

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 5, 2008

7:30 p.m.

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

Chairman: James Bowman

Commissioners: Mary Lou McDowell
Rob Osborne
Joseph Russell
Kass Sheedy

Absent: Ralph Begleiter
Angela Dressel

Staff Present: Roy H. Lopata, Planning Director

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

1. AGENDA TIME #1: THE MINUTES OF THE JANUARY 8, 2008 PLANNING COMMISSION MEETING.

Mr. Bowman: Are there any corrections or additions to the minutes by any of the Commissioners that were present at that meeting?

Mr. Osborne: Mr. Chairman, on page 6 there is a minor correction where it has me saying, "I believe the plan would be the governing item here." I don't recall saying that. That sounds like almost something, Roy, you would have said.

Mr. Lopata: That is not the kind of words I would use either.

Mr. Osborne: Can we make a motion to accept with checking that one item?

Mr. Bowman: I would offer a correction or offer that it be stricken.

Mr. Osborne: Why don't we just strike it?

MOTION BY OSBORNE, SECONDED BY McDOWELL TO ACCEPT THE MINUTES OF THE JANUARY 8, 2008 PLANNING COMMISSION MINUTES WITH THE CORRECTION ON PAGE 6.

VOTE: 5-0

AYE: BOWMAN, McDOWELL, OSBORNE, RUSSELL, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED UNANIMOUSLY

2. AGENDA ITEM #2: REVIEW AND CONSIDERATION OF THE REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT), MAJOR SUBDIVISION, AND A SPECIAL USE PERMIT FOR A

PROPOSED 3,500 SQUARE FOOT FIRST FLOOR OFFICE AND UPPER FLOORS SIX APARTMENT UNIT BUILDING AT 119 ELKTON ROAD.

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

“On December 4, 2007, the Planning Department received applications for the rezoning, major subdivision and a special use permit for the development of the .3867 acre property at 119 Elkton Road. The now vacant “Pizza Hut” takeout restaurant building is located at this site. The applicants and equitable owners of the property – Elkton Road, L.L.C. – are requesting a rezoning from the existing BN (neighborhood shopping) to BB (central business district) and major subdivision to construct a mixed use office and residential building that will contain 3,483 square feet of first floor office space and six apartments on the upper two floors of the facility. The applicants have also applied for the BB zoning required special use permit for apartments.

Please see the attached McBride and Ziegler rezoning, subdivision and special use permit plan and supporting materials.

The Planning Department’s report on the 119 Elkton Road project follows:

Project Description and Related Data

1. Location:

119 Elkton Road; approximately 110 feet from the intersection of Beverly and Elkton Roads.

2. Size:

.3867 acres.

3. Existing Land Use:

Small one-story take-out restaurant and paved parking area.

4. Physical Condition of the Site:

The 119 Elkton Road property is a fully developed site including a small commercial building and paved parking area. In terms of topography, the site is very level with almost no perceptible slope.

Regarding soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service and the subdivision plan, the 119 Elkton Road property contains Keyport Silt Loam soil. According to the Natural Resources Conservation Service, this soil has “moderate” development limitations for the use proposed.

5. Planning and Zoning:

The 119 Elkton Road property is zoned BN. BN is a commercial district that permits the following:

- A. Public transportation facilities, bus stops, etc.
- B. Municipal utility Uses
- C. Social Club, fraternal, social service, union and civic organization
- D. Non-profit community recreation centers
- E. Studio for artists, designers, photographers, with a maximum floor area of 5,000 square feet.
- F. Instructional, business, or trade schools with a maximum floor area of 5,000 square feet.

- G. Offices for professional services for administrative activities with special conditions
- H. Finance institutions, banks, loan companies.
- I. Retail stores limited to the sale of gifts, antiques, flowers, jewelry, newspapers, books, hobbies, stationary, art supplies, radio or television, hardware, variety, clothing, drug stores, beverages or liquors, with a maximum floor area of 5,000 square feet.
- J. Personal service establishments with a maximum floor area of 5,000 square feet.
- K. Laundromats
- L. Restaurants, excluding fast food and drive-in restaurants
- M. Retail food stores such as bakery restaurants, bakeries, candy, convenience grocery, meat markets, delicatessens, but excluding the preparation of goods for sale off the premises.
- N. Neighborhood shopping center with special requirements.
- O. Related indoor storage facilities with special requirements.
- P. Accessory buildings and accessory uses.
- Q. Repair and servicing with special requirements.
- R. Photo developing and finishing.

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

- A. Police and fire station.
- B. Electric and gas substation, and telephone central office with special requirements.
- C. Churches and other places of worship.
- D. Libraries, museums and art galleries.
- E. Drive-in and curb service for other than eating establishments with special requirements.
- F. Restaurants with alcoholic beverages.

The requested BB zoning, our downtown commercial district, permits the following:

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

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

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.

- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, the 119 Elkton Road plan meets or can meet all the applicable BB zoning specifications.

Regarding nearby and adjacent properties, the property immediately adjacent to the 119 Elkton Road property on the east is also zoned BN and contains the “Daffy Deli” takeout restaurant. A BC (general commercial) zoned gasoline service station, lies west of the site fronting on Elkton Road. The RM (garden apartments – multi-family dwellings) zoned University Garden Apartments are immediately south of the property. The BC zoned Kinko’s printing and copy service business is located northwest of the site across Elkton Road. The now vacant Grainery Station building and parking lot is located north and northeast of the site across Elkton Road. This property was rezoned and approved for redevelopment by City Council on April 23, 2007. The proposed new development on the site – “The Millyard” – will include approximately 9,000 square feet of first floor commercial space and nine upper floor apartments.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for, “commercial (auto-oriented) uses,” in the Planning Section within which the 119 Elkton Road property is located. Also regarding comprehensive planning, on May 29, 2007, City Council amended the Municipal Code to expand the boundaries of “Downtown Newark” and, as a result, included 119 Elkton Road as part of the Downtown District One. Downtown District One is defined as the:

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

Regarding the proposed density of 119 Elkton Road plan, the major subdivision calls for 15.52 units per acre.

Status of the Site Design

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

does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, as you can see from the subdivision plan and applicant's supporting building elevation, the 119 Elkton Road plan calls for a three-story brick and stucco building with first floor offices and six two-story apartments on the upper floors. Parking is shown along the rear of the property and in a small parking area on the east side of the site adjacent to the Daffy Deli parcel. Additional parking is shown located beneath a second floor overhang to the rear of the first floor offices. A retaining wall is shown at the southern boundary of the property adjoining the University Gardens Apartments. Stormwater management facility and dumpster locations are shown at the southeast corner of the site.

The subdivision plan calls for brick pavers at the front of the proposed new building intended to provide a "Main Street," pedestrian friendly look at the front portion of the site facing Elkton Road. Regarding the proposed building façade, the Planning Department suggests the Planning Commission review the proposal based on the criteria in Subdivision and Development Regulations Appendix XIV(d).

Subdivision Advisory Committee

The Subdivision Advisory Committee – consisting of the City's Management, Planning and Operating Departments – has reviewed the 119 Elkton Road rezoning, major subdivision and special use permit plan and has the comments below. If necessary, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. The Planning Department notes that the proposed mixed commercial and residential use corresponds to recently approved projects in the immediate vicinity on Elkton Road. The proposed land use at the site also conforms to the recent amendments to the Municipal Code extending "Downtown District One," from E. Main Street to portions of Elkton Road.
2. The Planning Department suggests that the Planning Commission consider the following, as conditions of subdivision approval:
 - That the architectural design for the proposed new building be carried out on all portions of the facility visible from public rights-of-way.
 - That mechanical equipment and utility hardware be screened from public view with materials harmonious with the proposed architectural design or shall be located so as not to be visible from adjoining streets or public rights-of-way;
 - That the refuse storage bin be screened from public view with materials harmonious with the proposed architectural design;
 - That exterior lighting be designed as an integral architectural element of the proposed architectural. All such lighting be shielded to limit visual impacts on the adjoining residential property.
3. The Planning Department suggests that in light of recent comments from the Mayor and Council, and the Planning Commission's and Planning Department's ongoing efforts to encourage owner occupancy, that the subdivision agreement specify that the proposed units be designed so that they can be converted to condominium apartments.
4. Regarding residential density, as noted above, the 119 Elkton Road project calls for 15.52 units per acre. To assist the Commission in evaluating this proposed density, the Planning Department has provided below the units per acre of recently Planning Commission reviewed and City Council approved nearby mixed use commercial/residential projects:

<u>Development</u>	<u>Location</u>	<u>Units/Acres</u>
Madeline Station	Elkton Road	20.31
Amstel Square	Elkton Road	17.17
The Millyard	Elkton Road	9.39

5. Regarding drainage and stormwater management, the Public Works Department indicates that prior to the plan's transmittal to City Council, the applicant should review with the Department stormwater quality control issues and technical specifications. In this regard, the Department may require that the proposed building be set back several feet to allow for a grass filter system to be installed in front of the facility on Elkton Road.
6. Regarding refuse collection, the Public Works Department indicates that required dumpsters must be accessible when automobiles are in parking spaces. If the City is to be responsible for refuse collection, two dumpster locations are required – one for residential and one for commercial use.
7. Prior to its review by City Council, the applicant should discuss with the Public Works Department technical matters concerning the proposed retaining wall at the rear of the property.
8. Regarding sidewalks, the Public Works Department indicates the following:
 - Handicap ramps are required at the road's entrance; sidewalk and driveway cross slopes must be 2%, as per ADA requirements.
 - Existing curbs should be shown at the west entrance; a note should be added to the subdivision plan indicating that the curb and adjacent brick walkway will be raised to the required full height.
 - Regarding the brick walkway, Public Works and the Delaware Department of Transportation (DelDOT) have raised concerns about the long term maintenance of this facility. Both departments recommend that if a brick walkway is to be installed, that the subdivision agreement should specify that the developer/owner will be responsible for the removal and replacement of the brick walkway abutting the curb if the curb is required to be replaced by the City or DelDOT, and in addition, to be fully responsible for any required brick walkway maintenance.
9. The Police Department has raised concerns about line of sight for vehicles exiting the proposed parking lot onto Elkton Road. The Department notes that setting the building back somewhat, as noted above under Public Works comments, should help with this matter. The Department also recommends that no left turns out of the parking lot should be permitted.
10. The Electric Department indicates the following:
 - An open utility easement should be noted on the subdivision plan.
 - No trees over 18 feet high at maturity shall be planted under aerial power lines on Elkton Road.
 - No part of the building can be closer than 12.5 feet to a straight line drawn between the utility poles on each side of the property.
 - The developer must pay \$1,500 toward the cost of radio read meters.
 - The developer must pay all costs for any relocation of any utility facilities.

- The proposed six inch water main is required to be relocated so it is no closer than three feet to the existing utility pole.

11. The Parks and Recreation Department indicates the following:

- Solid landscape screening or fencing should be provided along the rear property line; this should be integrated into the proposed retaining wall.
- The construction improvement plan should show structural soil as a base for the proposed tree pits. Trees along the side property lines – if they are located on this site – will need to be removed because they are in poor condition.

12. The Building Department indicates the following:

- All new construction will be required to be sprinkled.
- The building must meet the current standards in International Building Code.
- The plan must conform to all applicable State and City Fire Prevention Regulations.
- In order for wall openings to be permitted on the side of the building adjoining the gasoline service station, the facility would need to be fire rated.

13. Regarding water, the Water and Waste Water Department indicates the following:

- The existing fire hydrants must be relocated. The applicant should discuss related technical items with the Department.
- The utility pole at the south of the property line must be secured by the Electric Department when the water main is installed at that location; there will be a fee charged for this service.
- There are related technical requirements regarding the existing four inch valve and removing the existing domestic service at the site; these should be reviewed with the Department.

14. Regarding sanitary sewer service, the Water and Waste Water Department indicates the following:

- The existing sanitary sewer line needs to be “cameraed,” through the construction improvement plan process, to verify its condition.
- A new “cleanout,” behind the right-of-way line is required.

Recommendation

Because the proposed 119 Elkton Road rezoning from BN to BB conforms to the land use guidelines in the Newark Comprehensive Plan, and the recent amendments to the Municipal Code extending the Downtown District to Elkton Road, because the proposed mixed use 119 Elkton Road major subdivision conforms to recently approved projects in the immediate vicinity of the site, and because the proposed 119 Elkton Road subdivision plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on adjoining and nearby properties, the Planning Department suggests that **the Planning Commission make the following recommendations:**

- A. That City Council approve the rezoning of the .3867 acre 119 Elkton Road property from BN (neighborhood shopping) to BB (central business district), as shown on the attached Planning Department Exhibit A, dated February 5, 2008;**

- B. That City Council approve the 119 Elkton Road major subdivision plan, as shown on the McBride and Ziegler, Inc., plan dated November 21, 2007, with the Subdivision Advisory Committee's suggested conditions; and,**
- C. That City Council approve the special use permit for apartments in the BB district, as shown on the McBride and Ziegler, Inc., plan, dated November 21, 2007, with the Subdivision Advisory Committee's suggested conditions."**

Ms. Lisa Goodman: I am the attorney representing this project. I am with the firm of Young, Conaway, Stargatt & Taylor in Wilmington, Delaware. With me here this evening is the project engineer, Mark Ziegler from McBride & Ziegler, and Kevin Heitzenroder representing the applicant.

As Roy said, we are here with a plan that, we think, continues the redevelopment and revitalization of Elkton Road. I will just give you a little bit of background.

The site, as Roy indicated, is the shuttered Pizza Hut between the Daffy Deli and the BP Gas Station. The site is a little less than .4 acres. It is fully paved end to end and is currently zoned BN. As Roy indicated, in May Council expanded the boundaries of the downtown Newark zone to include this area. The district within that is defined as, intended to be redeveloped with first floor shops and apartments/office on the upper floors with careful attention regarding apartments to traffic, parking, design and intensity. This proposal has been carefully designed to sit squarely within that definition, as have the other projects that have been approved right in this little strip. We, actually, brought Elkton Road to you this evening. As you can see, what we are showing here is the not very good state of a number of the parcels on Elkton Road and the very positive signs of the redevelopment that either has been started or is about to be started. This project is really perfectly consistent with the good start that has already been made. There are specifically three new projects – and I know you are all familiar with them – within a stone's throw of this proposed site, all of which have been rezoned to BB. Again, we are very consistent on that as well. The three projects are Madeline Crossing; Amstel Square, which was the former Crab Trap; and the Millyard. All three of them have been approved essentially for exactly what this proposal is – first floor businesses, second and third floor apartments. And, again, that is exactly what Council said it wanted to see happen here.

This plan, specifically, as Roy indicated, is on a small site, and therefore, it is a small building. The plan proposes a little bit less than a 3,500 square foot footprint building with office/commercial on the first floor and six apartment units above it on the second and third floor, and 21 parking spaces all to the rear. Again, which is very consistent with the Main Street look here in pulling the building up to the sidewalk. The rendering that you have in front of you shows brick broken with some stucco, which, again, is very consistent with what is being done along Elkton Road. So, this building is brick broken with stucco with lots of glass on the front to make it very inviting to walk into the first floor. You can see activity and people in there and that tends to pull people in and make a building much more welcoming. We are showing landscaping, which currently is none on the parcel; we are showing street trees; we are showing brick sidewalks on the plan. We would like to do brick sidewalks. They are pretty, high quality, more expensive, but we think that they are important. DelDOT has come back and has said that they do not want to see brick sidewalks. I think their concern is the proposed work that they are going to do on Elkton Road. They like to keep it simple and they like to pour their concrete. We would like to do brick. The City, in general, would like to see brick as well. We are going to work with the City and DelDOT and that will all get resolved.

We think we have a really good case for this rezoning. I am just going to highlight the four major things. One, we are squarely within the recently enacted downtown district. Two, we provide ample parking in an attractive design. Those two things go to what everyone wants Elkton Road to look like when it grows up, so to speak. Three, we are perfectly consistent with the other redevelopment projects in terms of stories, in terms of uses; we are actually less dense than two of the three. We are also consistent with DelDOT's recognition of the redevelopment of Elkton Road. We did bring the blowup of DelDOT's website of their proposed Elkton Road planning study area, which shows the road improvements and the changes that they are planning for Elkton Road, which is just more

indication that, I think, everybody both wants and believes that Elkton Road is going to be redeveloped and come back and, hopefully, extend Main Street. And, finally, we have the recommendation of the Planning Department which, I think, has looked very carefully looked at this and has determined that it is consistent with what the City in its planning goals would like to see. We are happy to answer any questions that you might have.

Mr. Bowman: Are there any questions from the members of the Commission.

Mr. Osborne: I will follow up on your question from earlier which was what number of bedrooms is in each apartment.

Ms. Goodman: There are six apartments and they are planned for four bedroom units, which is really standard. That is what these units tend to be.

Mr. Bowman: So, that indicates, Roy, that we get three parking spaces per unit. Is that correct?

Mr. Lopata: Correct.

Ms. Mary Lou McDowell: Would the apartments be two stories or one story.

Ms. Goodman: There are two stories of apartments.

Mr. Osborne: But, each one is a flat. There are no stairs within each unit.

Ms. Goodman: Each one is a two-story unit.

Mr. Lopata: That is what lends itself to the condominium concept that I was talking about before. They are going to be pretty good size apartments.

Mr. Osborne: What is the square footage of each apartment.

Mr. Kevin Heitzenroder: They will probably be 1,300 to 1,400 square foot.

Ms. Kass Sheedy: How much further north along Elkton Road will the new building extend beyond the footprint of the Pizza Hut? It looks like it is going to go up to the edge of the current driveway. Is that correct?

Mr. Mark Ziegler: I am with McBride & Ziegler. I don't have the existing building shown right there, but I would say it is roughly ten to twenty feet further north. The existing building is, basically, in the middle of the site toward Elkton Road.

Mr. Lopata: Of course, the building is much closer toward the west or the gas station side. Right now you can drive on that side of the Pizza Hut.

Mr. Osborne: How many occupants are you envisioning in each of the units?

Ms. Goodman: That really varies. You can get units with four, you can get units with three if somebody wants an office, and you can get units where people are willing to bunk in together and share bedrooms. So, it really depends on the tenant mix at the time. It is very hard to say. Kids come here and their parents pay for them to have a nice apartment because they want them to have a quiet place to study and those parents will pay for a bedroom and a second bedroom for a study. It is very variable. I don't think there is any way to say that definitively.

Mr. Lopata: Let me get right to that, Rob, because you may recall at our last meeting that we discussed at great length the restrictions on the number of tenants in the property at Choate Street. The reason that restriction isn't here – although you are welcome to consider one, that is up to the Commission – is that this is adjacent to apartments with a much higher density. It is very close to University dorms. The other project was at a downtown site that we are very much concerned with the congestion and the parking. Here is a little bit more open so we have tended not to have that kind of restriction at this location, but if the

Commission wants to have an upset limit, you are free to recommend one. This is a different site and trying to figure out how to treat this site versus the Choate Street site. That site does not have a commercial component on the first floor, plus it was a tighter site. Our concern is with the parking downtown. There, frankly, isn't a parking problem on Elkton Road. On the other hand, we do not want to create one.

Ms. Goodman: Kevin is involved in the townhouses that are on the Crab Trap site and the experience there is that these newer really nicer units don't tend to be the ones where kids pack in. They tend to be the ones where they are rented by the folks that want to rent them because they are a nice unit. I would suggest that we let the market control that. If you put the restrictions on and they are really hard to enforce.

Mr. Lopata: That is an example of what I am talking about.

Mr. Kevin Heitzenroder: I am the principal of Elkton Road, LLC. I also live at 271 Beverly Road right behind this project. We really would prefer not to have any restrictions. Let me speak to that a little bit as I own multiple projects in the City. The closest being the Amstel Square site. I am one of the principals in that project. The townhouses that are up have no restriction on them. I would say the average number of people per unit is four. A couple have five and I believe a couple have less than that, but these are very large units. We are targeting the upper echelon of housing to students or not to students. We don't care which. The commercial building that we will be starting in the spring where the Crab Trap used to be does not have any restriction on it. Very similar sized units designed to be very similar square footage. If your concern, Commissioner Osborne, is to pack people in there, that is not our motivation in this. We will leave that to others. We prefer not to have restrictions, but I would say on average we generally attract four people, one per bedroom. With three parking spots per unit, we have an average of less than three cars per unit at Amstel Square currently. We only have two parking spots over there and there is no room for anyone else and there hasn't been any problem. That, hopefully, addresses any past experiences you have had with that issue.

Mr. Lopata: The most important thing from the Planning Department's standpoint is, quite frankly, what Mr. Heitzenroder does or does not prefer is not important because no applicant prefers a restriction. That goes without saying. As I said the Commission is free to go in a different direction, I just looked at this site as somewhat different than downtown in terms of parking. I thought that was the principal problem. Here you have, essentially, University dorms and the housing right behind it – University Gardens – that has many apartments that have been there for decades without, as far as I know, any problems. They do park on Beverly Road and they have their own off-site parking. Again, this is up to the Commission.

Mr. Osborne: As the plan is on the table right now, there is no restriction.

Mr. Lopata: There is no Zoning Code restriction. There is a Housing Code restriction. There are restrictions. They are in that Code. It is based on square footage, not based on number of bedrooms. It is based on the size of the unit itself. It is a Housing and Fire Code requirement.

Mr. Osborne: There is a restriction.

Mr. Lopata: That is correct. There is a restriction. It is just not a Zoning Code or deed restriction as we have proposed at certain other locations – almost exclusively downtown. I can't think of one outside of downtown but might find one.

Mr. Bowman: If there are no further questions from the Commission, we will open it up to the public.

Mrs. Jean White: 103 Radcliffe Drive. I have a bunch of relatively quick questions and then a couple of comments. I always like to know who the owner of the property is. I know that Kevin Heitzenroder, your name is on the plan as the owner or one of the owners. Are there others? I wondered who the architect was? And, I understand from looking at this that

this is an office on the first floor not retail, so I just wanted to understand that for sure. Is your parking calculated for office but not for retail?

Mr. Lopata: That is correct.

Mrs. White: Are the entrances to the apartments all through the one stairway in the back? Does it go up to a hallway and from that hallway there are six different entrances to six different apartments and then once you are in you climb up to the third floor? It looks like there is only one entrance from the back according to your plan. I just wondered from the Building Code whether that is a good idea or whether there should be two ways to get down from the second floor. That is where I would like to start and maybe you could address those three questions to start with.

Ms. Goodman: There are two entrances. Mr. Ralph Olivier is the architect for the project. The Code requires two entrances.

Mr. Heitzenroder: We have hired Mr. Olivier to do the conceptual drawings at this point.

Ms. Goodman: The property is owned by the applicant and the applicant is Elkton Road, LLC, which is an LLC. Kevin is the principal of the LLC.

Mrs. White: I had a question by the Planning Director and that is when one calculates the amount of parking needed by office space and you take the total square footage minus the amount that can be excluded and divide by 300 and you get a number, if that number is not an even number, do you round up or round down? Say it is, 4.3, do you have to have five parking spaces or four parking places?

Mr. Lopata: Mark, why don't you explain how you did the parking calculation.

Mrs. White: I looked on the sheet how it was done, but the question is in the Code.

Mr. Lopata: You round down typically.

Mrs. White: In other words does it have to be at least half of another place?

Mr. Mark Ziegler: I believe the way the Code reads is, if you get, let's say, 3.51 then you round it to 4. If it is 3.49, you round it to 3.

Mr. Lopata: Which is typical for math in general.

Mrs. White: I am aware of some developments where even though it was 3.4, maybe they just gave an extra one to be nice. The second question I have about parking is, is the parking going to be dedicated for each apartment?

Mr. Lopata: We prefer that it is not. That certainly has not been decided yet. The Planning Department strongly recommends against it because it causes all sorts of problems with that. First, students are not typically in units all year long so you have empty spaces. Not every student brings a car so we prefer that they not be designated. We have had a very bad experience with one area in the City, where they were designated at Trader's Alley where the Iron Hill Brewery is. We have vacant spaces there. I continue to urge the property owner to come back and get that changed. I don't know which direction you are going in, Jean, but regardless, we don't think that is a very good idea.

Mrs. White: The direction that I am going in is, those who will be living there are going to be living there overnight full time. It is my understanding is that one of the other properties on Elkton Road that has been referred to by the developer. Although they had the number of parking places, as I understood it at the meeting most recently in the last year, they were going to put in the lease, even though they had the parking and they met the requirement, that no parking would come with the apartments. So, what I wanted to ask Mr. Heitzenroder if it would be in the lease that there would be no parking.

Mr. Lopata: We do not think that that is a good idea, so we are probably going to recommend that they not do that. I am not sure why anyone would think that was a good idea.

Mrs. White: To say that there is no parking that comes with the apartments.

Mr. Lopata: I am saying that we do not think that spaces should be designated.

Mrs. White: Whether it should be designated is a different question than whether the lease will say, we are renting this apartment and you who are signing the lease please understand that no parking comes with the apartment.

Mr. Lopata: I do not know about that.

Mr. Heitzenroder: That is not our intent.

Mrs. White: As long as that is not your intent because what was said for a different project was they were going to put in the lease that nothing came. I think that is a bad idea. The reason that three places are required for four bedroom apartments that you are going to make all those people go elsewhere even though you meet it.

There was a discussion about no left turn going out. Of course, it would have to cross traffic to do that. I actually think it is a good idea, but I just note that anybody making a right turn out will either go up to Amstel Avenue or Delaware Avenue and then go down from there. That is okay but I wanted to point that out. As a corollary to that, what about left turns in. As you are coming down Elkton Road, will those who live there be able to take a left turn in, which is also crossing traffic?

Mr. Lopata: It is less of a problem than the left turns out.

Mrs. White: Why is that less of a problem?

Mr. Lopata: Because of the building. The way the building sits. We are going to, hopefully, move the building back a little bit.

Mrs. White: You are talking about sight line as opposed to crossing traffic.

For the trash pickup, there was a discussion on whether the owner of the property would be required to contract with a private trash collector or the City might do it. If that be the case, what would be required. I wanted to make a plug for it not being the City's responsibility I think because it is a building of that size and it should be a private pickup.

Looking at the plan, it looks like the dumpster is very tightly put between a parking place on the side and one in the back. It is sort of sandwiched in. Although, I am not the driver of these trucks, it looked like it might be rather tight to back up and get the dumpster bin that is catty-corner there. That part seemed tight.

I guess I agree with the Police Department that there will be a sight line problem leaving and for that reason it would be helpful to set the building back even a small amount for those who are coming out to look down and see the traffic that is coming down.

Then we come to the brick pavers. The developer has proposed this for the front sidewalk instead of concrete with the best of intentions to match the building and have something look nice. I think that is the case and acknowledge it. I, personally, as a pedestrian would very much prefer to have wide block concrete sidewalks of the typical kinds. I ask you and the developer to do that instead. I have found as a pedestrian that brick pavers can get uneven. there are examples all around town where that is the case. It is easy to turn your ankle and so on. It is hard to walk with high heels that can get caught in the grooves. Cigarette butts get caught in the crevices leading to unattractive situations because they don't get cleaned out regularly and dirt and debris can get caught in the crevices and then plants grow in it and then there is the necessity of putting herbicides on, which is what the University does routinely on all of their brick pavers. In spite of the fact that this was

proposed for very good reasons, that it be concrete blocks. I think the nice look of the building will remain and it won't hurt the look of the building.

I would be for restricting to no more than four unrelated persons. Basically, the part of Elkton Road that has been added to the downtown area has only one basic set of multiple apartments at the moment. The Amstel Square end and the Grainery project will be built. But, as it gets more developed, the parking can very well become a problem just the way it is in the main part of downtown on Main Street, and I think it is important at this point to limit it to that. Since most of them tend to be full, I don't think it is a bad thing to do. It is actually a good thing to do.

My final comment is that the building as shown in the front elevation looks nice to my eyes and is a marked improvement over what is sitting there now as a boarded up one-story building in a sea of asphalt. It seems like the site is a bit tight, so you can look at that as to what you think.

Mr. Bowman: Is there anyone else from the public that would like to comment? If not, I will bring it back to the Planning Commission.

Mr. Osborne: I have a question about the office space on the first floor. How many workers are anticipated in the offices? There will be three office units, is that right?

Mr. Heitzenroder: The truthful answer is, I have no idea. With the building at this stage of the game what will happen is, if it is approved by Council, we will go forward with leasing the space, at that point, I can't see more than two tenants being in that space. It isn't a very big space. I am more than happy to put one in there. As far as the parking rationale goes and the issue of whether it is office or retail or some store or a deli or whatever, the City has parking rationale for different uses. We will certainly be forced to meet that rationale. We probably should have had on the plan office/commercial. If it is office, that is the case that we will present to Council. If it is a deli, that follows a different parking rationale. If it is a retail store, that, again, is a different rationale but we are committed and have to follow that rationale. I have no idea who will go in that space at this point in time.

Mr. Lopata: Let me make just one more little comment just as an aside. Since Jim was on the only one who was here, it is relatively recently that we added to the parking requirements requiring the extra parking space for units with more than three bedrooms. For decades we required two off-street spaces for residential uses. So, we really have had relatively little experience with the developments that have the three spaces per unit requirement. My point is, we are getting more parking on this site than we would have gotten two and a half years ago. I am not saying that the issue of parking isn't something you need to be concerned about but we have made a stab at changing that and this plan actually shows that.

Mr. Osborne: Generally, overall, I think that there is a nice amount of parking space. What I am concerned about is that if it is a mixed use site like you are looking for, we could have retail, deli, restaurant on the bottom with apartments upstairs without some kind of restriction on parking. Maybe there will be a competition for the spaces in the back. If there are four people per apartment and there are six apartments, that is 24 cars occupying the spaces in the parking lot. If there is a restaurant on the bottom floor, where do they park? If they are coming to the restaurant do they risk parking across the street? Elkton Road is very busy.

Mr. Lopata: Let me give you a better analogy – Madeline Court. It is a 15-unit apartment complex. They have commercial on the first floor. It is right up the street on Elkton Road.

Mr. Osborne: It has a lot of cars coming in and out because there is a dance studio.

Mr. Lopata: They came in under the old rule. There have been no parking problems there.

Mr. Osborne: They have a two-space per apartment unit limit?

Mr. Lopata: Correct.

Mr. Osborne: And there are how many total units in there?

Mr. Lopata: It is fourteen or fifteen units, plus first floor offices. It is analogous to this project.

Mr. Osborne: And there are fourteen parking spaces.

Mr. Lopata: No, There are fourteen or fifteen apartment units and it was built under the two space per unit requirements. It has roughly 30 spaces plus what they need for the first floor commercial. What I am getting at is the number of spaces on that site in terms of the relationship between the use and the site is considerably less than this site because they didn't have the requirement for the extra parking spaces for extra bedrooms.

Mr. Osborne: What I am hearing you say is that under those rules, there is no parking problem there. And what I am hearing is that this plan – if I am hearing you correctly – is under new rules.

Mr. Lopata: We now have a rule that requires more spaces.

Mr. Osborne: And that number is three spaces per unit.

Mr. Lopata: The old rule was two.

Ms. Goodman: Roy, one thing is that it as a practical matter there is no parking there, right. You have watched it operate.

Mr. Lopata: There is no parking problem there at all.

Ms. Goodman: You are saying that in practice there is no parking problem even though they have fewer spaces.

Mr. Osborne: Thank you for clarifying the three spaces versus the two. Per unit is the per apartment unit. It doesn't include the bottom floor, basically.

Mr. Lopata: Those are equivalent. That is an office, this is an office. The requirement for the dance studio comes under the office standard.

Mr. Osborne: I have not personally used the spaces in Madeline's Crossing.

Ms. McDowell: I have. I have dancers.

Mr. Osborne: Does it work?

Ms. McDowell: I have never had a problem finding a place to park. Of course, with my dancers, they are dropped off. I walk them in and then go in and get them. If it were a different type of business, there might be a problem.

Mr. Osborne: That works because there is a lot of drop off. You are there a minute and out.

Mr. Lopata: Let's try this again. They have less parking there because they come under the old rules.

Mr. Osborne: What I hear you saying, though, is that if there are three office spaces – what is being proposed in this plan – there are three parking spaces per office on the first floor for patrons to utilize.

Mr. Lopata: No. They need one space for every 300 square feet. It is a different standard altogether. I am talking about the apartments.

Mr. Osborne: I am just trying to – practically speaking – picture a deli on the bottom floor, is there adequate parking?

Mr. Lopata: Under the current plan there is no deli. They are proposing offices. If they are going to change the use, they will have to change the parking formula. That is what Kevin mentioned before. They would have to put in more parking. They would have to redesign the site or change the configuration downstairs. They will have to meet the parking standards no matter what it is. Madeline's Crossing replicates this project only 115 Elkton Road is smaller. There are two floors of apartments with office type uses downstairs. If you go to the back of those units you will see empty spaces. The kids come and go. They really don't use the parking to the extent that office tenants might.

Ms. Goodman: Mr. Osborne, I might offer two things. One is, in this world of mixed use buildings, part of the parking calculation is this non-concurrent use, that people come and go, so, typically, during the day when some of the folks in the apartments don't have their cars there, that is when the office/retail cars are there. It tends to work. We see that all throughout the County in multiple municipalities. The other thing that I would offer is that there are traffic engineers and code drafters who have studied all of this. And, while intuitively, you and I think that with four bedrooms everyone is going to have a car because we are grownups and we have a car. Not all grownups have cars and not all students have cars. They go on the statistics which tend to bear out. I think what Kevin indicated is even if they are a brand new project, statistics are bearing out. They have only two spaces because they are under the old Code, four bedrooms, and they are doing just fine. It is the same as traffic engineers who have studied the statistics and say, in fact, everybody on a site does not leave at 7:00 a.m. and come back at 6:00 p.m., but if you and I do that, we think everybody does that. There is enough variability that it works. I don't know if that is helpful in your thinking. I think in the broader world that is what we see and how these codes get drafted.

Mr. Bowman: Are there any other questions? If not, the Chair will entertain a motion on the proposal.

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

- D. CITY COUNCIL APPROVE THE REZONING OF THE .3867 ACRE 119 ELKTON ROAD PROPERTY FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT), AS SHOWN ON THE ATTACHED PLANNING DEPARTMENT EXHIBIT A, DATED FEBRUARY 5, 2008;
- E. CITY COUNCIL APPROVE THE 119 ELKTON ROAD MAJOR SUBDIVISION PLAN, AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC., PLAN DATED NOVEMBER 21, 2007, WITH THE SUBDIVISION ADVISORY COMMITTEE'S SUGGESTED CONDITIONS; AND,
- F. CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR APARTMENTS IN THE BB DISTRICT, AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC., PLAN, DATED NOVEMBER 21, 2007, WITH THE SUBDIVISION ADVISORY COMMITTEE'S SUGGESTED CONDITIONS.

VOTE ON MOTION: 5-0

AYE: BOWMAN, OSBORNE, McDOWELL, RUSSELL, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED

3. AGENDA ITEM #3: REVIEW AND CONSIDERATION OF THE ANNEXATION, WITH BC (GENERAL COMMERCIAL) ZONING, OF THE 3.7386 ACRE PROPERTIES AT 1364/1370 MARROWS ROAD AND

709 OGLETOWN ROAD, AND MINOR SUBDIVISION FOR A PROPOSED AUTO DEALERSHIP.

Mr. Lopata summarized his report for the Planning Commission which reads as follows:

“On December 6, 2007, the Planning Department received applications from 1364 Marrows Road, L.L.C. (Martin Dealerships) for the annexation and minor subdivision of their 3.7386 acre properties at 1364 and 1370 Marrows Road and 709 Ogletown Road. The applicants are requesting annexation with BC (general commercial) zoning and minor subdivision approval to remove the parcel lines separating the properties at the site so that they can eventually construct an auto dealership and accessory uses at the location. The project will be built in phases with a small auto dealership, vehicle storage and minor repair facility in the first phase – using existing buildings; and an expanded auto dealership to be constructed in the future.

Please see the attached McBride and Ziegler, Inc. existing conditions plan, annexation and minor subdivision plans, landscape plan, and brief project description.

The Planning Department’s report on this project follows. [For simplicity sake, we will refer to the properties as the “Martin Dealership properties”].

Property Description and Related Data

1. Location:

East side of Marrows Road; south side of Ogletown Road; south and east of the Shell Gasoline Station/Mini-Mart at the Marrows Road and Ogletown Roads intersection.

2. Size:

3.7386 acres

3. Existing Land Use:

The portion of the site fronting directly on Marrows Road [tax parcels #09-021.00-003, 004, 005 and 006] is vacant. The property fronting on Ogletown Road, running north and south on this site [tax parcel #09-021.00-011] contains three main buildings, several small accessory buildings, and the parking area that was previously occupied by a refuse and waste hauling company. The site is currently used for vehicle storage and repair.

4. Physical Condition of the Site:

The northern portion of the Marrows Road frontage is a vacant, grassy area containing a large tree near its eastern boundary with the old refuse hauling company portion of the site. The southern portion of this area contains a small L-shaped parking lot, with access from Marrows Road. The Ogletown Road frontage parcel contains the old refuse and waste holding company storage, vehicle repair and accessory buildings, and parking area, with access from Ogletown Road. Fences separate the Marrows Road property from the Ogletown Road portion of the site.

The Martin Dealership properties are relatively level with a slight slope from high points on the west to the east and high points on the north to south. Regarding soils, according to the United State Department of Agriculture’s Natural Resources Conservation Service and the subdivision plan, the southeastern third of the Martin Dealership properties contains Delanco Silt Loam soil. The remainder of the site contains Elsinboro Silt Loam soil. According to the Natural Resources Conservation Service, these soils have “moderate” and “slight” development limitations respectively for the use proposed.

5. Planning and Zoning:

The Martin Dealership properties fronting on Marrows Road are zoned “CN” in New Castle County. The Ogletown Road parcel is zoned “I” in New Castle County. “CN,” in the County, is a neighborhood commercial zone that is described, in general, as being of a “suburban character.” “I,” in the County, is an industrial zone that is designed primarily for “older industrial areas.” According to the County’s Unified Development Code, “light automobile service,” would be permitted in the “CN” and “I” districts with “limited review.” Vehicle sales are permitted in the “I” district with “limited review,” but not permitted in the “CN” district.

BC, in the City, is a general commercial district that permits a wide variety of commercial uses including the following:

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

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

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

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

Regarding adjacent properties, a BC zoned veterinarian hospital – the VCA Newark Animal Hospital – lies immediately south of the portion of the property fronting on Marrows Road. A BC zoned office building and a Toyota automobile dealership lies further to the south on Marrows Road. The BC zoned “Campbell Sports Center,” lies southeast of the site. All of these BC zoned properties are, of course, within City limits. The property immediately east of the Martin Dealership site is zoned “I” in New Castle County and contains the vacant Temple-Inland Corporation warehouse facilities. A “CN,” County zoned, gasoline dispensing convenience store lies north and west of the site at the corner of Marrows and Ogletown Roads. The BC zoned 84 Lumber retail store lies across Ogletown Road from the site within City limits. Also within the City, the BB (central business district) zoned Bennigan’s Restaurant lies across Marrows Road from the northern portion of the property fronting on that roadway, with the BC zoned Kentucky Fried Chicken fast food restaurant across Marrows Road from the site’s southern section.

Regarding BC zoning area requirements, except for what will become legal existing non-conforming buildings as a result of minor non-compliance with setbacks from property lines, the proposed Martin Dealership auto sales and accessory facilities meet or can meet all the applicable BC zoning area requirements.

Regarding comprehensive planning, the City’s Adjacent Areas Land Use Plan calls for “commercial (auto oriented),” and “manufacturing office/research” land uses in the Planning Area within which the Martin Dealership site is located. The proposed use, of course, therefore conforms to the City’s Adjacent Areas Land Use Guidelines for the site.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design of the project. Specific details taking into account topography and other natural features must be included in the building permit and/or construction improvement plan. For architectural character, under the City’s recently adopted design review criteria, applicants for minor subdivisions may be requested to submit color scale elevations of their proposed buildings. In this case, because of the site’s location and because any substantial construction will occur in a second phase of the project, we have not required color scale elevations of the buildings for this proposed minor subdivision.

In any case, if the construction improvement plan, which is reviewed and approved by the City Operating Departments, does not conform substantially to the approved subdivision site, the construction improvement plan is referred back to City Council for its

further review and reapproval. That is, initial City Council subdivision approval means that the general site concept 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 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 annexation/minor subdivision plan calls for a two phase auto dealership facility with the first phase on the eastern (or old refuse hauling company) portion of the site utilizing the existing buildings for auto storage and accessory repair, with additional auto storage shown on the portion of the property fronting on Marrows Road (see Sheet #3). The second phase of the project calls for a proposed two story auto dealership building to be constructed on the Marrows Road frontage of this site with the existing previously converted buildings continuing to function as storage and accessory auto repair facilities (see Sheet #4).

Access to the property is shown at curb cuts on Marrows and Ogletown Roads. A separate landscape plan for this annexation and minor subdivision has also been provided.

Departmental Comments

The City's Management, Planning and Operating Departments have reviewed the Martin Dealership properties annexation and minor subdivision plan and have the comments noted below. If necessary, the subdivision plan should be revised prior to its review by City Council. Our comments are as follows:

1. The Planning Department notes that the proposed Martin Dealership properties annexation, with BC (general commercial) zoning, and the proposed auto dealership and accessory repair facilities land use corresponds to similar auto sales facilities and other commercial businesses in the immediate vicinity on Marrows and Ogletown Roads. In addition, regarding comprehensive planning, as noted above, the proposed use reflects the recommendations of the City's Adjacent Areas Land Use Plan for the site.
2. The Planning Department suggests that as a condition of minor subdivision approval the applicant voluntarily agreed to deed restriction to the site to not permit the following BC zoning uses. Please note that these deed restrictions correspond to those voluntarily agreed to by the developers of the BC zoned properties on Marrows Road in the City south of the site, including the Toyota dealership site. The proposed restricted uses are as follows:
 - Auction
 - Crating service
 - Frozen food locker
 - Ice manufacturer
 - Sign painting and manufacture
 - Photo developing and finishing
 - Cleaning and dyeing plants
 - Commercial laundries, dry cleaners and laundromats
 - Outdoor commercial recreation facilities
 - Taverns
 - Delicatessens
 - Retail food stores of all sizes
 - Automobile/motor vehicle repair and/or service stations other than accessory to new auto dealerships
 - Self service car washes
 - Used car lots other than the sale of used cars accessory to new auto dealerships
 - Adult bookstore/adult entertainment center.

3. Regarding stormwater management and drainage, the Public Works Department has a series of technical requirements and suggestions that the applicant needs to discuss with the Department prior to the plan's review by City Council.
4. Regarding sidewalks and access ways, the Public Works Department indicates the following:
 - A five foot wide sidewalk with a five foot wide grass/landscape strip along Marrows and Ogletown Roads is required.
 - Handicap ramps are required at both access ways.
 - Access ways must be 24 foot wide; DelDOT approval is required for the entrances at the site.
4. The Public Works Department indicates that a minimum slope of one percent is required on the site.
5. The Public Works Department indicates that prior to its review by City Council, existing water and sanitary sewer lines need to be shown on the plan.
6. The Electric Department indicates the following:
 - Electric service is available from Marrows Road; a new pole will be installed along the property approximately 100 feet south of the property line along Marrows Road, adjacent to the gasoline service station/convenience store.
 - An open utility easement is required and needs to be shown on the subdivision plan prior to its review by City Council.
 - No trees over 18 feet high at maturity will be permitted under the new utility lines along Marrows Road.
 - The applicant will be required to pay for all costs regarding the assumption by the City of electric service to the existing Delmarva Power and Light served buildings and the reconnections to the Newark distribution system.
 - The applicant will be required to pay a contribution toward radio read meters and a required padmount transformer. The applicant also will be required to provide a suitable location, approved by the Department, for the installation of the padmount transformer and related bollards.
7. The Building Department indicates the following:
 - All new construction will be required to conform to the current standards in the International Building Code.
 - All new construction will be required to be sprinkled. The plan must conform to all applicable State and City Fire Prevention Regulations.
8. The Water and Waste Water Department notes that, subject to the company's approval, United Water will be providing water service to the site.
9. Regarding sanitary sewer service, the Department notes that for Phase One of the project all four manholes must be made water tight and meet other technical requirements. The applicant should consult with the Department regarding Phase Two sanitary sewer service requirements.
10. The Parks Department indicates that the landscape plan meets the City's general requirements. There are some technical matters that should be reviewed with the Department prior to the submittal of a construction improvement plan for the site. The Department notes that the large Sycamore tree located in the northeast corner

of the site can be preserved; the plan should be revised to reflect preservation measures for this tree.

Recommendation

Because the proposed annexation of the Martin Dealership properties, with BC zoning, conforms to the land use guidelines in the Newark Adjacent Land Use Plan, because the proposed auto dealership use at the location conforms to similar auto related business commercial uses in the immediate vicinity of the site, and because the proposed Martin Dealership minor subdivision plan, with the Departmental recommended conditions, will not have a negative impact on adjoining and nearby properties, the Planning Department suggests that **the Planning Commission make the following recommendations:**

A. That City Council approve the annexation of the 3.7386 acre Martin Dealership properties, with BC (general commercial) zoning, as shown on the attached Planning Department Exhibit A, dated February 5, 2008;

B. That City Council approve the Martin Dealership property's minor subdivision plan, as shown on the McBride and Ziegler, Inc., plan dated December 1, 2007, with the City Departmental suggested conditions."

Ms. Goodman: I am here representing Martin Honda this evening. With me, once again, is Mark Ziegler, the project engineer and from Martin Honda, Mr. Bill Camp and Mr. Hommy Poursaied, who are both with Martin Honda.

Martin Honda is a relatively longtime Newark business. They have been here since 1995, and they are here seeking to bring property into the City for a future dealership. They currently do own the property and do use it, but as Roy indicated, it is currently in the County. The property is, actually, made up of five parcels of land. It is about 4.7 acres. You know where it is. To the rear of the property, as Roy indicated, is the now closed Temple Inland Warehouse site, which is zoned "I" for industrial.

Martin acquired these properties in 2005. They were formerly owned by the Toliver family, which had a trash, refuse hauling and storage facility. The parcels are actually split zoned under the County zoning. The parcel that fronts on Ogletown Road is zoned I and the remained property is zoned commercial. As Roy indicated, we are seeking an annexation and along with the annexation would come the need to assign the zoning designation for the City. The City borders this property on three sides as was indicated by Roy as he began talking about the properties that border it and what their zoning is. To the south the veterinary property, the office, the Toyota dealer, all zoned BC. To the north across Ogletown Road is 84 Lumber also zoned BC and to the west across Marrows Road is Bennigans, which is zoned BB and KFC which is zoned BC. The site is currently used for car storage and minor repair and prep of cars and an occasional sale event. This plan is really to reuse and renovate this site and the three existing buildings on the site to continue the current use and then to plan, under a phase II, a new building that will become the main home for a new dealership. We have a rendering which is a concept rendering and attached to it is a small version of the site plan that you have in front of you in the large version. This concept rendering essentially shows you what a dealership building will look like. This is taken from the existing Martin template. It should look very familiar to you just to give you a sense of what that would look like. We are proposing extensive landscaping of this site. Currently the site has some trees but not many and a large paved area and no other landscaping per se. It is very open. What we are proposing is parameter landscaping consistent with the City Code that will really dress this site up make it very attractive and feel very, very green. One of the comments we got back was to pull the pavement back from the existing Sycamore Tree on Ogletown Road. We have already made that change. We had proposed to save the tree but the plan showed paving up closer to it than was ideal for the health of the tree and that has been pulled back. We are also saving some maples on the right hand front corner, and they are proposed to be saved as well. Along the back there will be deciduous trees that will back up to the current warehouse facility. As Roy indicated, we are very consistent with the Comprehensive Plan. In this case, it is the Adjacent Areas Plan for the City because, of course, this isn't in the City right now. But, the

Adjacent Areas Plan calls essentially for this exact type of use and contemplates the possibility of annexation someday. Martin is a business that is in the City and wants to continue to stay in the City with any new dealership they would bring in. So, given that the site is already surrounded on three sides by the City, it makes sense we think to bring it into the fold. That is the proposal in front of you.

Mr. Bowman: Any questions from Commission members for the applicants? If not, we will open it to the public.

Mrs. White: Jean White, 103 Radcliffe Drive. My first question is for the Planning Director. Why is the water to be supplied by United Water? I can think of a number of reasons such as the pipes are already in place or it is too far from the wells and other areas.

Mr. Lopata: It is because of the location.

Mrs. White: I know it is the location but what aspect of the location?

Mr. Lopata: United Water has service out there and we don't. I think that United Water serves the vet and the Toyota dealer. All of that is United Water.

Mrs. White: Does it also serve White Chapel and the Senior Center?

Does Martin eventually plan to move its operations entirely from Cleveland Avenue to this site? Will you still keep your location on Cleveland Avenue as well or at some point down the road will you move completely from there?

Mr. Lopata: I will indicate for the record that the applicants are shaking their heads no.

Mrs. White: Since the site has been formerly used for refuse and waste holding and hauling, I wondered if there was any type of contamination of the soil that would need to be dealt with even though this would be BC zoning and car dealerships, which would have a higher level of allowed levels of contaminations. and I wondered if there has been a look at that?

Mr. Lopata: They will have to meet any applicable environmental standards. They are already on that part of the site now. The car storage is on that part of the site. If you go look, it is paved and there are vehicles there. They have been there since 2005. The front part that is what you might call the Newark part is an open grass area that was not used by Toliver for refuse hauling.

Mrs. White: Only when people look and measure things do you find things. If you don't look, you never find things. There are lots of examples where there is major contamination. I am not saying that that is the case here at all, but unless someone looks, you don't find something.

I will end with the fact that I am glad that the large Sycamore tree is being saved at the northeast corner of the site and, furthermore, the macadam and the pavement is going to be setback enough to give it enough room. Generally speaking, you would want to allow to the drip line when you have a large tree. I actually didn't examine it to see if that is true, but I appreciate you doing that.

Mr. Bowman: If no one else from the public wishes to comment, we will bring it back to the table. Are there any further questions or comments from the Commission?

Mr. Osborne: This is for Mr. Lopata. This is the first opportunity I have had to participate in an annexation of any kind of property into the City. Other than some of the obvious benefits that are afforded to the City by growing and offering a product to the community, what other benefits does the City gain – additional tax revenue?

Mr. Lopata: The biggest benefit here is, of course, is the tax revenue, but our property tax rates are so low that that is a minor thing. The most important thing is electric sales. That is where we make our money. We are very interested in conserving energy, but auto dealerships are very high energy users. They have to pay for the disconnect and

reconnection – you will notice that is in my report – and then we will begin to serve electricity. As you indicate, the best thing is that Martin Honda has been a good business in the City of Newark and we prefer to have them in Newark rather than adjacent to the City. It will provide some additional jobs in the area and add some additional revenue. There is a building permit fee when they build a building, license fees and so on. There is some transfer tax if they haven't purchased the front part of it.

Mr. Osborne: I have no idea whether annexing a parcel of land this size would tip the scales to needing additional staffing for the City and things like that.

Mr. Lopata: Rob, good question. We have something called the Fiscal Impact Model that we run large projects through – any large annexation or large development in the City – to make sure that the cost to service the project doesn't exceed the revenue we derive from that project. This project is so small that we know intuitively that it is going to be pretty much all "gravy." They use very little in the way of police service. They use no refuse collection, which is very expensive for us, because they will have to haul their own. This is about as much as they are going to get. They will deal with our Building Department, but, by and large, they do not get much in the way of governmental services. Snow removal on their site is all private, of course. They do not use leaf collection. This type of use is the kind of thing we prefer. A well landscaped modern designed dealership is a pretty good use to come in.

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

- C. CITY COUNCIL APPROVE THE ANNEXATION OF THE 3.7386 ACRE MARTIN DEALERSHIP PROPERTIES, WITH BC (GENERAL COMMERCIAL) ZONING, AS SHOWN ON THE ATTACHED PLANNING DEPARTMENT EXHIBIT A, DATED FEBRUARY 5, 2008;
- D. CITY COUNCIL APPROVE THE MARTIN DEALERSHIP PROPERTY'S MINOR SUBDIVISION PLAN, AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC., PLAN DATED DECEMBER 1, 2007, WITH THE CITY DEPARTMENTAL SUGGESTED CONDITIONS.

VOTE ON MOTION: 5-0

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

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED

Meeting adjourned at 8:40.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission