

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

January 8, 2008

7:30 p.m.

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

Chairman: James Bowman

Commissioners Present: Angela Dressel
Mary Lou McDowell
Rob Osborne
Joe Russell

Commissioners Absent: Ralph Begleiter
Chris Hamilton

Staff Present: Roy H. Lopata, Planning Director

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

1. AGENDA ITEM #1: THE MINUTES OF THE DECEMBER 4, 2007 PLANNING COMMISSION MEETING.

The minutes of the December 4, 2007 Planning Commission meeting were unanimously approved as received.

2. AGENDA ITEM #2: REVIEW AND CONSIDERATION OF THE REZONING FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL) AND MINOR SUBDIVISION OF THE .56 ACRE PROPERTY AT 203 NEW LONDON ROAD TO ADD A THREE-UNIT APARTMENT BUILDING TO THE SITE [TABLED SEPTEMBER 4, 2007].

MOTION BY DRESSEL, SECONDED BY RUSSELL TO REMOVE AGENDA ITEM #2 FROM THE TABLE.

VOTE: 5-0
AYE: BOWMAN, DRESSEL, McDOWELL, OSBORNE, RUSSELL
NAY: NONE
ABSENT: BEGLEITER, HAMILTON

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

“At its September 4, 2007 meeting, the Planning Commission reviewed a request for the rezoning and minor subdivision of the .56 acre property at 203 New London Road. The plan before the Commission called for a rezoning of the property from RM (multi-family dwellings – garden apartments) to BLR (business limited residential) and minor subdivision approval to add a separate four-unit apartment building to the existing four-unit apartment facility on the site. After concluding its public hearing, the Planning Commission voted unanimously to table the plan and requested that the applicant make revisions noted in the attached August 27, 2007 Planning Department report.

The applicant has submitted a revised KCI Technologies, Inc. plan, building elevation drawings and supporting letters that address the issues raised in the Planning Department’s original report on the project.

The Planning Department’s report on the revised rezoning and subdivision plan follows:

Plan Revisions

Following the Planning Commission’s September 4, 2007 review, the applicant submitted a revised plan that now calls for three rather than four apartments in the proposed new building added to the north end of the site. The table below lists the key plan revisions.

	<u><i>Original Plan</i></u>	<u><i>Revised Plan</i></u>
Number of New Units:	4	3
Gross Density:	14.3 units/acre	12.5 units/acre
Footprint of New Building:	2,100 sq. ft.	1,770 sq. ft.
Parking Spaces:	16	16
Stormwater Management Area:	Not Shown	Shown
Landscape Screen on North Boundary	Partial	Extended

Additional commentary regarding the other issues raised in the Planning Department report is provided below:

1. The Planning Department notes that we will “agree to disagree” regarding the front setback of the new building. While we recognize that there is no specific Code requirement, the Department believes that the new building would fit more appropriately on the site from an aesthetic point of view if it was aligned with the existing building. We recognize, on the other hand, the setback is needed for access to the in-building garage.
2. Because of the reduction in the number of units, the Planning Department suggests a deed restriction limiting the number of unrelated tenants per unit to four rather than two.
3. The Planning Department notes that the previous reference to a subdivision identification sign is suggested to assist the applicants in ensuring that the appropriate sign is shown on the plan. If a sign location is not shown on the subdivision plan, it will not be permitted.
4. The Planning Department’s previous commentary regarding subdivision site design conditions remains applicable to the revised plan.
5. The Water and Waste Water Department reiterates that because of the proposed location of the driveway to the new building, the applicant will need to take care during construction to avoid impacting the water service to the existing unit.
6. The Public Works Department indicates that prior to the plan’s review by City Council a preliminary stormwater report will be required. The Department notes, as well, that proposed contours also need to be shown on the plan. The Department adds that handicap ramps at New London Road and at the new apartment walkways need to be shown on the plan.

7. Regarding the landscape plan, the Parks and Recreation Department indicates that the Tree Planting Detail needs to be revised by deleting the reference to “trunk wrapping.” The Department also notes, regarding the Tree, Evergreen and Shrub Planting Detail “tree balls,” the following language should be added: “If wire basket is on root ball after the tree is placed in the hole (at proper height and plumb), cut away 1/3 to 1/2 of the wire basket and fold down burlap.” The Department adds, regarding the Shrub Planting Detail, that the following language needs to be added: “If plant material is containerized, scarify the outside of the root ball prior to backfilling.”
8. All other Departmental comments have been addressed in the applicant’s attached plan and supporting letter or remain applicable.

Recommendation

Because the revised plan calls for a smaller building, with three rather than four apartment units; because the plan’s gross site density of 12.5 units per acre conforms to the land use guidelines for the location of 11-36 dwelling units per acre in the Newark Comprehensive Plan; because the proposed density conforms more closely to the 10.29 units per acre approved for the adjoining CampusSide townhouse apartment project (now under construction); because the proposed use, with the Departmental conditions, will not have a negative impact on adjoining properties, and because the proposed use corresponds, in general, to the development pattern in the area, the Planning Department suggests that **the Planning Commission make the following recommendations to City Council:**

- A. That City Council approve the rezoning from RM to BLR of the 203 New London Road property, as shown on attached Planning Department Exhibit A, dated September 4, 2007; and,**
- B. That City Council, with the relevant conditions in the Planning Department reports, approve the 203 New London Road minor subdivision plan, as shown on the KCI Technologies, Inc. plan dated July 2, 2007.”**

Mr. Lopata: The most important continuing condition is the suggestion that the property be deed restricted to limit the number of unrelated tenants on the site. That is per unit. The number of tenants would be four rather than two.

Mr. Bowman: Are there any questions from the Commissioners for Mr. Lopata?

Ms. Dressel: Roy, could you clarify, again, the number for the deed restriction that you are proposing?

Mr. Lopata: Yes, in the original report we had suggested that the unrelated tenants be restricted to two with the four units. Now, in light of the reduction in the number of units, it would be restricted to four tenants per unit, which is the traditional number we have used with other apartment complexes throughout the City. In light of the changes in the site, we thought that would make more sense.

Ms. Dressel: So, you are saying it would be deed restricted to four unrelated people per unit.

Mr. Lopata: With a total of 12 on the site.

Mr. Osborne: Roy, that is mainly because the apartments are three bedrooms.

Mr. Lopata: Correct, and it is less units.

Mr. Osborne: One other question. Roy, in #3 you talk about the sign. Can you clarify that?

Mr. Lopata: We put that in almost all of our reports. Applicants and their engineers uniformly miss that section in the Subdivision Regulations and Zoning Code that allow something called a subdivision identification sign that helps people find the subdivision. It is actually helpful from both a community standpoint and from the developer's standpoint so we typically remind them to put that on the plan. If it is not on the plan, they have to come back and get an administrative subdivision.

Mr. Osborne: As opposed to a sign that you sometimes see where they are listing the designer or builder of the development and things like that?

Mr. Lopata: That is a real estate construction sign. This would be a sign that would say, for example, "Abbottsford" or "Oaklands." It helps people find the site.

Mr. Russell: Where your driveway comes to the sidewalk, is that a fence along there? I see a double line on your blueprint, I was wondering if that was a fence or something to split the sidewalk from the driveway. Is that a curb or a fence – see the double line how it curves around there?

Mr. Chris Flathers: I am the engineer with KCI Technologies. Our address is 1352 Marrows Road, Newark, Delaware. That is just a curb line. One of the comments that was brought up by the Public Works Department was that we would need to provide handicap ramp access across there. So, we will make that revision before it goes to City Council.

Mr. Bowman: Why don't we let them make their presentation and then any further questions related to the rendering can be asked after that.

Mr. Flathers: I think Mr. Lopata covered the major items. We made some of the revisions that were asked for. I believe the rendering that you have shows the relationship between the existing building and where the proposed building. We did add the additional stormwater management areas on the plan that are required. We are in the process now of pulling together the preliminary report for Public Works' approval. We are working on it now and will be forthcoming after this meeting. We have tried to work with Mr. Lopata and the comments to try to make the plan work conforming to what they are looking for.

Mr. Bowman: Do we have any questions from the Planning Commission for the applicants?

Mr. Russell: With your garage spaces, are there any other entrance out of there except for the front entrance where the car goes in? Is there a door?

Mr. Ralph Olivier: 268 Chesterville Road, Landenberg, Pennsylvania. I am the architect.

It is my intention to have a door at the back of the garage. On the left side of the building facing the street . . .

Mr. Russell: Where it comes into the alley way?

Mr. Olivier: The space in between the two buildings, there is going to be a door there to go out of the garage onto the sidewalk so you can get to the entrance of the building which is located right behind the end of the garage wall.

Mr. Lopata: Ralph, will these be open garages?

Mr. Olivier: Yes.

Ms. Dressel: I would like to thank the applicant for providing the color views and diagram of your site. This is very helpful, and this was not in the original application. This, I think, helps us to see what it is that you are looking at. The last time I felt like I didn't have an idea at all of what you had intended to build.

Mr. Bowman: Roy, I did not notice anything in the report – I must admit I did not go back and read the old report in detail – but I assume that this building would be required to be fully sprinklered.

Mr. Lopata: Yes.

Mr. Osborne: Isn't it a requirement now that there be an elevation for each side of the building submitted with the plan?

Mr. Lopata: This is a minor subdivision so that is not required for minor subdivisions. On the other hand, submitting them is always advisable just for the reasons that have come up. It is much easier to get a sense of what the plan looks like with a picture like this. Most of our developments are major subdivisions.

The reason that distinction was made is sometimes we review a one or two house development where a homeowner is subdividing their lot. They may not know what the house will look like. So, it was decided not to include that, but we advise developers that a drawing like this is helpful. It is certainly appreciated that they provided it.

Mr. Bowman: If there aren't any other questions from the Commission, we will open it to the public.

Mrs. White: 103 Radcliffe Drive. First, to say something that the applicant at the initial meeting is September when he said that this property was "mis-zoned;" I think that is the wrong terminology. Basically, as it currently exists before anything was built on it was legally non-conforming. That probably goes back – although I did not research it – to when Newark changed its Zoning Code back in the 1960's to different types of zoning things like now we have RS, RM and so on. And this building was there as a four-unit apartment house before that. Likely, because of that it got a new RM zoning and then the total area made it, either at that time or later without an acre, non-conforming. I don't think it is fair to call it mis-zoning.

Also, there was a comment at that meeting that had to do with the building that is proposed that the original building had just recently been changed from two units to four units. I wanted to say that all the 36+ years that I have lived here, the original one has been four units and it probably went back till the 1930's or 1940's or the 1920's and was originally the Ice House before that.

Perhaps because I knew people who lived in this 15 to 25 years ago – and I have been in two if not three of the different units of the present building – I have to say that I decry filling in every last space around even this and that if the applicant really wanted to bring it to conformity, he could get the zoning changed to BLR and not build another building. So, the real reason, as you can clearly tell for wanting a change to BLR, is not to bring it into conformity and have it legally non-conforming but to build a separate building.

I do think that people – even in an apartment house and this is a small even folksy kind of apartment house as it currently stands before the new building goes in – should have some tiny bit of a place that they can sit outside and enjoy the summer breezes, enjoy a picnic, put a tomato plant in, and do other things. So, I am sorry to see the open space, which I am well aware of because I have visited people I knew there long ago.

Mr. Lopata: They prefer to have a beer on porch more than plant a tomato.

Mrs. White: A backyard is nice, too. Since I am coming in later at the second meeting, I want to comment on the things of the new building. I am a little bit confused because at the first meeting, the purpose was to remove the porch so a driveway could go across the front to then go into garages on the proposed new building. And, now when I look at this picture that is posted there, it has the porch still there. So, I wanted first off to know, is the porch going to remain or is it going to be taken off? That picture with the proposed new building and garages shows the porch of the existing building still there. So, I wondered if the applicant can tell me if the porch is going to remain or not.

Mr. Flathers: The intention is at this time to remove the front porch in order to get access for cars to the front.

Mrs. White: The picture shows the porch in the front. I want to speak out very strongly against taking the porch out. This was, and to some extent, still remains a very charming building. Furthermore, I highly object to having a roadway, a driveway in the front. In fact, the City has tried very hard to eliminate that in a number of cases like rentals which put macadam parking spaces right on the front lawn. I am surprised that this is even allowed but I object to it very much.

On the letter dated November 1, 2007 that was written by Christopher Flathers, says, "This building will contain three stories and two three-bedroom apartments and one two-bedroom unit." That is in the letter; however, the plan that is posted over there says it is going to have two four-bedroom apartments and one two-bedroom. The letter says two three-bedroom. I would like to know which it is because it affects what I am about to say. Your plan there and your letter here do not conform to each other.

Osborne: I believe the plan would be the governing item here.

Mr. Lopata: The applicant told me that the letter was what they intended.

Mrs. White: When you have up to three bedrooms, you need two parking spaces. As soon as you have four bedrooms, you need three parking spaces.

Mr. Lopata: That is why it is the opposite.

Mrs. White: So, if you are doing, as the letter states, two three-bedroom apartments and one two-bedroom apartments, you would need six parking places. Whereas, before with the four apartments you needed eight. If that is the case, I believe you already have 14 parking places on the side where all the parking is now. They need eight for their current building; and if they had as the letter says, they would only need six more and they have 13. So, I am proposing that on the plan if you look where the driveway starts but before it goes in front of the porch, you could get a 14th parking place and you would not have to have a driveway going in the front and you would not have to have garages in the front. The whole first floor is garages, is that correct?

What I am proposing is, you have either two three-bedroom or three three-bedroom apartments in this new building and you would totally on the whole property only need 14 parking spaces. You have 13 already and the 14th could be before you even get in front of the porch right at the beginning of the driveway that would go by but not yet in front of the porch, you could put your 14th parking place there and then you could make this house on the side without your carport and could make it look more like a house with proper entrances to go in. For example, just up the street at CampusSide they have purposely put the parking in the back, and that looks very nice. Even this current building that already exists has a porch in the front and parking to the side. I think you could make this building look much nicer with entrance doors and that kind of thing. You could even make three three-bedroom apartments. You could get rid of the parking and the road in the front. I would very much for the aesthetics of the whole thing and the fact that you can do it – get your 14th parking space on that site.

Mr. Flathers: There is a 20 ft. setback in that area that would prevent us from putting a parking space there. So, providing a 14th parking space on that side of the building was not practical.

Mr. Lopata: Let me make sure you understand at least from the Planning Department standpoint, we are going forward with the understanding that it is a maximum of three three-bedroom units. Otherwise it does not work. Just so the Commission understands that -- I am saying a maximum of three three-bedrooms.

Mrs. White: If you can't get that parking place there because its setback, I think there is another place you could get it along the back. I would have to show you that on the plan

later on, but I think there is a place you could get it close to the stormwater management. I would seriously ask that you consider it because you would keep this beautiful porch and make the building look much nicer.

I noticed at the September meeting there was a lot of talk both by the Planning Director and by members of the Planning Commission that it would be nice if the building could be pulled up to be somewhat like the current building, and if you didn't have the three-car carport type garage there, then you could pull that building up and you could allow a little more of the kind of space that I like to have with the building in the back or the developer could now build a deck like he has done on his addition to the other part.

The very last thing is about Bogy Creek. I am still concerned about the buffer along that although that doesn't have a delineated floodplain because it is not on the Corps of Army Engineers floodplain. It is a perennial stream and it does flood in the spring sometimes. So, it is really important that it not just be seen as some little trickle that should be ignored. It is a viable kind of thing.

Mr. Bowman: Is there anyone else from the public that wishes to speak. If not, we will bring it back to the table. Are there questions from the Commission members?

Mr. Osborne: I think Mrs. White brought up a couple of interesting things. If I read the letter from November, 2007, it is three apartment units – two three-bedroom and one two-bedroom unit. For the record, that is the plan.

Mr. Lopata: That is what is in the letter and we had understood it was going to be, as I said, a maximum of no more than three three-bedroom units. That does not affect parking. Three three-bedroom units is the same amount of parking as two-three bedroom units plus one two-bedroom units.

Mr. Osborne: I am not really looking at it from a parking standpoint, I just want to be sure I understand.

Mr. Lopata: That is what I understood.

Mr. Osborne: But the drawing that was submitted by Todd Frey doesn't reflect that.

Mr. Lopata: That has to be changed. I would certainly suggest that you include that in your motion.

Mr. Osborne: I guess it is a matter of what is the best practice. Should it be changed when it comes to the Commission or . . .?

Mr. Lopata: I had talked to the applicant about it.

Mr. Osborne: So, we can recommend this go on under the condition that the drawings . . .

Mr. Lopata: Or recommend that it not go on. As you probably have already noticed, often these plans are not in final form before they get to Council and there are required corrections. And, this is one where clearly the letter and the plan do not match in an important way. So, they have to match, but there is no problem with going ahead with it. It cannot be recorded without it being correct. In fact, this happens at Council meetings. Sometimes there is something that is noted and the engineer has to make a change before the plan is recorded.

Mr. Osborne: If we recommend that this go before Council with these conditions, the drawings be changed, we are trusting that the applicant will make that change.

Mr. Lopata: You do not have to trust it, it has to happen.

Mr. Osborne: And Council ensures that that will happen.

Mr. Lopata: It cannot go forward to Council without being fixed.

Ms. Dressel: Mrs. White, I appreciate you bringing these two issues to us because I also went by the letter and did not look back at the plan and scrutinize it. There is definitely a discrepancy here and I am a little surprised that that would happen knowing that we spent a lot of time on this plan back in September. I am also now feeling like I was blindsided almost by the picture because when I saw the picture I said this was great that they decided to keep the front porch on. I did not, again, by looking at the plan see that that had been coming off. Mrs. White also brought to our attention that if this unit is only to be a maximum of three three-bedroom units, there only need to be a total of 14 parking spots. With that information, it seems to me there has got to be a way to fit one more parking spot in this parking area. Somehow rearranging those spots there has just got to be a way to eliminate that road in the front, which is something that the Newark Planning Commission and Planning Department has raised concerns about. Again, I had hoped that those garages had had doors on them. I would guess that if they don't, that will just look like a trash heap in a very short period of time with renters in there. So, by putting the 14th spot over here, we could eliminate that whole parking garage idea and you could, perhaps, use that for storage for the unit. Then there would not have to be a drive at all or tearing off the porch which I think is the most horrible thing because that really adds to the character of that building. That would be my recommendation to the Commission that the front porch not come off, there not be a garage below that new unit so, therefore, there would be no road coming around the front and that a space be found to put that 14th parking spot.

Mr. Osborne: So, what you are saying is that three additional spaces aren't necessary, only one?

Mr. Lopata: The total number would be 14 on the site.

Mr. Osborne: And there are already 13 existing spaces.

Ms. Dressel: There are 13 spaces on the plan.

Mr. Bowman: Not counting the three garage spaces.

Mr. Lopata: You could recommend that as a condition of approval that (a) the plan be revised to ensure that it be limited to a maximum of the three three bedroom units; and, (b) that any additional parking required be found on the south side of the site in the parking area rather than within the building.

Mr. Osborne: According the drawing 13 spaces are already there.

Mr. Lopata: That is immaterial. The important thing is that if the Commission wants to go that way, you wouldn't have to put the driveway in the front, you could put the parking in the surface parking area and still meet the Code requirements. You are talking about a smaller number of required spaces back from where we started at the meeting back in September, and that is how this has worked out.

Ms. Dressel: And that was when they needed the 16 for the number of units they were proposing.

Mr. Lopata: That was four units and four bedrooms each.

Mr. Osborne: Under the revised plan of three units . . .

Mr. Lopata: You need two spaces per unit. If you go over three bedrooms, you need three spaces per unit. So, it is that number of bedrooms that is key here. That is why the plan and the letter must be reconciled.

Mr. Osborne: I think that appeals to me to have that open space in the front without the driveway

Mr. Lopata: That appeals to me, too, because they can also, as noted in my report, move the building up in alignment.

Ms. McDowell: How could we do that?

Mr. Lopata: The key ingredient is adding an additional space onto the surface parking part of the site.

Mr. Flathers: We spent several hours trying to fit a 14th spot on that side and we haven't had any luck. Like you said, it sounds like they would be happy going to the three bedrooms and having a requirement of the 14. If we could get a variance to allow us to put one space into that 20 yard setback, is that something you would consider?

Mr. Lopata: That could be done as a Council approved condition of the subdivision. That is another way of doing this.

Mr. Flathers: That is something that they would definitely be willing to look at doing.

Mr. Lopata: Council can approve subdivisions with conditions.

Mr. Flathers: If you would be willing to put that as a condition for us to allow that 14th space to be in that 20 ft. setback, we could eliminate that drive, push the building further up on the site. Is that a goal that you would be willing to go for?

Mr. Osborne: I am not inherently opposed to the carport, but if we could avoid that drive across the front and maintain the porch on the existing property, I think that adds some value. Procedurally, what options do they have with regard to creating a curb cut out there in front of the new structure and just having a straight in drive?

Mr. Flathers: That would require a new permit from DelDOT which would be pretty impossible to get because they usually limit one curb cut per property.

Mr. Osborne: To me, that would be the ideal, but if that is a real slim possibility for that happening, then I understand.

Mr. Bowman: I agree with Angela. I think that open carport spoils the whole concept of that whole complex. You have the one next door that is not going to look like that, and then you have this one that has the back ends of cars sticking out of it. I think the same thing that Angela does, before long that is going to look like a trash dump in there along with cars. I think you can do a lot for this by looking for that 14th space, making that storage space closed up, and if you have to stick a garage on there, I would certainly opt for garage doors on there so they can be closed and you are not looking at an open garage all the time.

Mr. Lopata: If we go with this approach, there won't be any garages.

MOTION BY DRESSEL, SECONDED BY MCDOWELL THAT THE PLANNING COMMISSION RECOMMENDS THAT:

- A. CITY COUNCIL APPROVE THE REZONING FROM RM TO BLR OF THE 203 NEW LONDON ROAD PROPERTY, AS SHOWN ON ATTACHED PLANNING DEPARTMENT EXHIBIT A, DATED SEPTEMBER 4, 2007; AND,
- B. CITY COUNCIL, WITH THE RELEVANT CONDITIONS IN THE PLANNING DEPARTMENT REPORTS, APPROVE THE 203 NEW LONDON ROAD MINOR SUBDIVISION PLAN, AS SHOWN ON THE KCI TECHNOLOGIES, INC. PLAN DATED JULY 2, 2007, AND WITH THE FOLLOWING ADDITIONAL CONDITIONS:
 - THAT THE SUBDIVISION PLAN LEGEND BE REVISED TO SHOW A MAXIMUM OF THREE THREE-BEDROOM UNITS;

- THAT THE SUBDIVISION PLAN BE REVISED TO SHOW ALL ON-SITE REQUIRED PARKING SPACES WITHIN THE EXISTING SURFACE PARKING AREA ON THE SOUTHERN PORTION OF THE PROPERTY, WITH THE RELATED RECOMMENDATION THAT CITY COUNCIL IF NECESSARY, AS A CONDITION OF APPROVAL, PERMIT PARKING IN THE FRONT SETBACK;
- THAT THE SUBDIVISION PLAN BE REVISED TO REMOVE THE PROPOSED GARAGES AND THE ACCESS DRIVE TO THE NEW BUILDING, WITH THE RESULT THAT THE PORCH OF THE EXISTING BUILDING WILL NOT BE REQUIRED TO BE REMOVED.

VOTE ON MOTION: 5-0

AYE: BOWMAN, DRESSEL, OSBORNE, McDOWELL, RUSSELL
NAY: NONE

ABSENT: BEGLEITER, HAMILTON

MOTION PASSED

3. AGENDA ITEM #3: REVIEW AND CONSIDERATION OF THE MINOR SUBDIVISION AND SPECIAL USE PERMIT OF THE .32 ACRE PROPERTY AT 21-27 CHOATE STREET FOR A FIVE-UNIT APARTMENT BUILDING.

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

“On October 31, 2007, the Planning Department received an application from Independent Investors, L.L.C., for the minor subdivision of the property at 21-27 Choate Street. The applicants are requesting development approval in order to demolish the existing one-story building at the site and to construct five townhouse apartments at the location. The applicants have also applied for the required special use permit for apartments in the BB district.

Please see the attached Karins and Associates minor subdivision and special use permit plan; color building elevation drawings; photograph of the existing building on the site, and applicants’ supporting letters.

The Planning Department’s report on the 21-27 Choate Street project follows:

Property Description and Related Data

1. Location:

West side of Choate Street at 21-27 Choate Street [application and supporting letter refers to 21-27 Choate Street; plan refers to 29 Choate Street].

2. Size:

.32 acres.

3. Existing Land Use:

The existing one-story 7,040 square foot building, located at the southern portion of the site, previously the home of the Casablanca Restaurant, is now used for storage. The remainder of the property is leased to the City as part of Parking Lot #4. Part of the site is shown as extending into properties on the southern boundary of 21-27 Choate Street, also owned by the applicants.

4. Physical Condition of the Site:

21-27 Choate Street is a developed site containing a one-story building and a portion of the northeast corner of the Planning Department's Parking Division Lot #4.

In terms of topography, the site slopes very gradually from high points at northeast corner of the property to the southwest.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the 21-27 Choate Street site consists of Matapeake Sassafras Urban Land Complex soil. The Natural Resources Conservation Service indicates that this is a disturbed soil that has been used for development purposes; no development limitations for the use proposed are indicated.

5. Planning and Zoning:

21-27 Choate Street is zoned BB. BB is a central business district zone that permits the following:

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

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

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

Regarding BB zoning area requirements, the 21-27 Choate Street subdivision plan meets or can meet all applicable Zoning Code requirements.

Regarding adjacent and nearby properties, the 21-27 Choate Street property is adjacent on the north to BB zoned nonconforming small single family detached

rental dwellings. The properties immediately to the south on Choate Street are also zoned BB and contain several small nonconforming single family rental semi-detached dwellings. The parcels across Choate Street from the site are zoned BB and BLR (business limited residential) and contain a mix of single family detached and semi-detached rental dwellings. The BB zoned Klondike Kate's Restaurant is located on the northwest corner of the Choate and E. Main Street intersection. The BB zoned lands west of the site, running through to Center Street, contain portions of properties leased to the City. In the case of Center Square (the site of "Happy Harry's," "Home Grown," and other uses), also west of the site, the rear portion of this property was dedicated to the City as part of a previous subdivision approval. These properties contain the Planning Department's Parking Division Lot #4.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for "commercial (pedestrian oriented)" uses at 21-27 Choate Street. 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 central business district that 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 the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods."

Regarding gross residential site density, please note that the 21-27 Choate Street minor subdivision and special use permit plan calls for 15.63 dwelling units per acre.

Status of the Site Design

While the 21-27 Choate Street plan is being reviewed as a minor subdivision, because of the size, scale and location of the project, the Planning Department suggests, as permitted in Subdivision and Development Regulations Appendix XIV, that the Planning Commission and Council consider the architectural character of this project.

In this regard, therefore, please note that at this stage in the Newark subdivision review process, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features; and, in addition, contextual color scale elevations showing the front facades of all buildings immediately adjacent to the property. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond 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.

In any case, the 21-27 Choate Street subdivision plan calls for five three-story, four bedroom townhouse style apartment units in a building situated along the site's Choate Street frontage. Each unit contains a four space garage with a driveway to Choate Street. The rear (or west) portion of the site is to be reconfigured so that the existing Parking Lot # 4 spaces on the site will be replaced and two additional spaces provided within a proposed "public parking easement."

Regarding the building's proposed architecture, the Department suggests that the Planning Commission consider this design in terms of the criteria in Subdivision and Development Regulations Appendix XIV, section (d).

Departmental Comments

The City Management, Planning and Operating Departments have reviewed the 21-27 Choate Street subdivision plan and have the comments provided below. Where appropriate, the subdivision plan should be revised prior to its review by City Council.

1. Because of previous questions raised by the City staff, the Planning Commission and City Council regarding the proliferation of rental units downtown and the related impact on off-street parking, as well as the resultant impacts of the increase of rental units on the City's apartment housing stock, concerns may be raised about the 21-27 Choate Street project.
2. As a condition of approval, the Planning Department suggests, to limit the impact of the proposed apartments on downtown, and taking into account the related access issue discussed below, each dwelling unit should be restricted to a maximum of three bedrooms and four tenants.
3. The Planning Department suggests that the Planning Commission recommend the following site design conditions:
 - A. The architectural design of the proposed facades of the building shall be carried out on all building elevations visible from public ways.
 - B. Storage areas, mechanical and all utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - C. A six foot high solid fence should be installed to separate the reconfigured public parking on the site from the residential area.
4. The Planning Department suggests that as a condition of the special use permit for the proposed apartments, the applicant agree to transfer to the City ownership of the portion of the adjoining site, owned by the applicants, used for off-street parking within Planning Department Parking Division Lot #4, as well as the reconfigured public parking on the 21-27 Choate Street parcel. This transfer would occur following the completion of all required building construction and parking lot reconfiguration and reconstruction, as shown on the approved subdivision plan.
5. The Electric Department has the following comments:
 - A. Electric service is available from Choate Street.
 - B. An open utility easement covering the full site must be noted on the subdivision plan.
 - C. No part of the proposed building can be closer than 7.5 feet to the center of the poles on Choate Street.
 - D. The developer will be required to pay for any line hose covering needed on high voltage wires during construction for scaffolding as well as all

costs for two Verizon-owned poles to be replaced on Choate Street to allow for an additional transformer installation. The developer will also be responsible for pole removal and aerial line rearrangements in Parking Lot #4.

6. The Building Department indicates that any building permits for the site will be required to meet all the applicable requirements in the International Residential Building Code, including the requirement for fire suppression systems within all proposed units. In that regard, a minimum of a six inch underground waterline will be required to feed the fire protection system; this waterline connection to the building should be shown on the subdivision plan.
7. The Public Works Department has the following comments:
 - A. The Department has raised concerns about the Choate Street access to and from the site on relatively narrow driveways, with vehicles shown as “stacked” within the private parking garages.
 - B. The garages must be designed so that there is room for storage of refuse containers.
 - C. Prior to submitting the construction improvement plan, the applicant should review stormwater management issues with the Department.
8. The Water and Waste Water Department indicates that water and sanitary sewer service can be made available to the site.
9. The Parks and Recreation Department indicates that the landscape plan is, in general, acceptable. Existing plant materials shown on two parking lot islands proposed to be removed can be relocated to other locations in the parking area. The applicants should consult with the Parks Department prior to submitting the final construction improvement landscape plan for the site.
10. The Police Department raised concerns about the access to and from the site in light of the “stacking” design of the parking garage and the narrow width of Choate Street. The Department notes that because some of the possible “solutions,” to this problem – removing parking on the east side of Choate Street (off-site from the project), or setting the existing building back further from Choate Street -- may be impractical in light of the nature of the site and the general area, there should be other attempts to address this issue (see item #2 above).

Recommendation

Because development of 21-27 Choate Street as proposed, with all the City Departmental recommended conditions, should not have a negative impact on nearby and adjacent properties; because the proposed use clearly conforms to the development pattern in the immediate adjacent area; because the proposed use will result in the demolition and replacement of an unsightly existing vacant building; and because the proposed land dedication of the portion of the site leased to the City will help improve downtown parking, the Planning Department suggests **that the Planning Commission make the following recommendations to City Council:**

- A. **That City Council approve the 21-27 Choate Street minor subdivision plan, with the conditions in this report, as shown on the Karins and Associates plan, dated September 19, 2007.**
- B. **That City Council approve the 21-27 Choate Street special use permit for apartments in the BB district, with the conditions in this report, as shown on the Karins and Associates plan, dated September 19, 2007.”**

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

Mr. Mark Sisk: I am an attorney. I am at 299 E. Main Street in Newark and I am here tonight representing Independent Investors who are the owners of this parcel. The people here with us tonight are Diane Georgov who with her husband, Bruce, is part of Independent Investors; Alan Burkhard is another part of Independent Investors along with his wife, Sally. Diane is a Newark native. They live in the area.

You have seen the configuration of that part of Main Street where Choate Street dead ends at Main Street. Independent Investors owns a number of parcels that are located in that area including the Klondike Kate's building and another couple of parcels over. Reflecting on other discussions I have heard in this room, here, at Council and the Board of Adjustment, I thought this was kind of an ideal way for a client to come in with a project in downtown Newark, first buy a parking lot and then bring you a development.

What you have on this parcel now is a building that some of us remember as a restaurant. It has been a long time since it was a restaurant. It is secure. It is Code compliant in the sense that it is secure, but it is not attractive. In exchange, we think that the first good thing that is going to happen out of this project is that building is going to go away and you will have a modern brick façade, a very nice looking building.

I want to hit a couple of issues head-on that will come up in this kind of discussion. I know there has been a lot of discussion – because I have been a party to them and an observer of what you do and what Council does – about student housing and do we have enough? Do we really need more student housing? I think this would be the time and place for a long extended discussion on that topic. Just to make up something wild, Newark High School is moving, they are going to knock Newark High School down, they want to put up another project on that parcel, next to the project the group put up some years ago on the old Budd property project. I think that is a legitimate concern, if you are going to put that many more units on line. But, we are talking about a relatively small project here.

The second question I think we have discussed and heard people discuss in these discussions is, why here? As Mr. Lopata noted, this is all rentals. While Independent Investors would certainly rent to anyone who wanted to rent here – and I have made statements to this body and City Council, in the context of the Stone Balloon project, that it would be great to have a multi-generational kind of magnet thing downtown. We are not going to stand here and tell you that these are going to be attractive to young families with young children in all likelihood; we are not going to tell you these will be attractive to retirees who want to come back to the University. This will probably be student housing; but, again, it is a relatively small addition to the present housing stock. We also think that this is proportionate development of the site.

Independent Investors owns, as Mr. Lopata has noted and as your plans show, a good bit of that parking lot that is in Lot #4. They also own several other parcels. They have no plans to do anything but continue to operate that corner in the way it has been operated, but who knows what the future holds. Putting something like this up, it fits. I don't know what one could do as a matter of right on this corner. I have not thought about it, if one assembled the whole corner. We had looked at this project in the context of the Stone Balloon at an office use. I think we could have gone up five or six stories. It is ridiculous. Nobody wanted to do it, but in terms of sitting around thinking about what we could do here if we really wanted to do it. This is proportionate development, and it fits.

What we describe to you at the present time, the arrangement that the City has with Independent investors in this parking lot. If you have ever been in that parking lot or looked at the land use plan, I believe that other than the City there is at least one other owner besides Independent Investors. It is hard with several parcels assembled, if I go in there on a Friday night and then hand my dollar over on the way out, to talk about exactly where I parked and how much of that is generated by Independent Investors' spot. But, roughly, after reviewing this with Andy in the Parking Division, who is now gone, it is

my understanding that the revenue from this lot is something like \$140,000 per year. This is leased to the City for a nominal amount. I think it is a dollar. In addition, Independent Investors pays taxes on this parcel; there is at least some role in maintenance. Although, as part of its other efforts does keep the property maintained as well.

If you notice on the reconfigured plan, there is a net gain of two parking spaces to the City in terms of availability. The other thing that is done by this project is, if you park in the part of the lot that this is going to go, it is a dead-end. If you drive in there at a busy time and you can't find a spot, you have to back out. It is not a huge inconvenience as these things go, but we do eliminate that.

We do respectfully disagree with the idea of dedicating the parking to the City as a part of this project. Independent Investors is happy to continue the present arrangement as far as the eye can see legally by leasing this property to the City for a nominal amount. The other projects that Roy spoke of, he is quite correct that sometimes developers have made contributions of properties to the City. I had the opportunity to review some files in that regard. I noticed, for instance, on the corner with Happy Harry's and Home Grown, some of the correspondence in the City's file started out with Mr. Lang – who was then acting on behalf of Commonwealth Development. The original words that were going back and forth were sell and then at the end of the line, it ended up being dedicated. My sense was that there were other imperatives that they felt for whatever reason in the context of that project, possibly requiring a parking waiver. I believe that is an issue also with 102 E. Main Street that is being developed and, I think, is going before Council in a month or so. The Galleria, interestingly, the Newark Parking Authority actually purchased for \$388,000, I believe, a portion of that property. That property is now in the City's hands as part of the Parking Authority being merged into the City.

In any case, my clients do not want to sell the property as part of this process. They are not trying to hold you up. They are just saying that they would rather not, in terms of their big picture going forward, part with the property. They do not need a parking waiver. Perhaps that was part of the imperative at the Galleria.

One of the reasons under the Code that we are here needing a special use permit, my recollection, without my Code book in front of me, is that if we wanted to put commercial on the ground floor, we could just do it. The experience with Casablanca proved that commercial on that street wasn't going to work. We have lots of other thriving restaurants around there. I think putting anything commercial there is not going to work.

The other thing that we were perplexed by in the recommendations was the four bedroom vs. the three bedroom limitation. We have John Garcia, the engineer, from Karins and Associates is here. These buildings are big buildings. They are 23' across the front. There is plenty of room in them for four bedrooms. We really did not see any particular rationale in the report, with all due respect, for limiting the number of bedrooms other than . . .

Mr. Lopata: It was to reduce the number of cars. That is all that it is.

Mr. Sisk: They have enough parking either way, though.

Mr. Lopata: And then it is easier to maneuver in and out of the driveway. The report was notes that since Public Works and Police have raised this issue about access in and out of the driveways and garages and the tight Choate Street configuration and one of the ways of dealing with that would be to make the building smaller, remove parking or set the building back. Some of those things are not really feasible. So, the only thing we could think of was to reduce the number of vehicles so there will be a little more maneuverability out of the, admittedly, large garages. That is the reason for that recommendation.

Mr. John Garcia: With Karins and Associates, representing the project. We understand Mr. Lopata's concern so we went back, measured the roadway and actually ran a couple

of analyses, which I can should the handout to the Commission to show how the radius and turns come into the garage. I went out there. Looked at how Choate Street is one way, the parking is on the other side of the road, which does limit how the turn can be in the driveway. It is not question. We are not going to say it's not going to be tight. But, you also have existing residences that live along Choate Street. You have that same issue coming in there.

Mr. Russell: How many cars are going to be in each garage?

Mr. Garcia: You can fit four cars in each garage.

Mr. Lopata: We presumed that if you had three bedrooms you would, by-and-large, have three cars and, therefore, have more room to get in and out, plus, of course, reduce the number of students living on the site in general, which refers back to item one in the report.

Mr. Sisk: One final thought on that subject. This was not in front of this board but in front of the Board of Adjustment some months ago on a project that is now not going forward, at 209 E. Main Street where there were traffic concerns raised. There was a proposed convenience store there and for other reasons it did not go forward. This owner has at least as much a vested interest as the public in general in traffic not being a problem. If it is a problem, they are not going to rent these units. They do not want potential tenants walking around Newark saying, "21-27 Choate Street, you can't get in or out of there." So, they have thought about this, too.

Mr. Lopata: Just briefly on the land dedication, which is something that I anticipated we would have some discussion tonight. Over the recent past, the Council has changed its regulations for downtown and required the special use permit for apartments. That was really, by-and-large, because the Commission and the Council had the sense that there were many new apartments downtown – maybe more than we could handle – and they ought to be scrutinized more closely. You notice, too, I include that from the downtown part of our Comprehensive Plan about how we have to look at these carefully and weigh the benefits to the community when we look at this kind of project. Well, from the Planning Department's perspective, the only benefit to the community that we can see in this project, because it is simply more apartments downtown is, in fact, the land dedication. That is, I will tell you quite frankly, why we are recommending in favor of it. Without the land dedication, this project has no appeal to us. It is simply five apartments downtown where we would prefer – with all due respect to Mark – additional commercial, office or retail use. That is really what we prefer downtown. We recognize that this is not an attractive space now and the new project is a very nice looking building. But, I think beyond that, if we are going to approve additional apartments downtown, much as we did with the 102 E. Main Street project that I think you folks reviewed in December, we made a big point that the land dedication made sense to us. In that particular case, that project also saved an historic building. This project does not have any other appeal other than this land dedication. I think that is the most important factor involved here. It is simply filling up a space that is perfectly acceptable as parking. The Casablanca property could be used for something else at some point. That is really our pitch for why we feel the land dedication is important; but it is ultimately up to the Planning Commission and Council.

Mr. Osborne: Could you, Roy, or the applicant, clarify the portion of the drawing that is being dedicated to the City?

Mr. Lopata: Right now, nothing is being dedicated to the City, but if land were to be dedicated to the City, if they ultimately agree to it, would, essentially, be to the west side of the parking area.

Ms. Diane Georgov: I am with Independent Investors, 103 Partridge Way, Landenberg, Pennsylvania. Basically, you are discussing two parcels concerning the parking area. The City is asking for the remainder of this parcel, which is the parcel we are asking for development approval, plus the parcel that runs up to commercial property on E. Main Street right by the Panera Bread area.

Mr. Alan Burkhard: 455 N. St. Augustine Road, Chesapeake City. I want to address two things, both that have been touched on so far. Regarding this real estate, we acquired this less than three years ago and paid full market value, and to have a significant portion of each of those properties no longer available to us when we have full mortgages, it is just not a very good investment. We have full intention, as you see, of staying and being a good partner with the community. It is not a good business arrangement for us to dedicate land that would take out a parcel of each of those properties and, therefore, reduce its value down the road. We felt particularly comfortable with the fact that for 17 years the City has had, virtually, a free lease and some revenue driven from it. We are happy to continue on as the principal owner of Klondike Kate's. We value that parking for our customers, too. So we continue on with the relationship. We have no concern about that. Regarding comments #three and four; my own view is that we planned these townhouses or apartments of a larger size.

Mr. Lopata: Why don't we let the Planning Commission make some comments on these things? I do not have any sense of whether the Commission agrees with the Planning Department . . .

Mr. Burkhard: I was going to address the three bedroom/four bedroom issue . . .

Mr. Lopata: I know you do not like those ideas, but what I am suggesting for the sake of time and continuity, let's hear what the Commission has to say about it and then you get your chance to make your comments.

Ms. Mary Lou McDowell: Is there on-street parking on one side of Choate Street or not at all?

Mr. Lopata: On the east side.

Ms. Dressel: I wish we hadn't gotten off talking only about the parking. I wish in the applicant's presentation you had started on the building so I could hear about that. They are going to be four bedroom units? Is that correct?

[Secretary's note: The applicant's representative's response was inaudible.]

Ms. Dressel: So it will be five four-bedroom units.

From the picture and from the drawing, it looks like it is a continuous road cut for each of the driveways. I have a little bit of a concern about that because, again, it is rental properties I recognize that we do not have parking on that side of the street, but it seems to me, again, with college kids that they are just going to end up parking up on that drive, since there is no raised portion for a sidewalk. Does that make sense?

Mr. Lopata: It makes sense but the problem is because of the one way configuration in turning in, if you look at applicant's drawings. If you are going to approve the project designed this way that is how they have to do it for safe access backing in and turning in from the north. But, I understand what you are saying.

Ms. Dressel: While I recognize that the investors are trying to maximize your building and then your parking, I am concerned about what the end result is going to be on Choate Street. I do recognize that the building that you are proposing is going to be a plus. It looks very attractive, although, I must say that my husband and I frequently park in that back section simply because we can walk right through onto the street to go up to Klondike Kate's or any of the other restaurants. I don't mind that part where I have to back out at all. I just think of that as being quirky Newark parking, which isn't a bad thing.

Mr. Sisk: It is more difficult when leaving, at least to me, than when arriving.

Ms. Dressel: If you could address my concern about the size and the parking there, I would appreciate it. If there is any way to add in something that would eliminate the possibility . . .

Mr. Lopata: They ought to make them driveways somehow.

Ms. Dressel: Obviously, safety is going to be paramount, but I think safety also comes into play with whether or not there are going to be cars just coming up on the sidewalk area where people could potentially be walking. I like the idea of a small wall or something there. I think that would help.

Ms. Georgov: You have to realize that that is an issue with any house on that street whenever you have parking. It is something that is addressed. If not the students themselves, there are parking tickets that are given if the cars are not parked in the proper space. So, I think it is not something that is unusual. But, I do think that we could put something there that would eliminate someone from driving up the whole side.

Ms. Dressel: I know there are other places, but there is a sidewalk and so there is at least a raised area in front. My biggest fear is that someone is going to be coming up Choate Street wanting to just pull in and there are going to be pedestrians at night and we will have problems.

Ms. Georgov: It will be just like a driveway. There will be a slight lip there. It is not going to be continuous as in the road.

Mr. Osborne: Obviously, today it looks like there is not much of a setback from the road with the existing structure. With the picture here, it looks like about six feet from the street at the most.

Mr. Lopata: The old Casablanca you mean.

Mr. Osborne: Right. And the new plan would have it back seven feet from the street curb?

Mr. Garcia: From the edge of the street curb back, it is 11 feet.

Mr. Osborne: I see that the existing sidewalk goes down in front of the two houses to the left of the existing building. With the new technologies available to create the appearance of a sidewalk that runs contiguous from the existing houses to the left all the way in front of these houses, maybe that is an option, too, so that we maintain an appearance of a driveway that is still intended to be a sidewalk. There are some ordinances in place, right?

Mr. Lopata: The sidewalk will be replaced; it is just a question of there being no curb. I think that is what Angela is worried about.

Mr. Osborne: Except in the small areas in front of the doors.

There are five units, four bedrooms each – how many tenants do you expect in each of the bedrooms?

Mr. Lopata: The Housing Code allows many more than that; this area does not come under the Student Home Ordinance. As a result, we usually limit downtown development to four tenants per unit.

Mr. Osborne: And is that the proposed limitation here?

Mr. Lopata: Yes.

Mr. Osborne: The limit will be four tenants per unit.

Mr. Sisk: Downtown where you are calculating on square footage, not based on a zoning number, at least theoretically as Roy points out, one could have more.

Mr. Osborne: Roy, the Planning Department's recommendation is to limit it to four.

Mr. Lopata: Right.

Mr. Sisk: The benefit of not having that limit is keeping the housing downtown consistent with the Student Housing Ordinance where student housing is limited to certain places. The more you put downtown within rational limits, obviously, the less pressure there is outward.

Mr. Osborne: Four per unit is 20 persons occupying the property. If there are two people sharing each bedroom, that is 8 per unit, 40 people, twice the occupants. Parking, to me, is a big concern when you compare 20 people over the five properties.

Mr. Lopata: Do you have a concern about the four tenant limit? I hope the Planning Commission understands that that condition is very, very important to us. I can certainly live with some negotiations on the land dedication, but we do have a problem with students downtown. We have a Student Home Ordinance now that has kind of handled the problem Mark mentioned before. We really do not have the proliferation problem any more, but we certainly would not recommend a project that had multiples of five or six or seven or eight students or tenants, for that matter, in a downtown project.

I realize you made an investment here, but we are increasing the value of this property dramatically by just approving the special use permit. So, that is where the conditions come in and why I think they are important.

Mr. Burkhard: Our original thinking was smaller buildings – six to eight tenants and six to eight buildings. In assessing it and trying to get a handle on what we thought the City would be more interested in – and we mean that sincerely – and knowing that it is a commercial zoning, we designed pretty large buildings that, quite frankly, are good for family residences. The point I wanted to make earlier is that we have no problem renting these to families. They are nice enough to do it. They are larger enough to do it. They are larger than any other building on Choate Street. It could be the beginning of changing Choate Street from student housing to families. We could not function financially with four on this size based on the money that it would take to build them. We would have to go back to a larger number of units that would be smaller in order to meet that requirement. So, we thought we were doing the right thing. We thought we were doing the right thing, but financially based on what we would be paying to build them, based on the size, a limit of four would not return our investment. We couldn't do it, we just couldn't do it. If you reject it, we just can't do it.

Mr. Lopata: The answer is to build a smaller building.

Mr. Burkhard: That was our original thought.

Mr. Lopata: A smaller building but not more units. You could build five smaller units.

Mr. Burkhard: Why not more of them then?

Mr. Lopata: Because that increases the number of tenants. That is just another way of getting around 20 students living there. 20 students, to me, is a fantastic number of students to add to that location. That is just more problems for the City. You just have to visit ChapelFest just one weekend and see what that is like.

Ms. McDowell: Even if it is raining those garages would be a good shelter for a party. That occurred to me right off.

Mr. Burkhard: Every property we have bought we have done significant improvements. We are not the typical student housing student landlord. I have a business with 115 employees fifty feet from there. I care a lot about who we rent to. I know that doesn't guarantee anything, but I don't manager the real estate. I run the business, these guys run the real estate. I am saying that they are very special in what they do. But, it is simply a matter of economics that if we are limited to four, we just can't do it.

Mr. Lopata: Just a quick comment. I have been doing this for 31 years, and I have never

yet had a landlord who comes to the Planning Commission and say, I am one of those crappy landlords that causes problems.

Mr. Burkhard: I understand.

Mr. Lopata: They all say that they are good and most of them are. It is a very difficult thing to manage these sites. I do not have to tell you guys about that, they are very, very difficult. One of the ways to make it a little bit easier is to just reduce the numbers. It just makes it easier on us and, frankly, makes it easier on you. If the numbers do not work for the type of building you are building, you need to think about what you are proposing.

Each project stands on its own, but we just took a project on New London Road across from the University of Delaware not near a commercial development whatsoever, next to a townhouse development, and knocked off a unit between September and January. He agreed to a tenant reduction and a bedroom reduction. I am not saying that you have to do that and I know each project stands on its own, but you can make a better case for units there than I think you can make here. I would be much happier, frankly, if you came in and said we are going to build five condos and we were going to try to market it to young adults, just like the Stone Balloon, and restrict it to two tenants. That is what the Stone Balloon is doing.

Mr. Burkhard: Diane and I talked a lot about this. We would love to do that except it would be very difficult to find families who will rent.

Mr. Lopata: I understand that, and I am not sure that the Stone Balloon is going to work either, but they are living with a restriction of no more than two tenants per unit.

Mr. Osborne: I hear you talking about families, but I have a family and I look for a house with a yard and some space that my children can play in. While this is a very attractive property, if I were going to look for a four-bedroom house, as a family, I would be looking for something that has more land that children could play in, not in the downtown area like this.

Ms. Georgov: You have to understand that the design of the rental units was worked around what was good for the community in the City. We put these in together so that we could keep the parking in the back and that is why there is not a lot of land around it for children to play in and so forth. Also thinking that this is an area that is student housing, I am not sure I would like a lot of land for them to play on in that area because it may have those people that want to have parties and so forth. We are not trying to encourage that. We are good landlords and we do look at this an investment property. As far as the square footage, it does come down to economics because we only have a small area that we are planning on developing.

Mr. Osborne: Obviously it is your property, but I just got back from a trip to Houston. A colleague of mine owns a loft across from Minute Maid Park. These lofts are basically a one room loft and the bedroom is not actually a full ceiling. That might be something that would be an attractive idea or option here where you could build in the density that you are looking for, but from the Planning Department's perspective, manage the density.

Ms. Georgov: We did think of that for an option, but then you are talking about more parking and more people. We are trying to keep it in a manageable area. Whether or not anyone agrees on four people in that area for occupancy, we do not want to change the zoning whatsoever for this. It is commercial and it is an investment property. It borders onto other commercial properties on that street. We are not looking to make any restrictions on that and that is, maybe, a bigger issue than the economics of five rentals.

Mr. Burkhard: One of our biggest concerns was not to take the parking out of the back because it would take away parking for the City. You could have had a bigger setback, could have built bigger buildings, and that has been made clear to us that that is a very important City priority.

Mr. Osborne: I am hearing some inconsistencies. On the one hand, I hear you say that you want it to be a property that families can move into, on the other hand, I hear you say that you don't want to create a bigger back yard and sacrifice those parking spaces because . . .

Mr. Burkhard: They are parking spaces that the City uses.

Mr. Osborne: I just hear some inconsistencies.

Mr. Burkhard: What I meant by family is these are large apartments. They are 2,600 square feet. That means that family residents could live there very comfortably. They wouldn't want to because Choate Street is all student housing, but maybe this kind of building could begin a change in Choate Street that other owners might be willing to upgrade their properties and down the road that road could be city housing, not people that want the yards but people that want to live in the city. It is just the potential of that, that's all.

Mr. Bowman: We could continue this discussion, but we do have an obligation to open it up to the public for comment, so I will at this time entertain comments from the public. When they are finished, we will bring it back to the table.

Mrs. Jean White: 103 Radcliffe Drive. I wanted to commend that applicant for two things. One was in the letter. I did think that you were upfront with the fact that you said that you were saying that you expected this to be student rentals, where we do get many people who come and say that it is going to be young professionals, and you were straight forward.

Also I wanted to commend you because you have the elevations both from the front, the side and as well from the back, which you are required to do because you have to have elevations from a public parking lot. This requirement has not been met with some other applicants that have come previously.

As I understand it in looking at the plan, the only building that is being taken down is the Casablanca building. Is that right? The three buildings between this and Klondike Kate's will all remain.

Mr. Burkhard: Yes.

Mrs. White: I do see that Independent Investors does own a couple of those properties.

Mr. Burkhard: We own all of them.

Mrs. White: I actually like those. I am very glad they are not being taken down, but now I worry that since you own them that you plan to take them down in the future.

Your front elevations show no electric lines. Is there going to be no cable, electric and fiber optics in the front or will there be something going across there or will they all be buried?

Mr. Garcia: That is going to be finalized at the time of construction.

Mrs. White: But it is a requirement that was put in with Mr. Begleiter's encouragement that all those kinds of wires . . .

Mr. Lopata: This is a minor subdivision so they did this voluntarily to show those elevations.

Mrs. White: At the moment, there is walkway from Parking Lot #4. There is a walkway you can get out onto Choate Street. I was unclear whether there would still be a walkway to get onto Choate Street.

Mr. Lopata: No, it will be cut off.

Mrs. White: It will be cut off so no longer will anybody be able to go to Choate Street.

Mr. Lopata: We are proposing that it be fenced. The two uses should not mix, we do not think.

Mrs. White: On the diagram or blueprint over there, the back of the set of buildings where the parking of Lot #4 starts is ten feet. Is that going to be macadam or grass?

Mr. Garcia: Grass.

Mrs. White: It doesn't show that it is grass. I prefer it to be grass but it doesn't show on the plan.

On the plan it says, existing monuments – 2, proposed monuments 0. I don't know what a monument is, but I did wonder what that is.

Mr. Garcia: A survey marker.

Mrs. White: On the front I did not notice any gutters. Is that is because you can't tell or you are not putting gutters on the roof?

Ms. Georgov: There are gutters.

Mrs. White: Then I noticed on your elevation on the black and white of the side, it was like this, but when you look at that picture over there of your colored elevation, coming down to here it is white and the chimney sticks out and comes all the way down on that one over there, but on here the chimney is within. I wondered what the difference is.

Ms. Georgov: It is for aesthetics only.

Mrs. White: I wish it was a real chimney because I like to have function. This more correct than what is over there. You are not going to have this come down all the way.

Where does the front of the building in comparison to the three houses between Klondike Kate's and this – not their porch but the front side of the building – is this further forward?

Ms. Georgov: No.

Mrs. White: It is more in line with what those are.

Mr. Lopata: It is further back.

Mrs. White: But this has no porches.

It is a positive to remove the old Casablanca building. The front has a lot of delineation, but the back doesn't have different roof lines and it would be good if it could either have a brick . . .

Mr. Lopata: We suggested that the architectural design be carried out on all sides of the building.

Mrs. White: Although this is fine enough, I think it is kind of bland compared to what is very nice. Who is your architect. Who is your architect?

[Secretary's note: The applicant's response was inaudible].

Mrs. White: I want to support the Planning Departments suggestion. I certainly want it to be limited to four unrelated people. That is something that is common. You can cite many, many cases as you go back recently where that has been put in. I think it is a very important thing particularly since it is expected that there will be college students. I think

that is very important whether you say three bedrooms or four bedrooms. I will leave that up to other people.

I also feel strongly that the parking lot should be dedicated to the City whether we are talking about the L-shaped part or whether you are talking about the additional land that Independent Investors owns at the parking lot. I really think that is an important thing and that is often times the thing that allows the positive recommendation as well as Council's approval.

Mr. Bowman: Thank you Mrs. White. Anyone else? If not we are back to the members of the Commission.

Ms. Dressel: I would agree that we need to make sure that there is a requirement of a maximum of four unrelated tenants per unit. This is adding a lot of housing downtown and I would not want to see double that put in this space. I think it is too small of an area. There is a lot of student rental housing on that street, they are very small. I think if we were to add forty people to that section, that would be detrimental to the City of Newark. I also agree that providing the parking land to the City makes sense to off-set the impact of the additional 20 students downtown. I definitely want to make sure that the six foot high fence would be in the back between the parking and the building.

Mr. Osborne: So, that is essentially consistent with the Planning Department's recommendation. Right?

Ms. Dressel: Yes.

Mr. Bowman: The one thing that strikes me – and I have never seen it before – is the stacked parking in this garage. I can't imagine how that is going to work for college kids.

Ms. Georgov: Concerning the stacking of parking. If you look at most of the standard driveways with the houses there, they are stacked parking. It isn't the most favorable condition but in reality that happens in most of Newark where there is student housing where they have more than one car in a driveway, so it has to be stacked. Actually, that is a provision in the Code, I believe, that they have to have so much allowance for cars in the driveway.

Mr. Bowman: That's fine, you have more faith in college kids than I do in that respect. I can see fist fights breaking out in the garage over whose car is where.

Ms. Georgov: Concerning the occupancy in these units, you are assuming that we are putting eight in there. It is not to our benefit to put eight in there. We are looking at, for the size of the unit, some may be four, some may be five, some may be six at the most. I would never sign a lease with eight in there willingly to allow these kids to be in there. We have a responsibility and, quite honestly, as the whole evolution of the student rentals comes around, they are looking for space. They are looking for individual rooms. They are looking for better occupancy than is available at other places. We are not just looking to crowd as many people in there. Economics does say a certain amount of people that we need to break even, but I am more concerned about the zoning of this that we are changing zoning of commercial property that starts at this location and goes forward all the way to Main Street.

Ms. McDowell: Does the amount of bedrooms dictate the amount of parking that needs to be provided?

Mr. Lopata: Under the Zoning Code if you have more than three bedrooms – and that is one of these conditions – you would have to have the additional parking space. So, we are proposing two sets of things, the restriction to four tenants and the restriction of three bedrooms. That would reduce the amount of parking. It helps with what Chairman Bowman is talking about. The stacked parking, as you noticed from our comments, everyone noted it, and that is an unusual thing in a garage. It is less unusual in a driveway as Diane talks about. Essentially, that is our recommendation. We are really talking about scaling down the project, in effect.

Mr. Bowman: With all due respect as far as managing the property, I certainly assume right up front that you would manage it properly, but on the other hand, the type of guidance that the City wants to set in terms of limiting the number of tenants is very, very reasonable because it gives everybody an equal playing field. We try to give an equal playing field. As Roy said, we just limited a property that has got much more open space around it earlier this evening. Not that you will, but suppose five years down the road you say I am going to sell this place – and that is always a possibility – next thing you know we have a dormitory on our hands downtown. I don't think we want to see that. We don't have a crystal ball that we can see into the future, necessarily. We can only accept your past performance and your word, and we certainly accept that. On the other hand, we have to draw some lines, too.

Ms. Georgov: I understand that respectfully as well. That crystal ball is also my fear. No one can see into the future. That is why I don't want anything on this zoning for this commercial property. . .

Mr. Lopata: I am not quite sure I follow you. I do not want to belabor this because it is late, but I have lost that whole train of thought. You are asking to get a minor subdivision and special use permit and put residential use here. Effectively, from a use standpoint this is no longer commercial, at least this part of it.

Ms. Georgov: The property is still zoned commercial.

Mr. Lopata: I understand that, but you are, in effect, proposing to put a different type of use there. If you come back in the future and want to demolish this and put a commercial use there, the number of tenants is immaterial.

[Secretary's Note: The applicant's response was inaudible].

Mr. Lopata: I am talking about if you demolish the building and wanted to come back.

Ms. Georgov: But, you are still putting restrictions on it.

Mr. Lopata: Right. As Mrs. White said, and as I have said, we have been doing that up and down Main Street, frankly, with no opposition. Most applicants have just agreed to it without blinking an eye. That is why there is some surprise and I am somewhat surprised that you are not agreeing.

Ms. Georgov: I am sorry, we discussed this before.

Mr. Lopata: I do not remember talking about that one.

Mr. Osborne: I would just like to say is that one of our main responsibilities here as the Commission is to review what the Planning Department has done and has recommended; and in this case, I would like to commend the Planning Department for doing a good job of looking at this from the standpoint of where does this fit within the strategy that the City is trying to take in terms of developing the downtown area.

Mr. Bowman: The Chair will entertain a motion.

MOTION BY DRESSEL, SECONDED BY OSBORNE THAT THE PLANNING COMMISSION RECOMMENDS THAT:

C. CITY COUNCIL APPROVE THE 21-27 CHOATE STREET MINOR SUBDIVISION PLAN, WITH THE CONDITIONS IN THE PLANNING DEPARTMENT REPORT, AS SHOWN ON THE KARINS AND ASSOCIATES PLAN, DATED SEPTEMBER 19, 2007.

D. CITY COUNCIL APPROVE THE 21-27 CHOATE STREET SPECIAL USE PERMIT FOR APARTMENTS IN THE BB DISTRICT, WITH THE CONDITIONS IN THE PLANNING DEPARTMENT REPORT, AS SHOWN ON THE KARINS AND ASSOCIATES PLAN, DATED

SEPTEMBER 19, 2007.

VOTE ON MOTION: 5-0

AYE: BOWMAN, DRESSEL, McDOWELL, OSBORNE, RUSSELL
NAY: NONE

ABSENT: BEGLEITER, HAMILTON

MOTION PASSED

There being no other items to discuss, the meeting adjourned at 9:25 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission