Street. In our opinion, certainly not detrimental to Main Street at all. As far as the parking issues, I will have to let Mr. Patel address those, but from a design standpoint I do feel we have addressed everybody's major concerns as much as possible. We feel this is a reasonable compromise. To be honest, it gives us a little bit of financial benefit if we get one more unit for it. And, we feel that by doing that we recognize the need to get further back. We can keep more of the existing roof line. We've moved it further back from

Main Street. I apologize for the small renderings, but I think as a whole it provides a very unique and different appearance on Main Street. If necessary, I will be more than happy to answer any questions or point out any issues.

Mr. Hurd: Something that the Building Department pointed out and I was looking at on the drawing, they are not seeing your one hour rated glass fixed window.

Mr. Dalby: One hour rated exterior wall rated from both sides, one hour fire rated fixed glazing.

Mr. Hurd: Was that changed after their comments or before?

Mr. Dalby: Probably after. It has been there for quite a while. It is a full one hour glazing. I'm not allowed any unrated penetration through that wall.

Mr. Hurd: I understand. I just know that some building departments don't allow any openings.

Mr. Dalby: Because this is a rated glass, it is not an opening. It is considered part of the wall.

Mr. Hurd: I understand. I'm saying some building departments don't consider rated glass . . .

Mr. Dalby: If we have to take that off, I have no problem taking that off.

Mr. Hurd: I just want to be sure that the Building Department has seen that based on their comments that that one is not compliant.

Mr. Dalby: This went in at some point to them. During the permit process they require us to take it out, it is not into a bedroom or anything, and it's not an issue.

Mr. Hurd: It is just the only window into the living room area.

Mr. Dalby: It is, yes.

Mr. Edgar Johnson: My comments are that this is, essentially, an alley, that at some point in the history of Newark a building was built there (Newark Newsstand) and it was there forever, and I'm concerned that we are allowing a three-story building to be built in an area that is 14 ft. wide and that we need variances for parking and rezoning and so forth. And, it just doesn't make sense to me. If I was the owner, I would probably say, I am going to try to maximize this property as much as I can, but as a citizen of the City, it just doesn't make sense to me. Essentially, what you are doing is you are building a three-story building that is going to be 14 ft. wide, which is slightly wider than my backyard shed. And, if I came to the City and said, can I put a three-story backyard shed in my yard, everyone on this panel would deny me, and that is what you are asking the Commission to approve. I certainly don't see the benefit of the quality of life, as you say, to the citizens and, also, the benefit to downtown and I just don't feel like this Commission should be granting parking waivers and other waivers carte blanche. It just doesn't make sense to me.

Mr. Dalby: From a design standpoint, as an architect, I would probably agree with you if we were right up to the street line, but we have purposely held it back to minimize that tall, narrow appearance along Main Street. I would not have presented this as a three-story building right up tight to Main Street. You are right, 14 ft. wide, three stories looks pretty deadly. In fact, we have one story at 14 ft. high, we have a second story. We are only 9 ft. floor-to-floor so we kept it down as well as we could possibly get. We have eight foot ceilings, and then further back we even have a third story. So, to look at it on Main Street, you are not going to be seeing a tall narrow wall. It depends on the architectural standpoint. That would be my discussion.

Mr. Johnson: My question is, when will we start to say, no more parking waivers? Almost every time we come in here somebody wants a parking waiver, and it just doesn't make sense to me. I'm sorry, it just doesn't make sense and we should be very careful about granting parking waivers going forward.

Mr. Frank McIntosh: I can't imagine who you would rent those to. I am sitting here thinking about the amount of square footage that you are allowing for the inhabitants is not a lot. So, I really question in my own mind, is this something we should be doing in our city. Part of what our job is as commissioners is to look at the betterment of the town as a whole and when you look at that you say is this making our town a better town to be in? Are the citizens going to look at this and say, wow, I'm glad they did that? I'm not getting it, frankly. I think it is just taking a piece of space and trying to say what can I do to maximize that space, but I don't think it does much for the City of Newark, personally.

Mr. Dalby: Again, speaking as the architect, I understand your concern about the size and everything, and if we had more property I would love to be able to do that, but I do believe that it provides a betterment to Main Street. I think it provides something unique in terms of the living situation of being able to have a balcony and these balconies are not right out on Main Street so you are not going to worry about people throwing stuff over them. They are set back. While the units are small, I think they provide a very unique and very positive living experience. We have balconies on both ends. Both bedrooms have balconies. I think that the front elevation, the view from Main Street would certainly be improved as opposed to just a one story. If someone wanted to buy the property and say okay, I'm going to tear this down and we had the alley, I would certainly agree with the alley as another option.

Mr. McIntosh: You could put a toll booth there.

Mr. Dalby: Honestly, part of this is to generate some revenue.

Mr. McIntosh: I'm all for that. I really am. I have nothing against you doing that at all. This seems like it would be a place you would find in Manhattan, and people would be dying to get it, but this isn't Manhattan, it's Newark.

Mr. Dalby: I wish I could speak for who is going to live here, but I think that whoever lives here would have a very nice living experience.

Mr. Cronin: Mr. Chairman, I think the living space, as Mr. Stozek said, is particularly small per person and this space as shown, presumably, is cooking, eating, couches, chairs, television, things that are normally associated with a great room at least, and I don't see any renditions of counters, cabinets, refrigerators, anything that would make this space even smaller in terms of floor space. Maybe if they were one bedroom apartments reconfigured with only one bathroom necessary for the apartment and larger, more accommodating space, I think I would agree with Frank that it is more appealing, more rentable, but I think it is very, very crowded the way it is.

Mr. McIntosh: There is another thing, too. It is good that you have balconies there because I think they would spend a lot of time out there and God knows about what the problem might become with noise, depending upon who you have as tenants, but you are almost forcing people to go outside. So, I can see heaters out there in the winter, and so on.

Mr. Dalby: The way the balconies are presented, they aren't large. They are small balconies purposely to limit the number of people going out there. I really didn't want to make them large enough to have anybody have a huge party or anything on there.

Mr. McIntosh: I get that. Believe me.

Mr. Dalby: I want to make one more possible presentation on this. If we are permitted to, with the three floors, the one larger floor and the single at the top, one way to address the number of units is, since this is a connecting stair between the two, would be to prepare this as a single three bedroom apartment, which would enlarge the living areas.

Which would, as a single unit, then significantly affect the residential density but would not affect the bedroom density, but that would certainly be an option. Our preference from a rental standpoint is, obviously, two separate units, but if it means meeting the deeds and requirements of the Committee, that is an option for us.

Mr. McIntosh: That would be more interesting from my point of view.

Mr. Chairman: I would like to open up the discussion to the floor. Is there anyone who would like to speak?

Mr. Kazi Samee: Respectfully, Planning Commissioners and all the City of Newark, too. My name is Kazi Samee and I own the Indian Sizzler and I have owned the property for almost 15 years right now. My first point is that, Mr. Patel and my previous landlord, they have a mutual agreement just for the loading and unloading for the Newsstand, but my concern right now is, if you have 6 or 4 tenants, what is that? That space is very small. I don't know how people can walk in that width. I request before you do something, you consider the matter of the two because I have a tenant upstairs. And, also I have parking for my Indian Sizzler customers, but that space is too small for me and I think it will be a big problem for me. My first concern is that the agreement was made a long time ago. It is only for loading and unloading for the Newsstand. At that time, there was no residential there. That's why that was not happening, but now he is changing the building. That is why he needs that space, but I don't think it is better for both of us to do the same way, drive on the same driveway for both of our buildings.

The second thing is, I think you saw the design. Whenever they make the second floor or third floor, even if they make the second floor, all of my windows on the side of the bedrooms will be blocked because I only have one window for each side for each bedroom. I don't have any other windows for the bedrooms, but I still pay my mortgage for that building. If you think so, then I will have to stop renting to the tenant because it is dark, people will not take my apartment for the rent. That way it will be very hard for me to pay my mortgage also. That is why I am requesting that you will consider my situation. There was contact with Mr. Patel and the previous owner. I spoke to him a couple of days ago again to make sure, and he said, no, the only understanding we had on the paperwork was just the loading and unloading for the Newsstand, nothing else.

My last request is that if I have to come back to the meeting again, please do that after August because I am going for a vacation for 45 days. I will not be here during that time. That is why my request is, if I have to come back again, if you would do the meeting in September, I would really appreciate it. Thank you for your time. Thank you very much.

Mr. Silverman: Mr. Samee, I have a couple of questions. I, too, walked the site and back behind your business, the area appears to be devoted to, right now, 100% business uses. There is outdoor storage of milk crates that are being exchanged. I noticed there are commercial trash receptacles in the back. Your employees already park in the back and it is a fairly tight area. So, that is the kind of condition that exists. Also, with respect to, we call them, cross access agreement, permission to use someone else's property, to access another property. With respect to your cross access agreement, you said there was an agreement with the previous owner for the property at 70 E. Main Street.

Mr. Samee: That's right.

Mr. Silverman: Is that documented any place? Is it in writing and do you know whether that agreement was between two private individuals (the previous owner of your property and the previous owner of the old newsstand) and did it carry forward? Do you have a new agreement in place?

Mr. Samee: No, I don't have anything in writing, but maybe Mr. Patel has that because he bought the property before me, I think. So, maybe, he knows about that. I don't have any paper like that.

Mr. Silverman: I did not see that agreement in our packet, so as far as I know outside of a handshake there is no formal agreement that's beyond what you described for the commercial use for the temporary off-loading and movement of product. There is no agreement in place for anything else other than that handshake.

Mr. Samee: That's like a handshake I think there is no paper like that. Also, (inaudible) that you are talking about, that belongs to cookie place, that's not me.

Mr. Silverman: I also noticed that the only illumination in the back of that building appeared to be one small light over a doorway. So, it is not really illuminated like you would expect the parking area to be lit up for nighttime. Is that correct?

Mr. Samee: I'm sorry, I didn't understand.

Mr. Silverman: There is only one small electric light in the back for night time. It is not brightly lit.

Mr. Samee: Yes, that is correct.

Mr. Stozek: In the presentation when Mike was going through it, there are three or four items that are agreements that have to be made between property owners. I don't know when you submitted your paperwork vs. the presentation today, have any of those agreements been made?

Mr. Bachu Patel: I am the owner of 70 E. Main Street. I bought Newark Newsstand in 1997, in the deeds there is an agreement that I have a right-of-way to use the passage. Mr. Samee doesn't know, but when I bought the Newsstand we used to have at least 15 deliveries a day and they are all coming to the back door. Now, Insomnia Cookies is renting the lease for ten years. They hardly make any deliveries from the back and the crates that they put outside, they are supposed to put inside, which I am going to take care of because at the back of the space they are only using 700 sq. ft. for the business, all the rest of the space is empty. So, they have enough space for all their storage crates. When I took over this business, I made a lot of modifications in the back area. Before there were old trash bins and students used to jump from the National 5 & 10 onto my roof and there became problems with my roof leaking. Even now Mr. Samee has made a big balcony and they barbeque and put barbeque on my roof and they put beer cans in the gutter. Mr. Sargeni noticed that as well. So, I wouldn't do that with my building in such a way that I don't have any water issue. I take care of Mr. Samee's (inaudible) which is hanging onto my roof and it is all rusted and a lot of water is coming onto my roof at the moment. When I demolished that building, there were bunker holes under my floor going into Samee's basement. All these years, Mr. Samee must be paying a fortune for his heating bill and air conditioning bill and I sealed all those bunker holes. I took care of the water. So, I spent a lot of money while I was doing construction. I had to do all those things because they were all in my way. When I do second phase, obviously the overhang is going to be in my way so I'll have to put a new overhang for him. Since I am going to get usage for my apartment, for my student tenants, I'm going to take care of the parking space by putting nice (inaudible), put more light and it is going to hide all that industrial look which is at National 5 & 10. If you go behind M & T Bank and see, the side is not pretty at all. (inaudible).

Mr. Stozek: That really doesn't answer my question, which was, again, in this documentation it talked about several issues where the property owners have to come to some agreement before building permits can be issued. Have you had discussions to resolve those issues?

Mr. Patel: I had brief discussions with Mr. Samee once because when I was working upon my roof and I saw a lot of these issues with his overhang and he was complaining that water was going in his basement. So, I said, can you come up on the roof with me and I drew his attention for the first time he saw how bad it was. So, I said when I do this apartment I will take care of this and he never said anything at that time. Once we had an issue where (inaudible) at the back wall. When the final paperwork had to be done they found out that I was over so Brian Sargeni made me take the wall down. So, I asked

Mr. Samee if he could sell me that 9 inches and we agreed to the price so I went to the City and Brian Sargeni and told him that I was prepared to buy this land so I don't have to tear the wall down, but I will only pay this money subject to my approval for my second phase.

Mr. Silverman: Mr. Patel, you are getting into items that are private contracts between individuals at this point and don't necessarily reflect what we need here to make our decisions. I see your architect would like to speak again.

Mr. Dalby: Just a couple of quick comments to directly address your question. We realize that this is just one step in a long process. We have been through the building permit on some preliminary reviews. That is kind of how we got to this point. The agreements in effect to improve the overhang, the window in the side still have to be worked out and we realize we are not going to get a building permit without those being worked out. We didn't come to this meeting prepared to particularly address a building permit issue. We are just looking for approval to go to the next phase. Obviously, if we don't get those easements and the Building Department doesn't grant us a permit, then thank you very much for your time.

Mr. Silverman: It would appear that the cross access agreement to use the residential space would be crucial. No access agreement is equivalent to a landlocked parcel. You can't get to it.

Mr. Dalby: There is, in fact, a cross access agreement in writing. I have seen it. I didn't bring it with me.

Mr. Silverman: For other than loading and off-loading in the commercial use?

Mr. Dalby: Unfortunately, I can't address that at this point. And, again, if that is the way the cross easement reads then it would obviously have to be addressed and modified before we can move forward. Again, that is just one step in this whole process. I am certainly not deluding myself or even Mr. Patel that this is the final access. Even you heard my comments, we could possibly do this in a three story apartment. And, we are at that stage right now where we can do that. We are looking for permission to go to that next phase.

Mr. Silverman: Is there anyone else who would like to speak?

Dr. John Morgan: District 1. I just want to say very briefly that I completely agree with what Mr. Johnson said about parking waivers. This is a small drop in a large bucket, but it is necessary to look at the larger bucket.

Mr. Silverman: Is there anyone else who would like to comment? I will make my comments in response to what was provided in the report, in some of the discussion here at the table and some public comments. We have three elements we are looking at here and that is the site development plan, the special use permit for the apartment use and the parking waiver. I view the site as a site that is taking advantage of a nonconforming use. If we were asked to develop this parcel as it is existing and proposed today, it wouldn't even get in the door. It doesn't meet any kind of minimum. So, it is relying on the nonconforming use. It had to go through a Board of Adjustment action to get a special dispensation. I think the parking issue is key here. The cross access agreement in my mind that exists verbally with dealing with a commercial property is far different than a cross access agreement dealing with residential units, which in our town are active 24 hours a day with a transient population who says, I can park here; I've only got 20 minutes to my class. Or mom and dad park there thinking that it is available and the area behind the store becomes the equivalent of an inaccessible fire lane and can no longer serve as a service area. I'm disturbed that the proposal has gotten even this far with not one onsite parking space available to it. It's not like we are being asked to waive two out of 12 existing spaces where there is a special configuration that is in mind here. There is zero parking available. Again, it is piggybacking on the previous nonconforming status and asking for 100% waiver is quite a stretch. The area behind the existing structure with the adjoining structure is primarily a commercial use. It is relatively poorly lighted. It

really only has to be lit for the purpose of what the commercial tenant who owns the property wants to pursue. However, it is one of those dark places along Main Street that may be subject to a lot of mischief. Right now it is out of sight out of mind. If residential units are placed in that area, it could become a very popular area of coming and going so there may be a policing and vandalism issue there.

Impact on adjoining properties. This is where we get into the BB zoning where we get into the Comprehensive Plan. The parking and loading conflicts with the Indian Sizzler property even with an agreement for crossing one another's property into unbuilt areas with the different kinds of uses mixing residential and commercial, it will impact the existing properties, particularly the Indian Sizzler property. Additional construction above the existing properties do not meet the test of the Zoning Code Section 32-78 Special Use Permits as referenced in the report that was read into the record referring to page 7, paragraph A and B, not adversely affect the health or safety of persons residing in the neighborhood of the proposed use and not be injurious to the property or improvements in the neighborhood. I don't accept a 6" separation as providing proper light and ventilation and secondary means of emergency or fire egress between buildings. The windows, from my point of view, are at a zero setback. We don't have party walls up against party walls, but we have 4/10 of a foot, whatever that works out to – 4", 5"- of separation. The separation would obstruct existing windows for both the National 4 & 10 and the Indian Sizzler. Mr. Samee has already said that he believes it would have an adverse affect on his existing rental units that he uses the income from to offset his mortgage, and that means potentially jeopardize his business or the use of his business on Main Street. So, it does adversely affect the property from a financial point of view. The occupants of the existing buildings where the window would be blocked would be deprived of light and air. On the 5 & 10 side of the building, there are a series of windows that are used for second floor offices. We have a letter submitted that was submitted to us that I can read into the record, if that is proper, from the Handloffs that talks about their particular building. This is addressed to Maureen, who can't be here tonight. It came in the form of an email dated, Tuesday, July 7th at about 4:30 p.m. this afternoon.

"Hi Maureen,

My father and I are out of town on vacation, but we wanted to express our views on the request for a 2nd and 3rd floor over the building at 70 E. Main St, formally the Newark Newsstand (NNS). We are both of the opinion that we are not in favor of the approval for the additional floors. The added height to the building would block the entire eastern exposure and subsequently the windows in the second floor of our building at 64-68 E. Main St.," I believe we have another street address identifying that, "the current National 5&10 building. Both of the neighboring buildings pre-date the original NNS, which was never intended to be a multiuse property. The additional floors could negatively affect current and future use of our building under existing zoning laws.

We have had discussions about potentially restoring the original facade of the 5&10 and returning the second floor to its original domestic use."

Mr. Silverman: Right now it is used for office space.

"as this is where my great-grandparents, my grandparents, and my father all resided at one time. Losing the eastern exposure and the resulting limitations on design that would result from the additional floors being added to the NNS site may make such a project less feasible.

Thank you for your time,

Brian J. Handloff

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Brian J. Handloff

National 5 & 10 Stores, Inc.
(302)368-1646 (phone)
(302)368-8620 (fax)

Mr. Silverman: Now it also appears, and I would have to have this confirmed by the Building Department, that when the new building replaced the Newark Newsstand, was that building extended onto the existing sidewalk? Did the Newsstand project go out as far as the existing building does? I don't recall. Did it, okay. I'm seeing heads bobbing up and down, because I was going to make another comment that that projection was detrimental to Mr. Samee's building with respect to commercial visibility of people coming down the street. That is just another observation. I believe that the new building would interfere with the existing construction or the existing building materials of the buildings on either side. The proposed construction would necessitate the removal of existing nonconforming overhangs, cornices, window treatments and rainwater conduits on the original buildings on either side. Even if they were replaced with some kind of drainage system, it is awfully hard to get back into a 6" wall space to repair a leader that either clogs or becomes defective.

My conclusion is the applicant is really pushing the limits of the BB downtown zoning - the Comprehensive Plan, the Zoning and Land Use Codes, as well as Life Safety Codes. I'm not sure about the Life Safety Codes on the square feet of floor area per person and window openings and light and air and airshaft requirements there. The density of 90 bedrooms per acre I know is an absurd number when you are playing around with numbers. We are talking about a property that is 14 ft. wide and more than 100 ft. long. But, it is an indication of relative density. 100% parking waiver. Often BB proposals involving commercial and apartment units go in almost the opposite direction. There is one project on Main Street that dedicated uses to the municipal parking as part of their development. We are used to seeing redevelopment on Main Street involving substantial size parcels, not just a small parcel like this. I don't believe it qualifies for the special use permit because of the potential significant impacts on nearby established businesses. Its lack of written documentation, as some of my colleagues have talked about with respect to cross access parking agreements, the need for 100% parking waivers. I could go in either direction on parking waivers. I am wavering on waivers at this point, but not have any potential parking on the site and relying on borrowing someone else's parking space, it is just not a good way of doing business.

Mr. McIntosh: Mr. Chairman, with regard to your comments, when you read the Handloff message into the records, my reaction to this email, they are talking about something that is in the future that they have no commitment to, potentially wanting to use it for something else and the like. I think there are more than enough concerns expressed in other areas than this. If they have a plan to do it and can show us plans that is a different matter.

Mr. Silverman: You are referring to the Handloff restoration of the façade of their building?

Mr. McIntosh: No, I'm referring to the Handloff discussion about potentially restoring the original façade and returning the second floor to its domestic use. Throughout this whole paragraph they are saying, "we're not sure," and I don't think that "we're not sure," should be part of our discussion. If anything, I would suggest to the applicant that there are a lot of things that you need to clean up before, I think, this Commission would want to look at this seriously, and, perhaps, that is what you should do.

Mr. Silverman: Mike, did you have some comments?

Mr. Fortner: Sure, I would just say that you should proceed with a recommendation and the Planning Commission should give a recommendation. The situation you are looking at is, are two apartments a good idea on this, or one apartment a good idea, or no apartments, you should make a recommendation on that. A lot of the details, easement agreements, these things have to be worked out. Those are private matters, so those shouldn't affect your decision. If you don't think this is a good idea, you should vote against the recommendation to Council and not say, work out an easement agreement and come back if you are going to vote no on it anyway.

Mr. Silverman: I have a question for Mr. Herron. Are we permitted to make a suggestion to the applicant that the applicant may want to withdraw their application at this point until they get their ducks in order, rather than us giving a potential no or a yes, but?

Mr. Herron: If the applicant wishes to withdraw his applicant, they are permitted to do that.

Mr. Silverman: But, they could come back without any penalty or prejudice.

Mr. Herron: I believe that is correct. Mike?

Mr. Fortner: I think, if the applicant wants to withdraw, certainly, but I think they can proceed to Council with a no recommendation, if that is what they wish. I don't want to pepperoni them, saying come back to us with something different when the ultimate thing is we don't want another apartment on top.

Mr. Johnson: I think the applicant deserves a vote and we ought to vote.

Mr. Silverman: Are we ready to take a vote?

Mr. Dalby: We've created a lot of discussion based on what maybe is a misunderstanding on the plans, particularly in relation to the windows and so forth. If we withdraw the application, we would come back and clear up some of those possible misunderstandings. I'm not saying it will make a difference but I am hearing a lot of discussion in terms that we have a 6" gap when, in fact, we have a five foot gap. In other cases where we have particularly held the building back in order to permit light to the windows, and whether it is my presentation or just a question on the plans, if we could withdraw the application and then we could come back with further clarification.

Mr. Stozek: I'm not sure what you are asking for us to do, to approve the plan submitted because you have already talked about an alternative plan of stepping back the third floor. I think if you are talking about that plan, you have to come to us with drawings and dimensions. I'm certainly not going to approve the step back version without seeing any documentation.

Mr. Dalby: We were already stepping back the second floor to miss the windows.

Mr. Stozek: That is not reflected in anything we've seen.

Mr. Dalby: It is reflected on the plan. We purposely held them back to provide access to those windows.

Mr. Silverman: Edgar, is your preference to vote it up or down?

Mr. Johnson: Call for the vote as recommended by the Planning and Development Department.

Mr. Silverman: That is with the one story addition or we cannot agree with the recommendation of the Planning Department.

Mr. Johnson: What we have before us is the Planning Department saying approve a two space parking waiver for a residential unit above the existing commercial space; recommend approval of the minor subdivision and special use permit plan dated December 12, 2012 with revisions through April 29, 2015. . . This is what we would vote on. I have nothing else before me in writing to consider.

Mr. Silverman: We can modify this to say we vote not to approve the parking waiver and not to recommend the minor subdivision plan.

Mr. McIntosh: I used to know Robert's Rules, but I don't any more. However, I would like Mike to speak to this discussion.

Mr. Fortner: As a point of order, maybe this is for Bruce, but if the applicant wants to withdraw or if he is permitted to withdraw, I would certainly think that the proper procedure would be for the Planning Commission to make a recommendation then revising their plan and taking it to Council saying that they have answered these questions. They just go with a no vote. Other applicants have done that, but if the applicant is actually requesting a withdrawal, do we have to honor that or can Planning Commission make a vote anyway?

Mr. Herron: I think the better practice is as you said, the Planning Commission can take the vote and the applicant can take the comments to heart come back and proceed directly to Council and make whatever changes they wish at that point.

Mr. Silverman: Do I hear a motion on agenda item #3 with respect to 70 E. Main Street? And, we will vote in two parts.

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

- A. APPROVE A TWO-SPACE PARKING WAIVER FOR A RESIDENTIAL UNIT ABOVE THE EXISTING COMMERCIAL SPACE AT 70 E. MAIN STREET; AND,

VOTE: 0-6

AYE: NONE

NAY: CRONIN, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK

MOTION FAILS

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

- B. RECOMMEND APPROVAL OF THE MINOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE PELSA COMPANY PLAN DATED DECEMBER 12, 2012 WITH REVISIONS THROUGH APRIL 29, 2015 AT A REDUCED DENSITY OF ONE TWO-BEDROOM UNIT AND FURTHER REVISED TO MEET ALL SUBDIVISION ADVISORY COMMITTEE CONDITIONS.

VOTE: 0-6

AYE: NONE

NAY: CRONIN, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK

MOTION FAILS

- 3. REVIEW AND CONSIDERATION OF THE REZONING OF 163, 171, 175, 179 SOUTH CHAPEL STREET AND A PORTION OF 52 BENNY STREET FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) AND RD (ONE FAMILY SEMI-DETACHED RESIDENTIAL) TO RA (MULTI-FAMILY DWELLINGS – HIGH RISE APARTMENTS) AND MAJOR SUBDIVISION APPROVAL TO CONSTRUCT A FOUR-STORY, 16 UNIT APARTMENT BUILDING AND FIVE TOWNHOUSE STYLE APARTMENTS FOR A TOTAL OF 21 UNITS AT THE SITE.

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

“On December 4, 2014 the Planning and Development Department received an application from Wooden Apple, LLC for the rezoning of 163, 171, 175, 179 South

Chapel Street and a portion of 52 Benny Street from RM (multi-family dwellings – garden apartments) and RD (one family semi-detached residential) respectively, to RA (multi-family dwellings – high rise apartments) and major subdivision approval to construct a four-story, 16 unit apartment building and five townhouse style apartments, for a total of 21 units at the site.

Background

As you may recall, these properties have been proposed for development for some time; and in fact, have come before Planning Commission two times previously. Specifically, on June 2, 2013 the Planning Commission denied a request from Delta Etta Corporation to extend the expiration date on an approved subdivision plan for Pike Park located at 163, 171, 175 and 179 S. Chapel Street. Subsequent to that Planning Commission review, on September 9, 2013, a new applicant (Wooden Apple, LLC) submitted a major subdivision application for a 12 unit apartment building at the site, and the rezoning of a portion of the rear of the property located at 52 Benny Street. The Benny Street piece was proposed to be added to the Pike Park development plan to help meet the parking requirements for that 12 unit apartment building with a mixture of 3, 4, 6 and 7 bedroom units. The Benny Street parcel is zoned RD (one family semidetached residential), and the applicant requested that .08 acres of this parcel be rezoned to RM (multi-family dwellings – garden apartments) and added to the Pike Park plan. The Planning Commission reviewed this plan on November 5, 2013 and recommended its approval with conditions. Subsequently, the applicant decided not to pursue City Council approval of that plan, and instead submitted a new set of plans for consideration.

The Planning and Development Department report on the revised Pike Park rezoning and major subdivision plan follows:

Description and Related Data

1. Location:

163, 171, 175, and 179 S. Chapel Street are on the west side of S. Chapel approximately 150 ft. north of Chambers Street; and the rear of 52 Benny Street which is adjacent to the southwest portion of the site.

2. Size:

1.13 acres (18-026.00-140)
.08 acres (portion of 18-026.00-132)
1.21 acres. Total site

3. Existing Land Use:

The site contains three single family detached homes, and associated access way, parking and open lawn. The Benny Street parcel contains a single family rental unit, which is proposed to remain.

4. Physical Condition of the Site:

The Pike Park site is essentially a developed property with three single family dwellings on the northern portion of the site, with an access way and parking. The property is level with almost no slope. Access is provided to the development via Pike Way off of S. Chapel Street, which separates the three single family style rental units from the currently grassed area along S. Chapel Street proposed for the apartment building. Parking for the development is provided at the rear of the property and in the driveways of the single family homes. Likewise, the rear portion of 52 Benny Street is a grassed area which is relatively level with several large trees along the property line. The remainder of the parcel contains a single family rental house fronting on Benny Street.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, Pike Park consists of Aldino-Keyport-Mattapex-Urban land complex soil. According to the Natural Resources Conservation Service, this is a disturbed soil that does not have limitations for the development proposed.

5. Planning and Zoning:

The properties at 163, 171, 177 and 179 South Chapel Street are zoned RM. RM is the multi-family dwelling zoning that permits the following uses:

RM is a multi-family apartment zone that permits the following:

- A. Garden apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
- B. One-family, semidetached dwelling.
- C. Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further provided that the minimum lot area for each eight or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
- D. Nursing home, rest home or home for the aged; provided that:
- E. Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
- F. Cluster or neo-traditional types of developments, including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.
- G. One-family detached dwelling.
- H. The taking of nontransient boarders or roomers in any one-family dwelling by a family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use provided there is no display or advertising on the premises in connection with such use, provided there are not more than three boarders or roomers in any one-family dwelling, and provided that such use by a nonowner occupant family resident on the premises and an owner occupant family resident taking in more than two roomers or boarders, is permitted subject to the following requirements:
- I. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- J. Public and private elementary, junior, and senior high schools.
- K. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- L. Municipal tower, water storage tank, water reservoir, water pumping station and water treatment plant.
- M. Municipal sewage pumping station and sewers.
- N. Right-of-way, street.
- O. Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- P. Utility transmission and distribution lines.
- Q. Public transportation bus or transit stops for the loading and unloading of passengers.
- R. One-family town or row house subject to the requirements of Sections 32-13(a)(1) and 32-13(c)(1).
- S. Student home, provided the following requirements are met:

No impact home businesses in a residential dwelling shall be permitted subject to the following special provisions:

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

- A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the neighborhood, subject to special requirements.
- B. Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- C. Physicians' and dentists' offices, subject to special requirements.
- D. If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- E. Police and fire stations, library, museum, and art gallery.
- F. Country club, regulation golf course, including customary accessory uses subject to the following special requirements:
- G. Professional office in a residential dwelling permitted subject to special requirements.
- H. Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter:
- I. Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
- J. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
- K. Swimming club, private (nonprofit).
- L. Day care centers, kindergartens, preschools, day nursery schools, and orphanages with special requirements.

Area regulations.

- 1. *Minimum lot area.* 2,725 square feet per family for garden apartments, unless certain density bonuses are granted. In no case shall the minimum lot area be less than 2,350 square feet per family for a garden apartments and 6,250 square feet for any other permitted use.
- 2. *Maximum lot coverage.* 30%
- 3. *Minimum lot width.* 50 feet.
- 4. *Height of buildings.* 35 feet.
- 5. *Building setback lines.* 15 feet, except that for an apartment building, which requires:
 - a. 30 feet from the line of all perimeter streets.
 - b. 25 feet from the line of all interior streets.
 - c. 25 feet from all exterior lot lines.
- 6. *Rear yards.* 15 feet, except that for the apartment building, the minimum rear yard is 25 feet.
- 7. *Side yards.* In an RM district, two side yards shall be provided on every lot as follows:
 - a. Minimum 7 feet, with an aggregate of 15 feet; and, for apartments, the minimum side yard shall be 20 feet with other conditions.

The 52 Benny Street property is zoned RD. RD zoning permits the following uses:

- A. one-family, semidetached dwelling.
- B. Accessory uses and accessory buildings subject to special requirements.
- C. Cluster development subject to site plan approval as provided in Article XXVII
- D. A one-family detached dwelling.
- E. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident of the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling.
- F. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner-occupant family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than two boarders or roomers in any one-family dwelling.
- G. Church or other place of worship, seminary or convent, parish house, or Sunday school building.
- H. Public and private elementary, junior, and senior high schools.
- I. Municipal park, playground, athletic field, recreational building, and community center operated on a noncommercial basis for recreation purposes.
- J. Municipal utilities; street rights of way.
- K. Swimming pool, private; swimming pool, public.
- L. Temporary building, temporary real estate or construction office.
- M. Utility transmission and distribution lines.
- N. Public transportation bus or transit stops for the loading and unloading of passengers.
- O. Student Homes, with special requirements
- P. No impact home businesses in a residential dwelling shall be permitted subject to the following special provisions.

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

- A. Nursing home, rest home, or home for the aged, subject to special requirements.
- B. If approved by the Council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- C. Police and fire station, library, museum, and art gallery.
- D. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- E. Professional office in residential dwellings for the resident-owner of single-family dwellings, with special requirements, including the requirement that the professional office is permitted only for the resident-owner of a single-family dwelling.
- F. Customary home occupations subject to special requirements.
- G. Substation, electric, and gas facilities, subject to special requirements.
- H. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- I. Public transportation bus or transit shelters.
- J. Public transportation bus or transit off-street parking facilities.
- K. Swimming club, private (nonprofit) subject to special regulations.

Area regulations.

- 1. *Minimum lot area.* 6,250 square feet.
- 2. *Maximum lot coverage.* 25%, and the total maximum lot coverage of 50%.
- 3. *Minimum lot width.* 50 feet.
- 4. *Height of buildings.* Three stories or 35 feet.
- 5. *Building setback lines.* 15 feet.

6. *Rear yards.* 20 feet with conditions.
7. *Side yards.* Minimum width 8 feet, with an aggregate of 20 feet, with conditions.

The proposal is to take a .08 acre portion of the rear of the Benny Street site (tax parcel #18-026.00-132) zoned RD and add it to the Pike Park parcel (tax parcel #18-026.00-140) zoned RM and then rezone the combined properties to RA.

RA is a multi-family high rise apartment zoning which permits the following uses:

- A. High-rise apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
- B. Garden apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
- C. Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further provided that the minimum lot area for each eight or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
- D. Nursing home, rest home or home for the aged; provided that:
- E. Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
- F. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- G. Public and private elementary, junior, and senior high schools.
- H. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- I. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- J. Municipal sewage pumping station and sewers.
- K. Right-of-way, street.
- L. Swimming pool, private, swimming pool, public.
- M. Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- N. Public transportation bus or transit stops for the loading and unloading of passengers.
- O. No impact home businesses in a residential dwelling shall be permitted subject to special provisions.

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

- A. Police and fire stations, library, museum, and art gallery.
- B. Physicians' and dentists' offices subject to special requirements:
- C. Physicians' and dentists' offices in a multifamily residential building.
- D. Substation, electric, and gas facilities, subject to the following special requirements:
Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.

- E. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
- F. Swimming club, private (nonprofit).
- G. Day care centers, kindergartens, preschools, day nursery schools, and orphanages; with special provisions.

Area regulations.

1. *Minimum lot area.* 6,250 square feet, except for those uses otherwise regulated.
2. *Maximum lot coverage.* 40%, except for those uses otherwise regulated.
3. *Minimum lot width.* 50 feet, except for those uses otherwise regulated.
4. *Height of buildings.* seven stories or 80 feet with bonuses. Up to ten stories or 110 feet, under special conditions.
5. *Building setback lines.* 15 feet, except that for an apartment building, which shall be set back at least:
 - a. 30 feet from the line of all perimeter streets.
 - b. 25 from the line of all interior streets.
 - c. 25 feet from all exterior lot lines.
6. *Rear yards.* 12 feet, except that for apartments, which shall be 25 feet.
7. *Side yards.* Seven feet, with a minimum aggregate of 15 feet, except for apartments the minimum shall be 20 feet with conditions.

In terms of zoning area requirements, the plan meets all RA area requirements, except for minimum lot size and building setback lines.

Regarding these area requirements, on March 19, 2015, the applicant received the following variances from the Board of Adjustment: for minimum lot size (a variance of .08 acres), a 2.1 ft. variance for building setback lines, specifically minimum setback from all perimeter streets, and a 10 ft. variance regarding the required 25 ft. setback from exterior lot lines. In addition to these variances, previously on November 21, 2002, the Delta Eta Corporation applied for and received variances from the Board of Adjustment for building height and for distance between the relocated units (to be demolished). While these 2002 variances may run with the property, they are no longer applicable as they were to meet the RM zoning requirements for the site.

In addition, should the development be approved, the remaining RD zoned parcel at 52 Benny Street will still meet all RD area requirements.

Regarding adjacent and nearby properties, those to the north and south along the west side of Chapel Street are RM zoned single family homes, most of which are rental units. Across S. Chapel Street is the RA zoned East Village at South Chapel development, currently under construction and containing 10 townhouse style apartments; and an MI zoned property containing one legal but nonconforming residential rental structure, as well as UN zoned facilities, owned and maintained by the University of Delaware. Adjacent to the rear of the Pike Park property along Benny Street, are RD zoned single family homes, which again, are mostly rental units. Finally, the recently rezoned to RM Rupp Farm townhouse development is on the corner of Chambers and Benny Streets.

Regarding comprehensive planning, the Newark Comprehensive Development Plan calls for “multi-family residential (medium/high density)” uses at the Pike Park location. “Multi-family residential (medium/high density)” is defined as 11 to 36 dwelling units per acre. The density of the proposed Pike Park, major subdivision is 17.35 units per acre.

Based on discussions at both Planning Commission and Council meetings, the following density calculations are provided.

In terms of bedrooms per acre, the 90 proposed bedrooms associated with the Pike Park project calculate to 74 bedrooms per acre. While the same bedroom information for the immediate area is not readily available for comparison purposes, recent City Council approved residential development bedroom per acre densities calculate as follows:

Rupp Farm (Chambers and Benny Streets):	88
South Main Commons:	61
Campus Walk:	77
Cleveland Station:	57
East Village at Chapel Street	85

Based on Council imposed restrictions on residencies in these projects, bedroom counts translate to the following unrelated individuals permitted to reside in those developments.

Rupp Farm:	48
South Main Commons:	78
Campus Walk:	72
Cleveland Station:	30

Status of Site Design

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

Be that as it may, the Pike Park rezoning and major subdivision plan calls for .08 acres at the rear of an RD zoned parcel at 52 W. Benny Street to be rezoned to RA and conveyed to the tax parcel containing the Pike Park development and the proposed construction of a four-story apartment building and five three-story townhouse style apartment units. The 16-unit apartment building is proposed to contain the following mix of apartments: 13 four-bedroom apartments, 2 three-bedroom apartments and 1 two-bedroom apartment, and fronts on S. Chapel Street. In addition to the north of the proposed apartment building are three existing single family three-bedroom dwelling units which are proposed to be demolished, and replaced with 5 townhouse apartments with 6 bedrooms each. The application, therefore, is for 21 residential units on the site. Access is proposed through the existing private Pike Park entrance/exit (Pike Way), which also functions as the fire lane. Parking is proposed on either side of the parking lane behind the apartment building including nine double stacked spaces on the northwest corner. The remainder of the parking requirements are met in the parking lot and the driveways and garages of the townhouses. A total of 67 spaces are provided. This number exceeds the parking requirements by 7 spaces.

Fiscal Impact

The Planning and Development Department has evaluated the Pike Park project impact on Newark’s municipal finances. The estimates generated for net return are based on

the Planning and Development Department's Fiscal Impact Model. The Model projects the Pike Park fiscal impact – that is, total annual municipal revenues generated, less total cost of municipal services provided. The Planning and Development Department's estimate of net annual revenue for Pike Park is \$3,055.

Please note that the analysis does not take into consideration existing conditions. In other words, the estimate provided is for the total development completed as proposed, and not for the difference between the existing, and proposed developments. Also please note that there is no difference between the first year net return and that of future years as the applicant already owns the property and therefore, there is no real estate transfer tax in the first year.

Traffic

At the request of the Planning and Development Department, the Delaware Department of Transportation (DelDOT) has reviewed the Pike Park rezoning major subdivision and rezoning plan. The Department indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which are 400 trips per day and 50 trips per peak hour. Having said that, however, DelDOT has comments which will need to be incorporated into the plan as follows:

1. Dedicate an additional 14.9 feet of right-of-way along S. Chapel Street from the Center line of the road. A 40 ft. minimum right-of-way from the center line is required and only 25.1 feet is currently provided.
2. Adjust the location of the 15 ft. permanent easement along S. Chapel Street in accordance with the right-of-way dedication noted above. The width of the easement can be reduced by the amount the right of way is in excess of the minimum.
3. A traffic generation diagram should be shown on the plan.

Subdivision Advisory Committee Comments

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

Electric

1. The developer will be required to pay \$12,000 towards transformers, smart meters and on-site materials. This price is subject to an annual CIP increase one year after Council approval.
2. The developer must provide keys for any mechanical rooms housing meters and/or equipment.
3. The Electric and Public Works and Water Resources Departments indicate that the developer will be responsible to pay all costs associated with restoring proper operation of the City's smart meter system if the new building interferes with radio coverage. Note 28 has been added to the plan regarding this requirement.

Public Works and Water Resources

1. The Public Works and Water Resources Department notes that each unit shall have a water meter which shall be located in an area approved by the Department; and STP fees are due at the time of issue of CO for each unit.
2. The Public Works and Water Resources Department notes that during the CIP process, the developer will provide a set of water system drawings in accordance with the State of Delaware Department of Health Drinking Water Standards for review and approval.
3. If townhomes are proposed to use refuse carts, the garage's interior dimensions must be adequately sized for refuse and recycling carts, as well as 9 x 18' parking space(s).

Planning and Development

Planning

1. The Department notes that the proposed rezoning and major subdivision plan conforms to the land use recommendations of the Comprehensive Development Plan IV.
2. The Planning and Development Department indicates that 21 apartments at a site that currently has three rental units will significantly increase density in the area, specifically when 5 of the units are six-bedrooms and 13 are four-bedroom units. Therefore, to minimize the overall impact of the development, the Department believes the applicants should voluntarily deed restrict the property to one tenant per bedroom for a total maximum number of unrelated tenants permitted to reside in the development of 90. The Commission may want to review this matter with the applicant at the meeting.
3. Originally the Department expressed concerns about the rezoning of the parcel to RA based on the zoning of adjacent parcels. However, because the RA designation will allow the apartment building to occupy a smaller footprint, and as a result provide more open space; and based on the proposed unit density (17.4 units per acre) which is just 1 unit more than the existing RM zoning would permit (16 units per acre) and is significantly less than what could be requested in RA, and further considering recent S. Chapel Street RA developments, the Department believes the zoning appropriate. However, to ensure that the property continues to be appropriate for the surrounding area in the future, the Department suggests that the developer voluntarily deed restrict the property to a maximum density of 18 units per acre, and a maximum building height of four stories.
4. The Planning and Development Department also indicates:
 - The architectural design of the proposed facades should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - Lighting should be designed to limit impact on adjoining and nearby properties.
 - The units should be designed to be easily converted into condominium units should market conditions change.

Code Enforcement

1. The Code Enforcement Division of the Planning and Development Department notes all buildings shall be designed and constructed in accordance with the International Building Code, and the International Fire Code (IFC), as amended and the Delaware State Fire Prevention Regulations (DSFPR), whichever is more restrictive, in place at the time the building permit application. In addition, the division indicates that two complete sets of architectural/structural drawings with details and sections are required to be submitted for construction review.
2. The buildings are required to meet the City's LEED-like requirements.

Parks and Recreation

1. The plan indicates that the existing solid fence around the perimeter of the property will remain. The fence is not in good condition. The developer must coordinate with the Department, prior to the issuance of the first CO, regarding its maintenance or replacement.
2. Code requires 17% of the site within the open area to be active recreation space. Considering the proximity of Kells Park and the James Hall Trail, the Department will consider the cash in lieu of recreation space provision. The developer will be required to coordinate with the Department and pay the fee prior to the issuance of the first CO for the project.

3. The Department will have on the specifics of the landscape plan during the CIP phase. The developer should consult Chapter 32, Article XXV and Chapter 27, Article VI for requirements.

Newark Police Department

1. The Department cites a concern for an increase in maintenance calls in the area as a result of the development.
2. The Department notes that the plan exceeds the required number of parking spaces by 7 spaces, but also notes that residents of the development will not be issued residential parking permits or guest passes.

Recommendation

Because the Pike Park rezoning and major subdivision plan conforms to the Comprehensive Development Plan IV and because the rezoning and major subdivision plan, with the Subdivision Advisory Committee recommendations, will not have a negative impact on adjacent and nearby properties, and because the proposed plan does not conflict with the development pattern in the nearby area, the Planning and Development Department suggests that **the Commission take the following actions:**

- A. Recommend that City Council approve the rezoning of .08 acres from the current RD (one family semi-detached residential) and 1.13 acres from the current RM (multi-family dwellings – garden apartments) zoning to RA (multi-family dwellings – high rise apartments) as shown on the attached Planning and Development Department Exhibit A, dated July 7, 2015; and,**
- B. Recommend that City Council approve the Pike Park major subdivision plan as shown on the Landmark Science and Engineering plan dated August 15, 2013, with revisions through May 12, 2015, with the Subdivision Advisory Committee conditions.”**

Mr. Silverman: In the interest of time given the hour, how about if we hold off on comments on the Department’s report and move right to the applicant’s report?

[Mr. Prettyman, the Planning Commission and the public refer to a PowerPoint slides that were brought to the Planning Commission for his presentation to the Planning Commission].

Mr. Prettyman: Good evening Commissioners. My name is Hall Prettyman, 163 S. Main Street. First of all, I would like to thank you for approving all the previous plans that we have presented in front of you. There is an explanation of why we are here so many times. We purchased this project and were thinking it was shovel ready, meaning that we could just go ahead and build what had been approved in 2005 and when the previous owner came before the Commission, the extension was denied. We then brought a plan forward that working with the previous owner and that plan had things that you all liked and you passed that plan 5-1, but there were issues that were brought up during those conversations which bothered us and bothered some of the Commissioners even though we were able to get a 5-1 vote. So, we went back to the drawing board and decided to do this project if it was us starting from the very beginning. So that is what you have here tonight. We wiped the slate clean and, of course, we did have to work with the fact that we had a million dollars worth of stormwater management already in the ground with curbs and things of that nature.

I’m sorry, I jumped ahead of myself a little bit. I would like to introduce the people I have with me. I have Joe Charma from Landmark Engineering; I have Mr. Hill from Hillcrest; I have the other owners of the property, which is my family – my son Ben, my wife Ruthanne, and my daughter Julianne.

To quickly go through this because it is getting late and I know that you are pretty familiar with this area since there has been several project that have come through here recently. These are some of the recent projects that have been approved and are in the neighborhood. I’m just going to run through some quick photographs.

This is a property located on Chambers Street. It is a duplex that was built recently. This is Continental Court, which I know you all are familiar with which was built this past year. This is looking down Chambers Street, Rupp Farm on your right, University of Delaware dorms straight ahead. Again, University dorms at the end of that street. This is across from Rupp Farm on the corner of Chambers Street and S. Chapel Street. This is University Courtyards, which is across from Continental Court. East Village – this is directly across the street from our project and is currently under construction. And this is Rupp Farm which was built on Chambers Street. So, these are the general projects that have been approved in the area. Just to give you some idea, this is the project location that we are talking about right there.

I want to talk just a little bit about these properties all throughout here. There are approximately two to three owner occupants. All the rest of these properties are rental properties.

This is our site plan. We changed up some things from the previous ones. This building is roughly 60 x 100, which gives it a smaller footprint. We took the three houses that along the right-hand side moved them closer to the road, which gives us more of a setback off of the rear. And, we are 45 feet from our neighbor on the left-hand side, which was a nice setback and he liked that very much. On the other side, we did get a variance. We actually moved the building off the property line. The previous variance for that was 10 feet. We went in for a variance of 15 feet because, as Mike explained, the variance didn't go with the rezoning, so we had to reapply for that.

This is one of our elevations. It is, of course, done by Rick Longo. It is a combination of stone and siding, and this is from the front. This is an elevation from the rear. So, the front looks like the rear, which means if you go back on Benny Street or another street where you can see this property from, it is still going to have a nice appeal from the street view. This is a side elevation. There was a comment that Mike had said this is not site plan approval so, there could be some minor changes. An example of that would be, you see that big window that is in the middle, that is actually a staircase there. Rick does a fantastic job, but he draws things that can be difficult to build, so we might have to have a variation of that window. So, this would be something of a variation black and white that we might do with that center window, but the rest of the building pretty much looks the same.

Mr. Silverman: Are the mechanical systems hidden behind the extension of the roof line above the fourth floor?

Mr. Prettyman: That is correct. It is actually a flat roof building. There is living space on that fourth floor, but it is a flat roof building. Let me jump back if I can. What you see off the balcony is actually where the HVAC rooms are right here and they are all stacked. They can pull their air and everything from the side so that it's not actually on the front of the building.

These are the townhouses that we are proposing. We thought this was a much better presentation on Pike Way as you pull in as the buildings that are already there. I do want to say, if we take this jump drive and go print it in one of your computers, the colors will vary. So, there can be some variations as far as the color goes. What we want to do here is we want to match the stone with the larger building so we have that uniformity kind of look when you pull in, but the siding we want to a little bit of a different color.

There is parking that is underneath of these units. There are two parking spaces under the units and we have made the front driveways so you can actually park in them and it is not where you can't pull a car in. There are actually four spaces in front of each one of those units.

This is a side view from S. Chapel Street. I know there has been a lot of talk about side views and whether S. Chapel Street should look like that is a house facing this way or whether it is the side. Ricky Longo and myself discussed this a lot and we looked at the street. Right now, this is what they have done at Continental Court and they did try and make that look like it faced S. Chapel Street, but unfortunately, they had some issues.

This is property that was on the corner of Chambers Street and S. Chapel. They, too, has some issues. You can see where their electric came in, but they did use landscaping. It doesn't really show up on this picture, but that is really a nice looking flower bed in front of that vehicle there.

This is Holly Woods and that is the side view. Basically, what they did was use trees and plantings and things of that nature. So, what we are proposing is a building that isn't unpleasant to look at right now, but in front of this when you look on the site plans, there is a lot of planting that is going to happen in front of this. In about three or four years, you are really not going to be able to see this building very well. The other thing is that it is only 40 feet wide. So, you are going to be by it, if you know what I mean, and I think your eye is going to be attracted to the larger building. If you are coming the opposite direction, I think you are going to look at the townhouses and the fronts and the way they look.

Again, this is our site plan. We were able to do the 43% open space, which the Variance Board commented us on because most of the time they had people coming to Variance Board so that they could have less open space.

These are the houses that are currently on Pike Way. So, the townhouses that you saw would replace what you see here. This was originally was a duplex – a top and a bottom. There are two bedrooms on the bottom and two bedrooms on the top.

This is a five bedroom house, two full baths. We tried to get those letters off that brick, but believe it or not it is construction glue and it is practically impossible to get them off. We were up there with torches trying to burn them off. At least we got them to the point where, actually, I don't think those letters mean anything. We got some of the parts and pieces off of them.

This is the last house in the back. This is a five bedroom house also with two full baths. We will actually end up with the townhouses right about to the right of where that house is. So, it is going to move off that back line.

This is a project that we did a couple of years ago. I'm sure you probably recognize the Hadley Plumbing building. We were able to purchase that and we went in and kind of did that same thing that we want to do at Pike Park. We want to kind of spruce it up and make it look nice. That is what it looks like today and that is what we do with it, and we think that is a good example of what this project could look like.

Last but not least, we are back to the Comprehensive Plan. We feel like we have been able to come up with a project that meets the Comprehensive Plan, we have received all of our variances that we needed, we are now Code compliant, we have received a positive recommendation, of course, from the Planning and Development Department. We didn't have to but we took this to the DNP Design Committee and we got a positive response from the Design Committee for the way the buildings looked, and last but not least we do conform to the Comprehensive Plan. I will be happy to answer any questions.

Mr. Cronin: The site plan that you showed there indicates that on the townhouse structure, Units #1 and #5 are kind of offset a little bit toward the front. Where the drawing we have does not show that offset. I was wondering what your intention was?

(Inaudible)

Mr. Cronin: If you go back into your site plan on your particular screen, the top and bottom units are a little further to the left than the three middle units.

Mr. Prettyman: Correct.

Mr. Cronin: And what we have on our drawing shows it as one rectangle, all five units.

Mr. Prettyman: It will be what you see that is up there because we addressed that because Rick wanted a variation in the front. He didn't want a flat front.

(Inaudible – not a mic).

Mr. Prettyman: Then it is the one that you have – it's a square.

Mr. Cronin: The next observation, a question, when you showed the Continental Court up the street behind the 7-Eleven, all of their electric meters are facing Chapel Street which was not in the elevations we saw. Do you have any idea where your electric meters are going to be for either of these two structures?

Mr. Prettyman: That is part of that million dollar payment we paid for the infrastructure. So, all of the electric is underground already.

Mr. Silverman: The placement of the electric meters and bringing power into the site is the City's choice and they go the cheapest distance between two points. I brought that up at an earlier meeting. If we go to a lot of trouble on facades, a lot of money on facades and we end up with electric meters. So, that needs to be negotiated and I think as Mr. Prettyman is saying, they are down the road on that.

Mr. Prettyman: At this particular site, they are already underground. We are going to have to move them a little bit. The electric box is right off the corner of this house. So, it is just to the right. We will pay whatever it takes to extend that line down around and it will end up being in the back of the property and all of the meters will be on the back.

Mr. Johnson: The Planning Department believes that the applicant should voluntarily deed restrict the property to one tenant per bedroom. Are you in agreement with that?

Mr. Prettyman: We are willing to have deed restrictions on tenants but we do have some apartments that can have more than one person in a bedroom. We have some bedrooms that are large enough. So, what we would prefer to do is deed restrict the number of people that are allowed to dwell on the property.

Mr. Johnson: And, what number would that be?

Mr. Prettyman: We would like that to be 96.

Mr. Johnson: Instead of 90?

Mr. Prettyman: Instead of 90.

Mr. Johnson: How would that change the density?

Mr. Prettyman: That makes us behind Rupp Farm by 10 people. We are 10 people less than they are if you do the density per acre and we are 7 people less than the density across the street from us. So, that puts us less than the last two projects that have been approved in that area.

Mr. Johnson: What is the density per acre?

Mr. Prettyman: It would be 80. It is a little bit hard to comprehend because we are bigger than everyone else that is there. So, if Rupp Farm was the same size that we were, there density would be 106 people per acre. If East Village's size was the same size as ours then they would have 103 people per acre. So, what we are asking for is 96 people.

Mr. Johnson: I'm a little confused and maybe Mike has to correct me here or enlighten me. On page 11, it says, "However, to ensure that the property continues to be appropriate for the surrounding area in the future, the Department suggests that the developer voluntarily deed restrict the property to a maximum density of 18 units per acre. . ."

Mr. Prettyman: That is units.

Mr. Johnson: So, you are willing to do that?

Mr. Prettyman: Yes. All the other developments like Rupp Farm, they deed restricted to one person per bedroom. They don't have a total number of people that they are allowed. Technically, they are if you work the bedrooms. In the marketplace sometimes you have a three-bedroom unit and four people might go into that and it is a little cheaper, if you know what I mean. What we have done now is, when we came before you earlier, we had some seven bedroom units and Commissioner Dressel, who is no longer a Commissioner, did not care for that and so we tried to eliminate these large bedroom units.

Mr. Johnson: One final question. You have six-bedroom units, how many bathrooms?

Mr. Prettyman: In the six-bedroom units, we will have four and a half bathrooms.

Mr. Fortner: Just a little more clarification. 18 units has been agreed on, but in item 2 on page 11 the department recommendation, "... the applicants should voluntarily deed restrict the property to one tenant per bedroom for a total maximum number of unrelated tenants permitted to reside in the development of 90." So, we requested that it be limited to 90, but it is certainly to your discretion to go to 96, if you want to go to that or whatever you like.

Mr. Prettyman: I have no problem with 90.

Mr. Cronin: If these become condominiums one day and hypothetically, that 90 is all married couples. It would be a 180, yes? The way we read this. Unrelated tenants because they are now related.

Mr. Fortner: It would be a part of the 18 units and there are 18 families.

Mr. Silverman: And, if this property were to be converted, it would have to come back here for lot lines and other kinds of adjustments. So, that requirement could be extinguished.

Mr. Cronin: If it is deed restricted, it is a tougher thing to change, would it not be?

Mr. Johnson: Can I ask a final question because I am trying to get this in my mind, the difference between 90 and 96. What is your largest bedroom size?

Mr. Prettyman: I actually don't know the exact size. The City kind of knows us. It has to meet BOCA Code in order to have two people in it. We would never put somebody in a room that doesn't meet the BOCA Code. We are asking this as a maximum. I have to be honest with you. We are in the process right now of building Chimney Ridge right down the street here, and we have 32 townhouses that are all 6 bedrooms. We are allowed 192 people because we did deed restrict that to one person per bedroom because BOCA Code you couldn't get more than one person in the bedroom, and we are fully rented for September and we are allowed 192 people and, I believe, we have 170. So, we rented to 170. If we have a 6 bedroom townhouse and we have 5 good applicants in front of us, we are not going to say, hey, you've got to have 6 people. We are going to take 5 good applicants. This just gives us some flexibility in the market by having the six people dealing with the two-bedroom apartments and the three-bedroom apartment that we have.

Mr. Hurd: I have to say that the site plan is really well done. I have to commend you on how you put that together in a nice sort of compound with the open space and the parking. I am going to limit my comments to the elevations because that is my area of expertise. I always enjoy Rick's drawings because they are so fanciful. For the apartment building, my only comment is, and this is just strictly as an architectural thing, you have too many types of window tops going on and I would suggest just getting rid of those round tops and just keep them all the flat tops with the keystones because that works in the bricks, that works in the vinyl and it works all over and I think it keeps it from being a little too busy. Otherwise, I think the height and proportion looks good. I was glad to see the side elevations and see that that is being considered because that is always the tricky part is when you turn the corner. The one next to Rupp Farm on the corner of Chambers where one type of vinyl just turns the corner and becomes another type of vinyl. It drives me crazy every time I see it.

The one thing you didn't touch on and I wanted to be sure about is, the Planning and Development Department had also asked about a deed restriction for four stories because I

am one of the owner occupants on Lovett and Benny. Four stories is about what I am comfortable with.

Mr. Prettyman: We were trying to figure out how we could make everything work. RA zoning is across the street. We talked to an attorney and they said that adjacent properties would be considered across the street. That is considered an adjacent property, so then, we came back to the Planning and Development Department and said, how about if we were willing to deed restrict to four stories because the property across the street is four stories. Then they said that changes things. So, we said yes, we would agree to that.

Mr. Stozek: I presume that the plans that you have shown reflect DelDOT's concerns about right-of-way and easement?

Mr. Prettyman: Yes. We have gotten a full report from them.

Mr. Stozek: So, what has to be incorporated has been done?

Mr. Prettyman: Not everything has been done, but has to be done before we would move forward.

Mr. Stozek: I only have two other comments. Initially, I was concerned about the four story structure because just about everything else in the area is three stories, but then, of course, across the street there is a four story structure going up. So, that horse is out of the barn already. My only concern going forward is that we don't have a proliferation of four stories and then five stories in various places around the town because it leads to other problems, parking and all kinds of other things depending on the location of course. Here you've got some flexibility. I like the look of the building. I like the proportions. The only other thing that worries me a little bit and I'm sure you have considered it, is when I look at the plan I see an awful lot of impervious surface. I realize right now you have an open field, basically, and you say that the stormwater management will meet codes. How is the stormwater being collected and managed? A question back to Mike is, what about where it goes into the street into the stormwater system? Has that all been thoroughly calculated?

Mr. Joe Charma: Landmark Science and Engineering. Yes, the stormwater is a subsurface system and it was designed originally for the original project that was approved back in 2005. With this project, we redid the analysis based on the current cover, this revised cover. The system meets all storms. The water quality storm, the 200 and 100. The discharges are all less than the preexisting conditions, which meets the State regulations. Public Works and Water Resources has those calculations and they have verified that.

Mr. Stozek: But, everything coming off the buildings is going right to the stormwater. There is no collection system.

Mr. Charma: There is. Actually, what we really want is, what comes off the roofs, we want to disconnect that and get it to flow through grass as much as possible and then it will go into the catch basins. On the end of the streets, some will go into the street and there are catch basins that will collect all of that and bring it to the subsurface system at the rear of the property.

Mr. Prettyman: I think your question was, was there really going to be any more, other than what is shown here as far as impervious surface and there won't be. And, the stormwater management has already been installed. It is underground right here right now in this parking lot and there are inlets that go into that system. We actually own properties on Benny Street and there was a real problem with this being a low area of water lying in it and the previous owner put a drain back here which really helped with stormwater and he ran a pipe all the way through to Benny Street and hooked into a drain on Benny Street and all of that exists today. So, it should be able to handle stormwater.

Mr. Cronin: On page 12 under the Subdivision Advisory Committee section, item #1 – Police Department. Maybe we should clarify that somewhat where it says, anticipate an increase in maintenance calls in the area. I presume they mean maintenance of the peace as opposed to being called for electrical work and plumbing work and landscape work and yard

work. Is that something we should clarify in our remarks? Maintenance of the peace, is that what they mean when they say maintenance calls?

Mr. Fortner: Yes. They don't mean cutting the grass.

Mr. Cronin: Then I think we ought to say that in writing if we are going to reference the Subdivision Advisory conditions in our recommendation. We ought to be clear in what we are referencing.

Mr. Silverman: That may be Police jargon for non-emergency responses or something like that.

Mr. Cronin: Either way, we shouldn't go by Police Code, we ought to go by what normal English language might suggest.

Mr. Silverman: Are they saying increased Police patrols or increased normal patrols?

Mr. Cronin: I don't know what they are saying at this point. I have an idea of what they are not saying and that is not electrical work and plumbing work and landscaping and yard work and litter patrol and things like that. So, perhaps, we should just say Police calls. Don't say maintenance, just say Police calls. Take out the maintenance calls. If we are going to reference the Subdivision Advisory conditions as part of our likely vote to recommend approval, I think we should, perhaps, clarify their intent if we can to be so presumptuous to do so. So, I would suggest taking out the word "maintenance" perhaps and just say calls.

Mr. Silverman: This is actually a report from the Police to the Subdivision Advisory Committee, to the Department, and we really can't change that. It is like changing minutes. But, for future reference or for reference on this, we need a clarification of what they mean by maintenance before it goes to Council.

Mr. Cronin: Then, I would recommend that Council clarify that particular item before they consider it.

Mr. Silverman: If the Planning and Development Department will take that back.

Mr. Cronin: That would be my recommendation on that.

Mr. Silverman: I have two quick things. Pike Way is to remain a private street? I just didn't know if there was a revision there. And, Bob, I'm along with you on the Police Department. I'm not quite sure on this. Residents of the development will not be issued residential parking permits or guest passes. I assume that means that the Police will not issue parking permits for Chapel Street?

Mr. Prettyman: Correct. We've had that before.

Mr. Silverman: But there is no parking on Chapel Street.

Mr. Prettyman: That's a standard language for them. Let's say that someone would try to get one off Benny Street. They couldn't do that either.

Mr. Silverman: We saw it happen on the development on New London Road that there were private houses along there. They evolved into townhouses and all of a sudden there is on-street parking in what used to be bicycle lanes in travel lanes. That is another issue that needs to get squared away before it goes to Council. Are there any other questions?

Mr. Johnson: I have a question for Mike. It says, zoned RA (multi-family dwellings high rise apartments). What is the City's definition or what is the zoning definition of high-rise apartments.

Mr. Fortner: It is, basically, over three stories or four stories up to eight.

Mr. Johnson: Then after eight, it's not high-rise anymore?

Mr. Fortner: It's not permitted, but then it also says a maximum of 36 units per acre.

Mr. Silverman: I will extend the floor to anyone else who would like to speak in favor. Would anyone like to speak in opposition? Hearing no more requests for discussion, let's move immediately to the motion before the group. The Chair entertains a motion with respect to the recommendation of the Land Use Department as cited on page 13 in their report.

Mr. Johnson: Can we put in there the recommendations from the Planning and Development Department to restrict the unrelated tenants to 96 and maximum density to 18 units per acre?

Mr. Hurd: I think that would go under Item B.

Mr. Fortner: That is already in there. You will have to amend the 90 to 96.

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

Mr. Cronin: Are we doing A and B together?

Mr. Silverman: Just A. Is there any further discussion on the motions?

A. RECOMMEND THAT CITY COUNCIL APPROVE THE REZONING OF .08 ACRES FROM THE CURRENT RD (ONE FAMILY SEMI-DETACHED RESIDENTIAL) AND 1.13 ACRES FROM THE CURRENT RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) ZONING TO RA (MULTI-FAMILY DWELLINGS – HIGH RISE APARTMENTS) AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JULY 7, 2015; AND,

VOTE: 6-0

AYE: CRONIN, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE

MOTION PASSED UNANIMOUSLY

Mr. Fortner: The 18 is in the Subdivision Advisory Committee comments.

Mr. Cronin: But, it says suggests 18. I think it should be something more clear than "suggest" will be 18. Something like that.

Mr. Silverman: Then I am going to restate the last part of that, with the Subdivision Advisory Committee recommendations with the exception of changing the recommendation to require 18 units per acre and 96 unrelated people on the total site and a total of four stories.

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

Mr. Cronin: How about the clarification on the maintenance calls since our recommendation is to Council?

Mr. Silverman: Let's make that a third piece.

Mr. McIntosh: Did we just say they have to build 18 units because that's the way it sounded to me?

Mr. Silverman: No, to a maximum of 18 per acre and 96 unrelated persons living on the total site.

Mr. Cronin: Unrelated tenants.

Mr. Silverman: Elizabeth, did you get that.

Ms. Dowell: I have it.

Mr. Silverman: Is there any discussion?

Mr. Cronin: I would like to amend the motion to clarify maintenance calls in the Police Department.

Mr. Silverman: Okay, we can add that in there.

Mr. Cronin: Unless the person that made the motion and withdraws it and we go back and add that.

Mr. Silverman: If they agree to the change, we are okay.

Mr. Johnson: It is unrelated to the motion on the floor.

Mr. Silverman: We will get that.

Mr. Cronin: Alright.

B. RECOMMEND THAT CITY COUNCIL APPROVE THE PIKE PARK MAJOR SUBDIVISION PLAN AS SHOWN ON THE LANDMARK SCIENCE AND ENGINEERING PLAN DATED AUGUST 15, 2013, WITH REVISIONS THROUGH MAY 12, 2015, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS, AMENDING THE NUMBER OF UNITS TO BE DEED RESTRICTED TO A MAXIMUM OF 18 UNITS PER ACRE AND THE MAXIMUM NUMBER OF UNRELATED TENANTS PERMITTED TO RESIDE IN THE DEVELOPMENT TO 96.

Mr. Silverman: Is there any discussion? Hearing none, we will move directly to the vote. All those in favor of the Department's recommendation along with the changes discussed by the Commission, signify by saying AYE.

VOTE: 6-0

AYE: CRONIN, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE

MOTION PASSED UNANIMOUSLY

Mr. Silverman: I will entertain a third motion.

Mr. Johnson: Mr. Chairman, it wouldn't be a motion. It would be a recommendation to the City Council or to the Police Department.

Mr. Silverman: As part of the record, I think by consensus the group would like the Planning Director to approach the Police Department with respect to their comments in the Subdivision Advisory Committee report to clarify the term "maintenance" and to also clarify their role in relationship with visitor's permits and parking permits. There is a consensus among the group.

Mr. Cronin: Consensus is agreed.

Mr. Silverman: Is there any other business to come before the body? Hearing none, with no objection, the hearing stands adjourned.

There being no further business, the Planning Commission meeting adjourned at 9:51 p.m.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Elizabeth Dowell". The ink is dark and the signature is written on a light-colored background.

Elizabeth Dowell
Planning Commission Secretary