

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

April 5, 2016

7:00 p.m.

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

Chairman: Alan Silverman

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

Commissioners Absent: None

Staff Present: Maureen Feeney Roser, Planning and Development Director
Tom Fruehstorfer, Planner

Mr. Silverman called the Planning Commission meeting to order at 7:01 p.m.

Mr. Alan Silverman: I would like to call to order the City of Newark Planning Commission meeting for Tuesday, April 5, 2016.

1. THE MINUTES OF THE MARCH 1, 2016 PLANNING COMMISSION MEETING.

Mr. Silverman: Copies of the previous meeting's minutes have been distributed to the Commissioners. Are there any additions or corrections to those minutes? Hearing none, the minutes stand as distributed.

2. REVIEW AND CONSIDERATION OF A MAJOR SUBDIVISION AND SPECIAL USE PERMIT FOR THE 2.34+/- ACRE PROPERTY LOCATED AT 400 OGLETOWN ROAD IN ORDER TO CONSTRUCT A 125 ROOM HOTEL AND 100 SEAT RESTAURANT.

Mr. Silverman: The next item on our agenda is the review and consideration of a major subdivision and special use permit for the 2.34+/- acre property located at 400 Ogletown Road in order to construct a 125 room hotel and 100 seat restaurant at this site.

Now before we begin, I would like to announce that I am going to recuse myself from any discussion and voting. I will still continue to preside in case the applicant has an issue over the mechanics of the meeting. Do the Commissioners have any problem with that?

Ms. Maureen Feeney Roser: Do you want to say why you are recusing yourself?

Mr. Silverman: Oh, I'm sorry. I am a member of Aetna Hose Hook and Ladder Company, which is the immediate adjacent property owner and I am also a past director and I serve on a number of working committees. So I feel it may be a conflict of interest if I get involved in any of the discussion or the voting.

We will continue with a report from the Planning Director.

Ms. Feeney Roser: Yes. Thank you, Chairman Silverman. For the benefit of those in the audience, I am going to briefly summarize the Department's report on this project which, as you already know, is a major subdivision and special use permit for a five-story hotel, which is actually a four-story hotel above a level of parking, and a 100-seat restaurant at the site.

The Planning and Development Department report on the proposed rezoning follows:

On February 4, 2016, the Planning and Development Department received applications from Danneman Hospitality, LLC for a major subdivision and special use permit of the 2.34 acre property located at 400 Ogletown Road. Specifically, the applicant is requesting major subdivision and special use permit approval in order to construct a five-story SpringHill Suites (a four-story hotel above one level of parking) hotel and a 100-seat restaurant at the site.

Please see the attached Duffield Associates' 400 Ogletown Road major subdivision and special use permit plan and artist's renditions.

The Planning and Development Department report on the 400 Ogletown Road hotel and restaurant project follows:

Property Description and Related Data

1. Location:

400 Ogletown Road is on the northeastern corner of the intersection of Ogletown Road (State Route 273) and Library Avenue/Kirkwood Highway (State Route 2).

2. Size:

2.3363+/- acres

3. Existing Land Use:

The 400 Ogletown Road property contains a vacant one-story commercial building and associated accessways and parking area.

4. Physical Condition of the Site:

The 400 Ogletown Road property is a developed site containing a now-vacant 16,455 square foot masonry commercial building, a parking area and limited landscaping. The property was previously used as a fabric store and, more recently, as a car dealership.

In terms of topography, the site slopes gently, primarily from highest points at the southeast boundary of the property towards the west and north. There is a considerable grade change from the Library Avenue/Kirkwood Highway road bed on the southwest side up to the property itself.

Regarding soils, according to the plan and the United States Department of Agriculture Natural Resources Conservation Service, the 400 Ogletown Road property consists of Urban Land (Up) and Elsinboro-Delanco-Urban (EuB) soils. According to the Natural Resources Conservation Service, such soils do not have development limitations for the uses proposed.

5. Planning and Zoning:

The BC (general commercial) zoning at the site permits the following:

- A. Auction.
- B. Automobile, boat, bus, truck, mobile dwelling unit, motor bike, utility trailer rentals, retail, and wholesale sales, subject to special requirements.
- C. Crating service.
- D. Frozen food locker.
- E. Ice manufacture.
- F. Sign painting and manufacture.
- G. Warehousing, except that no highly combustible or explosive products or materials, which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions; products or materials which involve highly corrosive or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or corrosive gases, shall be stored within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes and except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes.

- H. Wholesale sales with related storage and warehousing, except that no highly combustible or explosive products or materials which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions; products or materials which involve highly corrosive or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or corrosive gases, shall be stored within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes, and except that no semitrailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes.
- 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, such as miniature golf, archery ranges, skateboard centers, and other similar recreational enterprises, but excluding all forms of motorized vehicle amusements such as go-carts or motorbikes. Permitted commercial recreational facilities are subject to 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. A 20-foot setback is required for this with no vehicular parking permitted in the required front yard area.
- W. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district.
- X. Accessory buildings or structures, no impact, and accessory uses, no impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes.
- Y. Restaurants, bakery-restaurants, and delicatessens.
- Z. Public parking garage and parking lot.
- AA. Parking, off-street.
- BB. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; stations and depots.
- CC. Street, right-of-way.
- DD. Utility transmission and distribution lines.
- EE. Water tower, water reservoir, water storage tank, pumping station, and sewer.
- FF. 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, subject to special requirements.
- B. Self-service car wash establishment, subject to special requirements.
- C. Automobile/motor vehicle repair, subject to special requirements.
- D. Automatic car wash establishment, subject to special requirements.
- E. Used car lots.
- F. Retail food stores.
- G. Fast-food and cafeteria style restaurants, subject to special requirements.
- H. Drive-in restaurants, subject to special requirements.
- I. Drive-in and curb service, for other than eating establishments, with a minimum setback from all street lines of 65 feet.
- J. Substation, electric, gas, and telephone central office, subject to special requirements.
- K. Tower, broadcasting and telecommunications, subject to special requirements.

- L. Police and fire stations.
- M. Library, museum, and art gallery.
- N. Church, or other place of worship, seminary or convert, 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 subject to special requirements.
- S. Restaurants, with alcoholic beverages, subject to the requirements.
- T. Accessory buildings or structures, with impact, and accessory uses, with impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes.

Regarding area regulations, a summary of BC requirements are as follows:

- (1) *Minimum lot area.* 5,000 square feet, with exceptions.
- (2) *Lot coverage.* Entire lot, with exceptions.
- (3) *Minimum lot width.* 50 feet.
- (4) *Height of buildings.* Max three stories or 35 feet, with exceptions.
- (5) *Building setback lines.* No setback required, with exceptions.
- (6) *Rear yards.* 10 feet.
- (7) *Side yards.* None required, with exceptions.

Please note that, as submitted, the 400 Ogletown Road subdivision and special use plan meets or can meet all applicable BC zoning requirements with the exception of parking. In this regard, please note that the Board of Adjustment granted a 36-space parking variance for the use on Thursday, March 17, 2016, with conditions. Specifically, the Board voted unanimously to approve the variance with the conditions that the hotel provide shuttle service for guests and that arrangements are made to supply at least sixteen (16) parking spaces offsite to accommodate hotel and restaurant employee parking. With this variance, and subject to special use permit approval, the plan meets all applicable zoning requirements.

In terms of adjoining properties, the lands immediately to the south across Ogletown Road are zoned BB and contain the United States Post Office and the Hudson State Service Center. Also across Ogletown Road, southeast of the site at the intersection of Ogletown and Marrows Roads, is the BC zoned Wawa store. BC zoning is also adjacent to the east of the property, which contains the Aetna Hose Hook and Ladder Company facility, Porter Ford and 84 Lumber. The MI zoned CSX Railroad is adjacent to the site on its northern boundary. West of the site across Library Avenue are BB and BC zoned Main Street properties, including the library on the southwestern corner and McDonald's and Shinn's Paint on the west, and beyond that, the RM zoned Colonial Garden Apartments.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for "commercial (auto-oriented)" uses at the 400 Ogletown Road site location. The plan defines "commercial (auto-oriented)" uses as "shopping and commercial uses of all types, including retail facilities for buying and selling of goods, administrative offices, personal service establishments, eating establishments, and shopping centers ordinarily included in general business districts with customers, to a large extent, relying on the automobile to patronize these businesses." Should the draft Comprehensive Development Plan V be approved by Council the designation will be "commercial," which will also permit the proposed hotel and restaurant.

Status of Site Design

Please note that at this stage in the subdivision review process, applicants need only show the general site design and the architectural character of the project. For site design, specific details taking into account topographic and other natural features must be included in the Construction Improvements 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 the materials to be used, proposed signs, lighting and related architectural features. If the Construction Improvements Plan, which is reviewed and approved by the Operating Departments, does not conform substantially to the approved subdivision site and architectural plan, the Construction Improvements Plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out

the details of the plan – within Code determined and approved subdivision set parameters – to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the 400 Ogletown Road major subdivision and special use permit plan calls for the demolition of the existing 16,455+/- square foot, one-story building on the site, and the construction of a five-story 125-room suites hotel within an approximately 18,903 square foot footprint building, with a 4,730 square foot one-story restaurant proposed for a later phase of construction. Access and egress to and from the site is proposed from Ogletown Road, as well as Capitol Trail. A total of 140 parking spaces are provided to serve both uses. As previously noted, the Board of Adjustment granted a 36 space parking variance to accommodate this development. With this variance, the plan meets Code for parking.

Please consult the application's landscape plan for landscape details as well as the applicant's submitted building elevation drawings for additional information concerning the proposed building design. As the location is outside the boundaries of the Downtown Newark Partnership, the Partnership's Design Committee did not review the proposed elevations. To evaluate the proposed architectural design, the Planning Commission should consult the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations Appendix XIV (d).

Special Use Permit

Please be advised that hotels in the BC zoning districts require a Council issued special use permit. In addition, should the development be approved and a restaurant occupy the space at the site, a special use permit will be necessary in order for the restaurant to sell alcoholic beverages, as will also be required of a lobby bar, accessory to the hotel, if proposed.

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit providing that the applicant demonstrates that the proposed use [will not]:

- “A. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one (1) mile of the City of Newark boundaries and within the State of Delaware;
- B. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one (1) mile of the City of Newark boundaries and within the State of Delaware; and
- C. Be in conflict with the purposes of the Comprehensive Development Plan of the City.”

In granting any special use permit, Council may designate conditions in connection with it that will, in its opinion, assure that the use will conform to these requirements.

Fiscal Impact Study

The Planning and Development Department has evaluated the impact of the proposed 400 Ogletown Road hotel and restaurant on Newark's municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the 400 Ogletown Road development's fiscal impact; that is, the total annual municipal revenues, less the cost of municipal services provided. The Planning and Development Department's estimate of annual net revenue is \$8,504. Please note that the current fiscal impact of 400 Ogletown Road is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note that because the property is currently owned by the developer, no transfer tax will be assessed and therefore, there is no resultant revenue difference between the first and future years.

Traffic and Transportation

Because of the size and location of the proposed hotel and restaurant, and because Ogletown Road and Library Avenue are both State owned and maintained roadways, the Planning and Development Department requested that DeIDOT review the project, based on the Department's traffic impact requirements and the City's Subdivision and Development Regulations. DeIDOT's plan review and the results of a pre-submittal review meeting held

with the applicant, indicate that the project, as proposed, would increase traffic beyond what was generated by the car dealership by 570 trips per day, and 58 AM peak hour and 15 PM peak hour trips. Therefore, the project exceeds the 500 vehicle trips per day and 50 vehicle trips per peak hour threshold to trigger a Traffic Impact Study. DelDOT notes, however, that because the development will generate less than an additional 2,000 trips per day and 200 vehicle trips per peak hour, it is eligible for submittal of an Area Wide Study Fee in lieu of conducting a Traffic Impact Study (TIS). The (area-wide) study fee is proposed at \$10 times the increase in daily trips, and will be pooled with other fees collected to plan for future traffic improvements in the area.

Based on review of the City's draft Comp Plan V, DelDOT indicates that the likely use of those Area Wide Study funds would be the Land Use and Transportation Study associated with creating a Transportation Improvement District (TID). As the Commission knows, and as DelDOT acknowledges, the Comp Plan V draft details the City's desire to focus on the area bounded by Cleveland Avenue, Main Street and Delaware Avenue from New London Road to Library Avenue. Because the creation of a TID for this area will require that land accessing those streets be included, 400 Ogletown Road, as well as the intersection of Library Avenue and Ogletown Road, will be included in the TID. In addition, DelDOT indicates that the Library/Ogletown intersection, along with the parcel's access points on Ogletown Road and Capitol Trail would be the area scoped for a TIS associated with the development proposal, if one were required. Therefore, the same area would be studied in either a TID or a TIS; the TID would simply encompass a larger area which the City has already identified as an area of focus in our Comp Plan. Having said that, however, DelDOT cautioned that the proposed TID creation should not delay the City's subdivision and special use permit consideration as the timeframes involved in creating a TID may be of extended length, and DelDOT believes that requiring a developer with a pending application to wait while a TID is created could raise due process concerns.

Regarding site design, DelDOT expressed concerns about the full access on Ogletown Road and the proposed right turn out onto Capitol Trail. Both egresses will require further DelDOT review as part of the entrance permit plan. Normally DelDOT would limit site access to right and left turns in, and right turns out onto Ogletown Road, as well as right turns in only on Capitol Trail. As proposed, the development provides for left turns out of the site onto Ogletown Road, and crossing two lanes of westbound traffic and a relatively busy left turn lane to head east would be difficult, particularly during peak times. Their concern with the right turn out onto Capitol Trail is also a safety issue in that drivers seeking to reach Cleveland Avenue may attempt to cut across eastbound Capitol Trail, making a similarly unsafe movement in a very short distance.

In addition to the above, DelDOT is aware of a conceptual proposal for an access road that would connect the 400 Ogletown Road property through the lands of Aetna Fire Hall, Porter Ford and 84 Lumber to the signal on Ogletown and Marrows Roads. While DelDOT understands the appeal of the concept as a way of managing access to and from the parcels the road would serve, review of the site indicates that the proposal is most likely not feasible at this time. As a right of way, the proposed road would require demolition of portions of 84 Lumber buildings and negatively affect the operations of Porter Ford and the fire company's lot. While, with a series of easements, it may be possible to avoid taking buildings out to accommodate the plan, the negative impacts of the through traffic (for example, the need to provide space for it and the introduction of drivers who otherwise would have no reason to be on the property) are inherent in the concept, and DelDOT does not expect the fire company, Porter Ford or 84 Lumber to be willing participants in the scenario.

In addition to above information, DelDOT provided initial stage submission comments including that a traffic generation diagram should be added to the plans, as well as the dedication of right of ways and easements along Capitol Trail and Ogletown Road. Further, DelDOT will require a minimum 20 foot setback of stormwater facilities from right of way lines, and provided additional required information regarding DelDOT's standard plan notes and turning lanes.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Operating Departments – has reviewed the 400 Ogletown Road major subdivision and special use permit and has the comments provided below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

Planning and Development

Land Use

1. The Planning and Development Department notes, regarding comprehensive planning, that the proposed 400 Ogletown Road's hotel and restaurant correspond to Comprehensive Development Plan IV land use recommendations for the property.
2. The Planning and Development Department also suggests that Planning Commission recommend that subdivision site design conditions the following:
 - The architectural design for the facades of the building should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from public ways and adjacent properties in a manner consistent with the proposed architectural design.
3. The Department notes that Plan Note 9 should be edited to refer to the 2012 IFC and the Delaware State Fire Prevention Regulations, whichever is more restrictive, and as amended.
4. The Department notes that a signature line in the Certification of Accuracy and Subdivision Plan Approval signature block should be added for the City Manager's signature and approval.
5. The Department notes that Plan Note 28 will need to be edited to delete reference to New Castle County.
6. The Department indicates a constructability note needs to be added to the plan as follows: "The building and site plan attributes shown on this subdivision plan comply with the applicable subdivision and zoning code regulations of the City of Newark. Recording of this plan in the New Castle County Recorder of Deeds does not ensure or guarantee constructability. Complete building permit applications and site construction improvements plans, meeting all applicable City, State and Federal code regulations, must be submitted to and approved by the City of Newark prior to obtaining building permits. Changes to the subdivision plan may be required from issues arising at the construction improvements plan stage or building permit stage, and a resubdivision may be required prior to the issuance of building permits." This note is being required on all subdivision plans to ensure that the applicant does not detrimentally rely on subdivision approvals when the Construction Improvements Plan is still pending.
7. The Department acknowledges that DeIDOT will require ADA curb and crosswalk improvements to and through the triangular traffic island at the foot of Main Street, west of the site. To accommodate these improvements, a signal agreement and surety bond will be required. A copy of the fully executed signed agreement should be forwarded to the City prior to building permit issuance.
8. The Department notes that the ingress/egress issues raised by DeIDOT will need to be addressed and shown on the plan in the approved configuration prior to City Council review of the subdivision.
9. The Department notes that the site qualifies for the Area Wide Study Fee in lieu of an independent TIS. While City Subdivision Regulations provide the Subdivision Advisory Committee with the authority to require a TIS if a project meets the threshold for one even if DeIDOT is willing to accept the Area Wide Study Fee, in this case, because the scope of the TIS would be limited to the Library Avenue/Ogletown Road intersection and the two access points to the parcel, and because DeIDOT and the City already acknowledge that the intersection is congested at peak hour, and because the additional traffic generated by the proposed development will account for a very small percentage of overall area traffic and, finally, because the same area proposed for study under TIS can be studied in TID, the Department believes the Area Wide Study Fee requirement should be accepted for this development.
10. The Department notes that the Board of Adjustment, when granting the 36-space parking variance for this project, included conditions that the hotel provide shuttle service for guests and that provisions are made for hotel and restaurant employee parking offsite. Prior to the issuance of a building permit, the developers will need to

provide confirmation that the long-term arrangements have been made for offsite parking for employees and that provisions are made for renewal of same.

11. Finally, the Department notes that currently downtown Newark is underserved for quality hotel rooms within close proximity, and the hotel will provide shuttle service for guests. The Department also notes that downtown is accessible to the pedestrian hotel guest and may spur additional economic development activity in the area. The Department believes that the hotel use at this site will be of benefit to the community.

Code Enforcement

1. Sprinklers are required for every building on the site.
2. The fire protection system will need to be fed by an approved fire main.
3. All fire lanes should be marked accordingly. Parking is prohibited in fire lanes.
4. Pre-demolition and pre-construction meetings will be required. Protection of the site and public will be required during demolition of existing building and construction of new building.
5. The proposed hotel and restaurant shall meet all applicable Building, Fire and Municipal Code requirements.
6. Complete architectural, structural, plumbing, HVAC, electrical and fire protection drawings are required for review prior to permits.
7. Site must comply with all accessibility standards.

Electric

1. Pole 15E47 in the rear of the property has Verizon underground wires on it. Verizon will need to be contacted for its relocation.
2. The proposed transformer will feed both the hotel and restaurant and has a limit of six (6) conductors per phase. If more than six (6) conductors are necessary, the developer must install a transition box at their cost.
3. Should the new buildings disrupt the City's smart meter radio read system, the developer must pay to correct the problem.

Police

1. The Department originally expressed concern with the increase in traffic at the location. After review of DeIDOT's comments, however, they had no further comments on the development.

Parks and Recreation

1. The Department indicates that the landscape plan as proposed is acceptable. The Department may have additional comments during the Construction Improvements Plan phase.

Public Works and Water Resources

1. The nearest fire hydrant is located at the south entrance on Ogletown Road. There are no other fire hydrants in the vicinity of the proposed structures along Ogletown Road or Capitol Trail that could be used for fire suppression. A new hydrant should be installed on the north side of the west entrance to allow for additional fire suppression and to meet the hydrant spacing criteria, which indicates no portion of a lot shall be 500 feet from a hydrant.
2. The proposed six (6) inch diameter service will need to be increased to an eight (8) inch main to serve all hydrants installed at the site. The new main can be reduced to six (6) inch diameter after the new fire hydrant connection.

3. The new eight (8) inch water line to serve the hotel, restaurant and new hydrant will require a new tie-in to the existing water main on Ogletown Road. This construction should be done at night.
4. The existing features shown on the grading plan and the utility plan make it difficult to discern what is existing and what is proposed. Revised plans should be submitted which turn these features off on sheets where they are not necessary.
5. The Department will have additional comments during the Construction Improvements Plan phase.

Recommendation

Because the proposed 400 Ogletown Road major subdivision and special use permit plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project, with the recommended conditions, conforms to the land use recommendations in Comprehensive Development Plan IV, because with the variance issued by the Board of Adjustment on March 17, 2016, the plan meets all applicable Code requirements, and because the proposed use conforms to the development pattern in the nearby area, **the Planning and Development Department suggests that the Planning Commission take the following actions:**

- A. Recommend that City Council approve the 400 Ogletown Road major subdivision as shown on the Duffield Associates plan dated February 4, 2016, with revisions through March 21, 2016, with the Subdivision Advisory Committee conditions in this report; and**
- B. Recommend that City Council approve the 400 Ogletown Road special use permit, as shown on the Duffield Associates plan dated February 4, 2016, with the conditions in this report.**

Ms. Feeney Roser: That concludes the summary of the Department's report. I will be happy to try to answer any questions that the Commission may have for the Department.

Mr. Silverman: Commissioners, do you have any questions?

Mr. Robert Stozek: I have a couple. Bob Stozek. First of all, on page 6 where you talk about special use permit, I think this is mistyped the way it is. It basically says Council may issue a special use permit providing the applicant demonstrates that the proposed use: a) affect adversely, b) be detrimental, and c) be in conflict.

Ms. Feeney Roser: That should say proposed use will not.

Mr. Stozek: Right. Okay.

Ms. Feeney Roser: Thank you. That's not good at all.

Mr. Stozek: Two other general questions. Under Planning and Department's Subdivision Advisory Committee, #3 says the Department notes that plan note 9 should be edited and refer to 2012 IFC and the Delaware State Fire Code Prevention Regulations, whichever is more restrictive. Which is more restrictive?

Ms. Feeney Roser: It depends on what they're talking about. So sometimes the IFC is more restrictive for some requirements, and sometimes the State is more restrictive for others. So we go with whichever is more restrictive.

Mr. Stozek: So how are you recommending that that note be changed? Because right now I think it...

Ms. Feeney Roser: It says 2009. That is why the note is in there in the first place. I don't have the plan open in front of me, but I think you're referring to the 2009 IFC and it should be 2012. And it probably already says the Delaware...

Mr. Will Hurd: Right, it says 2009 State Fire Prevention Regulations.

Ms. Feeney Roser: So they just need to add that. And then that will be done at the building permit review stage for the hotel.

Mr. Stozek: You're saying they just need to add that. What is that? Just changing 2009 to 2012? Or this whole statement?

Ms. Feeney Roser: No, they need to add the whole statement.

Mr. Stozek: Okay. Whichever is more restrictive?

Ms. Feeney Roser: Yes, whichever is more restrictive.

Mr. Stozek: And then under the Police comments on page 10, it says the Department originally expressed concern with the increased traffic at the location. After review of DelDOT's comments, however, they had no further comments on the development. What does that mean as far as Police?

Ms. Feeney Roser: There was a note from the Police Department's traffic lieutenant that said he was concerned about traffic being generated from the hotel. That was his original comment.

Mr. Stozek: Okay.

Ms. Feeney Roser: After that time we received the DelDOT comments which were distributed to the staff. The next time around, when they had an opportunity to comment, they had no comments.

Mr. Stozek: So does that mean he still has the same concerns as DelDOT or he has no concerns at all now?

Ms. Feeney Roser: He didn't add concerns to DelDOT's concerns.

Mr. Stozek: Okay, so we're surmising he agrees with DelDOT's concerns still?

Ms. Feeney Roser: Yes.

Mr. Silverman: Any other Commissioners?

Mr. Stozek: That's all I have right now.

Mr. Silverman: Okay, hearing no further comments from the Commissioners, we'll open up to the applicant and to the public. Now I see some new faces in the room. If you would like to make sure that you have the opportunity to speak, and we would like to have the proper spelling and pronunciation of your name and who you are, we do have a form that is available by the entranceway for you to sign. Now this form, or the lack of you having a form, does not restrict your ability to speak. However it does give you priority and gives us some idea of the number of people who wish to speak.

I would now like to open the floor up to the applicant for their presentation. I've been asked by the people who do our recording that if you can speak directly into that microphone...

Mr. George Danneman: How is that?

Mr. Silverman: Good.

[Secretary's note: During the course of their presentation, Mr. Danneman and his design team referred to their PowerPoint presentation, being displayed for the benefit of the Commission, Director and public.]

Mr. Danneman: My name is George Danneman. I'm the president of Danneman Hospitality and also a Delaware lawyer. My family first came to Newark, Delaware in 1939. My great-grandparents came here to escape Nazi Germany with, pretty much, nothing valuable. They didn't know how they were going to eat so they brought canned goods. As soon as they got here, they started finding ways to make money that included everything from

door-to-door salesman to, eventually, opening a fabric company. The first location was on Main Street in one of the buildings we currently own. Afterwards, my grandfather and his brother-in-law went off to fight in World War II in the U.S. Army. Meanwhile, my great-grandfather continued to operate the business and, upon their return, my grandfather entered the business. He continued to expand to multiple locations including, eventually, moving the Main Street location to the 400 Ogletown site location after purchasing the A&P grocery store. At the same time he continued to expand the business and take it public, eventually spreading from Rhode Island to South Carolina. Then he sold it and invested mostly in real estate. Now my mother is managing all of the real estate as well as maintaining her activity in the Downtown Newark Partnership and the Newark Rotary Club. She sees this site and this hotel project as a lasting legacy from her generation to the future generations of her family. She would be here tonight but she just recently finished chemotherapy for brain cancer and had another surgery yesterday. So, with that, I'd like to introduce Stephen Kessler, who is the attorney representing us, and I thank all of you for your time here tonight.

Mr. Stephen Kessler: Okay, thank you, George. As George said, my name is Stephen Kessler. I am a Delaware attorney. I practice with the Danneman Firm, LLC, which George Danneman is the owner of. I'm here tonight to represent Danneman Hospitality, LLC in its application for a special use permit pursuant to Newark Code Section 32-78. The subject property is 400 Ogletown Road. It's currently used as the Toyota dealership and the proposed use is for a five-story hotel and detached restaurant. The current plans are for a Marriott Springhill Suites, which is the newest of the Marriott brands. And in our last meeting with the Board of Adjustment, we received a unanimous vote granting a parking variance for the project. And we're pleased to be here this evening. I am also pleased to introduce our team. You've already met George Danneman, president of Danneman Hospitality, and we have an amazing team of planning, development and hotel professionals. We have Jeff Bross and Mike Kaszyski from Duffield Associates. We have Kevin Wilson from Architectural Alliance. We have Craig Johnson from North Star Construction. We have Tom Hanna from Harvey Hanna. And we have Kostas Kalogeropoulos from TKO Hotel Management. Thank you. I've been working on that for two days.

In order to qualify for a special use under the Code, we have to demonstrate that the project does not adversely affect the health or safety of the residents of the City of Newark, is not detrimental to the public welfare or injurious to property in the City, and is not in conflict with the Comprehensive Plan. We believe that the project, on its face, meets this standard and tonight we hope to demonstrate how this project goes above and beyond. Before going into the details of the project, I want to just say a few general words and that is that the goal of the project is to transform the gateway to Main Street. The current use, as you know, is the Toyota dealership. And so, by redeveloping what we believe to be an underutilized and unattractive property use into a vibrant Main Street focused economic driver that incorporates the highest standards of site and architectural design and utilizes modern planning standards without burdening the City.

The project and its specific location are designed to encourage pedestrian traffic on Main Street. It's designed to reduce the number of people driving to and from the site by providing a free shuttle service loop that will service the Main Street downtown district on a regular basis and provide transportation to and from public transit sites. The project is designed to encourage economic development in the City by drawing business people, families and tourists to stay within walking distance of the Main Street businesses. This evening, through the testimony provided by our team of experts, we hope to demonstrate to you how the project will create an aesthetically pleasing and high quality eastern gateway to the City of Newark, stimulate the local economy by attracting business people, tourists and families to Main Street, provide construction and permanent operating jobs, generate tax revenues and permit fees to the City of Newark, and further the goals of the Comprehensive Development Plan, both old and new. Our hope is that hotel guests will patronize Main Street businesses. We will prevent the overcrowding of land by responsible planning and by reducing impervious cover. We will provide stormwater quality and quantity management. We will further the goals of transit oriented development by shuttling guests from point of arrival to and from the site and between Newark attractions. And we will provide a high quality, much needed lodging in the City of Newark. Yes?

Mr. Silverman: Now I understand from the Director that as your presentation evolved between the time the packets were submitted to the Commissioners and today's presentation, there may be a slight difference, so if the Commissioners don't see all the slides in their packet, it's because of that evolution.

Mr. Kessler: There have been a couple of very minor changes. Thank you. At this time I would like to introduce Jeff Bross. No, I'm sorry, Kevin Wilson. I forgot our own order. Kevin Wilson from Architectual Alliance who will discuss some of the aesthetic features and architectural features of the project.

Mr. Kevin Wilson: Thank you, Steve. Good evening, my name is Kevin Wilson, principal of Architectural Alliance in Wilmington, Delaware. At this time I'd like to give you a brief overview of the architecture of this project. I'd actually like to start from a planning perspective and just say that, in my opinion, I believe that this project really aligns with the new urbanism and smart growth principles by reusing this site with existing infrastructure in place and also with a variety of services in close proximity and, of course, a pedestrian friendly setting.

The architectural features and contemporary elements promote [inaudible] appearance. The compatibility with surrounding structures with a modern aesthetic are there, and they actually employ a very similar color palette. Both buildings maintain a high quality of materials and a contextually appropriate composition. They're made of concrete and steel which, as you know, are non-combustible materials and offer very good sound absorptive qualities. The goal of our landscaping scheme is to create a year-round mature, green and natural environment. We plan to use regional, indigenous plant materials and many evergreens with colorful seasonal and annual plant materials at the entrances and landscape beds.

The hotel roofline and porte-cochere are signature elements of this particular brand. This also features large-scale openings at the public area windows to maximize the indoor/outdoor connection, provide natural light and views, and to establish interest at the entry sequence. It has layering of façade elements, such as floating wall panels which provide varying depths at windows and extended suite bays. The flat, low-sloped roof has internal downspouts, no exterior gutters or downspouts, and has roof-mounted mechanical equipment which is screened and hidden by perimeter parapet walls.

On the inside, the hotel features warm, inviting contemporary and casual spaces that utilize bright and contrasting colors. The floors, in general, will be a combination of quality, easy to maintain durable surfaces such as porcelain tile and carpeting, always warm in color. The walls will combine vinyl wallcoverings, complimentary wood millwork and window treatments to bring warmth to the space. The window treatments evolve from casual, residential styles and patterns, and the ceilings are treated as an integral part of the interior architecture of the building. The ceiling variations, soffits, bulkheads and coffers are incorporated to achieve a cohesive design scheme. Decorative lighting is the consistent part of the décor package, and the furniture has a residential appearance with warm finishes and rich upholsteries, yet constructed to be suitable for heavy, sustained use. And, finally, a brief note about the guest suites. They are all designed to offer distinct working, dressing, relaxing, refreshment and sleeping zones while maintaining a comfortable, durable residential atmosphere.

At this time, I would like to introduce Jeff Bross from Duffield Associates to discuss the site in further detail.

Mr. Jeff Bross: Thank you, Kevin. Good evening. My name is Jeff Bross. I'm a principal at Duffield Associates. I'm a registered Delaware professional engineer. As was noted earlier, my colleague, Mike Kaszyski, who is also working on this project, is here with me tonight. I'd like to just briefly, this is a snapshot of your current Comprehensive Plan and you can see the project site up there in the upper right hand corner of the slide. We believe that the proposed project is consistent with the current Comprehensive Plan, and Mr. Kessler, I think, will enumerate, a little later in the presentation, why we believe that. In addition, we believe, and this is a snapshot of your proposed draft Comprehensive Plan. We also, again, believe that the project site is consistent with that Plan as well. And, again, Mr. Kessler will enumerate that a little bit later on.

I'd like to just spend a moment or two and go through the proposed site layout for the project. As you can see, the hotel itself is located here. The porte-cochere is right here. And the proposed restaurant is here. We spent a considerable amount of time planning and refining both the circulation around the site, as well as the site access points both here on Ogletown Road, as well as here on Capitol Trail. These proposed points of ingress and egress are proposed as full movement. This one is currently a full movement. This proposed ingress is being slightly reconfigured to be a little bit safer and conform to current traffic design standards. We are also proposing an egress point here as well. And as was

noted by Ms. Feeney Roser in the comments from the Department, we are currently in discussions with DelDOT and finalizing the geometry of these access points.

The other thing I'd like to point out is that we spent a considerable amount of time looking at pedestrian interconnectivity on the site. You can see from the various cross-walks shown on the site that we value the ability for pedestrians to leave this facility, both the restaurant and the hotel, and access the adjacent sidewalk network as well as the network of sidewalks across the streets from the facility. And that also goes for biking access. We intend to accommodate bicycle traffic as well.

Finally, I'd like to note on this plan that the landscaping you see is, in fact, consistent with the proposed landscaping. This isn't just a cartoon, for lack of a better term, and we'll speak a little bit more about the landscaping improvement and enhancements to the site.

You had heard, earlier, mentioned the parking. We have spent an awful lot of time looking at the parking rationale for the site. It is very important to both Danneman Hospitality, as well as to Marriott, that the site is adequately parked. That's very important for the operation of the facility. Your Code requires that for a hotel we must provide one parking space for every room, and then one parking space for each of the employees on a given shift. That totals 131 required spaces for the hotel. Similarly, for the restaurant use, it has to be one space for every three seats, one parking space, and one space for each employee on the shift. So, again, 33 seats worth of parking. Ten employees worth of parking is 43. Which gives you a total Code required parking of 174.

Based on our experience in the region and throughout the country, as a matter of fact, with hotels of this nature, we anticipate that 20% of the guests are going to arrive at this hotel by shuttle and taxi from airport, train station or other transportation hubs, which reduces the required parking by 25 vehicles. In addition, another 30% of guests typically arrive in groups by bus or van. And while this varies depending on the particular day, it does have a mitigating impact on traffic. For reasons of being conservative, we elected not to discount that, even though it is a real mitigating factor. And another factor that's not shown on here, again it's a smaller factor, is what we call the internal capture; that people coming to the restaurant may be using the hotel, and vice versa. And so, in some instances, by using the rationale up here, you're double counting. Again, that's a few spaces. Again, in the interest of being conservative, we chose not to attempt to show those as mitigating. As you had heard, as part of our commitment in the variance we were granted by the Board of Adjustment and, by the way, the Board of Adjustment granted a variance to permit 139 spaces on the site, and we agreed that 16 spaces would be provided offsite parking to accommodate the employees. And so that really gives us, with the rationale we've proposed here, required 133. We have a variance for 139. And the actual number of spaces provided on site will be 140. Does anybody have any questions about that? Yes, sir.

Mr. Hurd: Hi, Will Hurd. My recollection with Code and when you're counting is that you always have to round up. So one space for every three seats, 100 seats, that's 34 parking spaces.

Mr. Bross: Well, and again, we've got that covered but it's a good point. As I say, we didn't count any of this or the internal capture, which amounts to probably, arguably, 20 spaces. But we elected not to do that. We're attempting to be conservative. But, to your point, yes.

Ms. Feeney Roser: Commissioner Hurd, the Planning and Development Department uses math like you're taught math. Most of the time, unless I'm doing it. When Tom does it, he uses math properly. But what we would do, if it were more than .5, it would be 34. If it's less than .5, then...

Mr. Hurd: At least for occupancy and such, they always round up. You don't get a partial person.

Mr. Bob Stozek: We'll have to have you take some common core classes.

Mr. Bross: And either way, I think the 140 has us safely covered.

Mr. Jeremy Firestone: I do have a question, too. And I'm sort of new to all of this, but what happens if a guest shows up at midnight and there's no place to park? What is the guest supposed to do?

Mr. Bross: Well in that particular case, and we don't expect that will happen, but if it does happen, clearly hotel management will make arrangements to make sure that that guest has a safe and adequate parking spot. I mean that is typically the practice. And I can let the hotel operator speak to that if you would like.

Mr. Firestone: Sure. I mean it just seems a little peculiar to me. I'm not sure where the person is going to leave their vehicle.

Mr. Silverman: Can you identify yourself please?

Mr. Kostas Kalogeropoulos: My name is Kostas Kalogeropoulos. I'm the President and CEO of TKO Hospitality. To answer your question, there is a restaurant and there is a hotel. At midnight, the 33 seats for that restaurant, they're not going to be there. Forty-three spaces. Because the operation is done and so are the customers of the restaurant. Another thing that is not mentioned in the chart is that people are going to check into the hotels where they don't have restaurants. You know, we all travel. I would say 20-25% of them, they can't wait to drop their computers or laptops in the room and go out. With weather and other reasons, proximity, get a few drinks, will patronize that restaurant during the night, which would take a lot of parking away from people arriving by car to eat in the restaurant versus walking from the hotel into the restaurant.

Mr. Firestone: Well I mean if you have snow you're probably going to lose parking spots. You're not going to gain spots.

Mr. Kalogeropoulos: If I have snow, I don't have customers.

Mr. Firestone: Well, you may or may not. You may have people snowbound but you are going to lose spots if there's a big snow.

Mr. Kalogeropoulos: To answer your midnight question, is that there will not be guests patronizing the restaurant, restaurant patrons.

Mr. Bross: Listen, you never say never. But I will tell you for most snow events, this parking lot will be cleared wall-to-wall. If it has to be, they haul snow offsite to make sure that all the parking is available. We have to clear fire lanes. I mean those are requirements of Code. As I said, you never say never. There could be the end-all be-all blizzard but, typically, you've got to accommodate your guests or else you're not in business. Hopefully that addresses your question.

Mr. Edgar Johnson: I have a question.

Mr. Bross: Yes, sir.

Mr. Johnson: Edgar Johnson. On your 20% of guests arriving by shuttle, is that an industry standard figure? Twenty percent? Or is that something that you just estimated for this project?

Mr. Bross: No, it's an industry standard and typical in the region. And the experience that our current hotel operator has experienced. And, again, we believe it's conservative. But, again, we tried to err on the side of being conservative. But it is a standard. It's not just an assumption.

Mr. Johnson: Is that the same thing with 30% of the guests arriving in groups by bus or van?

Mr. Bross: That is correct. Again though, I would note we didn't take any credit in mitigation for that even though the reality is it is probably a bigger mitigation than the 20% arriving by shuttle and taxi.

Mr. Johnson: One final question. You have 125 rooms and you're only going to have six employees in the hotel at any one time?

Mr. Bross: That's correct.

Mr. Johnson: So you have all the rooms sold out. People have to check out by eleven. Six people are going to turn over all those rooms with the guests coming in later?

Mr. Bross: I'll let the hotel operator speak to that.

Mr. Johnson: It takes two people to make the bed I sleep in every night, so I don't know how you're doing it with just six.

Mr. Kalogeropoulos: I promise you, if you have to pay them, they will do it faster. What happens is the following. You have a customer who checks in and checks out the next day. For a stay in our hotel of that type, its averaged between 1.8 stay. So the same room that is occupied for the next day, it's a customer who doesn't, who checks in one and checks out another time. Because it's a two night stay. So to clean a room it takes an average of 20 minutes by our standards, at least, the way we do it. So if you stay over, it takes almost 7-8 minutes less than a check-out because it's the same customer. And today people don't make the rooms dirty. They just walk in, they have a little laptop with them. They don't even have suitcases anymore. And then they go. So in the tradition of the daytime after the check out, we don't have an entire hotel check out and an entire hotel check in. It's partial and at different times. So if we double shift the people because a maid has to do about 20 rooms in a shift, so check-ins occur from about 12 o'clock, 1 o'clock, a few little ones, and it starts picking up about 4 or 5 o'clock, and they're checking in all the way to about 10 or 11 o'clock. So what's happening, so they have all this time to clean the rooms and you don't have to bring a bunch of people at the same time to do that. You can have three people constantly cleaning the rooms over this period of time and you accomplish your goal.

Mr. Johnson: But if you have 30% of your guests arriving in groups that means the groups arrive at the same time. They're going to leave at the same time. That's 1/3 of your occupancy.

Mr. Kalogeropoulos: So?

Mr. Johnson: Six people.

Mr. Kalogeropoulos: Thirty percent of my rooms at 125 rooms is about 40 rooms. That's two maids. And if I do it on two shifts, it will be one maid in the morning and one at night. Because I don't have to clean it until the last room is rented in the night. I don't have to have rooms clean completely by 11 o'clock in the morning. I can do 7 o'clock at night.

Mr. Johnson: Exactly. So you're going to have six employees. Offsite parking for 16, counting the hotel. Do you know where that offsite parking is going to be? The post office across the street, or Aetna?

Mr. Kalogeropoulos: That's way above my pay grade.

Mr. Silverman: Name again?

Mr. Kessler: Stephen Kessler, attorney. The microphone is above my head. Danneman Hospitality, we're currently exploring options. We have to have something in place, obviously, before we get to recording. So we just were given the directive on the 17th of March, so we have multiple options we're exploring at this point. It will be in place, hopefully, sooner rather than later. We'll let everybody know, obviously, as soon as we have something in place.

Mr. Bross: Well and I would also note that that has to be an arrangement that's acceptable to the City. That's going to be a condition of recording the plan.

Mr. Johnson: I just have one more issue. In the presentation you said you're trying to encourage pedestrian traffic on Main Street, but, to me, the most frightening corner in the whole City is crossing Library Avenue at that point. Does the City or the State plan to change the timing of the light and make it more pedestrian friendly? Because I don't think it's pedestrian friendly at this time.

Mr. Bross: That's probably not a bad observation, Mr. Johnson. You heard, I think, mentioned that DeIDOT is expecting, with some of this money they're going to receive, a Transportation Improvement District to look at improving the pedestrian movement across that refuge island that you're referring to. So, yes, I think that's anticipated.

Mr. Firestone: I guess, similarly, you mentioned bikes. It would also seem pretty fraught for a bicyclist. And I guess my one question was going to be, are you intending on providing a number of bikes and helmets for people to use, because otherwise I would think, there's hardly going to be anyone who is going to have a bike on the back of their car. I mean, if you want to tie this property more to the City and you think walking is one way, well bicycling is another way and it cuts down on motor vehicles.

Mr. Kalogeropoulos: I'm sorry I have to do this again. Because we are a brand under the Marriott flag, we have to behave within our standards according to the policies of the brand. We cannot be a hotel providing bicycles to guests and then the guests have that experience at our property. Then she leaves, gets on a plane and goes to Chicago, checks in and says, where is my bike? They say, what bike? So in order for the brand to have standard services, forget the liability, the last thing I want is to give bikes for anybody. But from a brand standard, the Marriott will not let us give bicycles to the people.

Mr. Firestone: I've been at, I can't think of Marriotts, but I've been at other brands where bicycles are part of the experience that the hotel provides. Including high quality hotels.

Mr. Kalogeropoulos: That's a great thing, but I know for a fact that Marriott, if we wanted to get bicycles to give to people to ride, we would have to ask them for a waiver, which I would not suggest for the hotel to do so because of the liability. People can come with their own bikes. They can leave their own bikes. They can do whatever they want.

Mr. Firestone: Okay, well I don't think you should really tout this as a bicycle friendly hotel.

Mr. Bross: However we are providing bicycle parking. We have 16 employees in a given shift. To the extent that they want to ride bicycles to work, certainly we want to accommodate that and we intend to do that. Yes, Mr. Stozek?

Mr. Stozek: Yes, while we're on this chart, a couple of times I've heard you refer to industry standards where some of these numbers came from. I presume you've done some sort of marketing plan for this hotel. You at least have a sense of what your business is going to be because you talk about 30% of the guests are going to arrive in groups. I don't know what groups they are. I know some places, you know, groups come in for conferences. I don't know if you can speak to what these groups are going to be. And then the other thing is 20% will arrive by shuttle or taxi from airport or train station. What airport and what train? I assume you mean Wilmington because we don't really have full service in Newark. Are those numbers really believable?

Mr. Bross: I'm going to let the man who knows these numbers speak to them.

Mr. Kalogeropoulos: These are my numbers. I can't wait to tell you. Okay. To go and make an investment of \$20 million to put a hotel in a given market, when you do your marketing study to see what's the viability of the market is to be able to sustain a hotel like that. You have to try and measure what we call the segmentation that will make the hotel successful. What's the segmentation? It's the transient customer. The guy, you and me in a car, we just arrive. It's called SMEF, which is Social, Military, Education, Family reunions. Different types of segments that make the total of your business. One of the biggest and most important segments in the breakdown is group. If a hotel, in the segmentation breakdown, doesn't have, in the initial studies, 30% of group bookings, don't build it because you're going to go broke. So group is one of the most basic pieces of business that your sales department and marketing efforts are going to go after, not only to secure future business to you in your books. Because what happens? Why is that important? If I take 30% of that hotel from 125 rooms, which would make it 30. Well let's say you take 40 rooms out of the inventory. Now the moment that group is booked for these two nights they're going to stay over, I don't have a 125 room hotel anymore. I have 125 minus 40. I have an 85 room hotel. Guess what I do for those two days? The moment my hotel went from 125 to 85, my rate went up \$25 because I shrunk my inventory and I [inaudible]. That is the answer to the group question.

Mr. Stozek: I'm still skeptical but that's your business.

Mr. Kalogeropoulos: It's the way hotels run.

Mr. Stozek: That's not my issue.

Mr. Kalogeropoulos: I tried to answer the question as simple as I can.

Mr. Stozek: Yes, I understand. I just don't understand where these groups, but, again, that's not our issue. I guess I go back to the parking. When I first read the documents, I think you were initially asking for a 36 space parking variance. And the Board of Adjustment gave you 16, for some reason, in which you've committed to finding 16 spaces somewhere for your employees. I realize that your hotel is not going to be full. What do you expect your average occupancy to be? Sixty or 70%?

Mr. Kalogeropoulos: Sixty-five to 70% on an annual basis.

Mr. Stozek: Okay, so on five days out of the week, there is not going to be a parking problem. Maybe it will be busier on the weekends. You're definitely going to be busier during commencement, university events, and whatever, because every other hotel in the area is going to be busy. You're going to need those extra spaces. If you're going to get a commitment to find parking for those 16 employees, are you also going to make some sort of arrangement or commitment that you will also have parking for those additional, whatever it was, 20 spaces that you were lacking from what the Code requires? Why not find space for all of the parking rather than less than half of what you need?

Mr. Bross: Well, first of all, I think what you have to understand is the Code says you need this. And municipalities all around the country are in the process of taking their parking codes and looking at them seriously. We've done that here. In other words, even though the Code says that's what you need, that doesn't necessarily mean that's what you need. As I say, we don't think we need it. And again, we haven't even taken credit for all of the various mitigating factors, as we've said. So, if we were faced with that possibility, I'm sure some accommodation would be made, but we don't think it's ever going to be a reality. We think that the Code, based on this particular type of hotel, requires it to be over-parked. In other words, you're building a lot more asphalt and creating a lot more environmental impact than you really need to do. And I will tell you as someone who practices in basically four or five states around, almost all the municipalities are revisiting their parking codes because they're finding that, as time progresses, we're becoming less reliant on the cars and they're reducing their parking requirements. I don't know how better to answer your question, Mr. Stozek. But it's a good question.

Mr. Stozek: But, again, I mean, there is no answer. Nobody knows. But I think the question is, if you're committing to finding space for 16 on a daily basis, can you possibly commit to whatever arrangements you're going to make with some space owner, whether it's the shopping center or whatever, to have the ability to park more than 16 cars there.

Mr. Bross: Well, again, we vetted this issue thoroughly with the Board of Adjustment. I think they saw fit to agree with our proposal and so I really don't want to go back and revisit that legal decision, I guess, at least at this point.

Mr. Stozek: Well...

Ms. Feeney Roser: May I just...

Mr. Stozek: Wait a minute. I listened to the Board of Adjustment minutes and I was thoroughly confused as to why, I mean they kind of came up with this number 16 out of the air because it's employees.

Ms. Feeney Roser: Sixteen is the number of employees listed on the plan and what they did was give a 36 space variance. And a condition of that was that the applicant find 16 spaces offsite for employee parking. So while I know that parking is near and dear to our hearts and we are actually looking at that, you'll see in a later agenda item we are starting to look at our parking regulations, it's not really our purview to critique the Board of Adjustment's decision on this. So from our perspective we have to assume that this plan meets Code for parking.

Mr. Bross: Well, and we hit this head-on because we knew parking was an issue. We have thoroughly looked at this issue. We believe what we are presenting to you is correct. It will be functional and that's why we are where we are.

Mr. Stozek: And, like I said, I would like to see you do this project. And the vast majority of the year I know parking is not going to be a problem. But there are going to be certain weekends or certain weeks of the year when the university is going crazy when you're going to be jammed full like all the others are going to be jammed full. And that's where we're going to have God knows how many cars in the town already making traffic even worse

than it is now. I just don't want you guys adding to the problem by saying, we've got, all of a sudden today the buses didn't come in, and we've got 20 people arriving by car. Where are they going to park?

Mr. Bross: Well, is that a good segue way to talk about traffic?

Mr. Stozek: Well we could talk about parking but, you know, that's the question to me. On those one or two, or 10 or 15, days a year, what's the solution to the problem rather than just say, oh go find a place to park somewhere?

Mr. Bross: Well I think the solution to the problem is looking at you here. In other words, what you're doing is taking what the Code says we ought to have and applying it to a use that says we will never need that much parking. I mean, just think about what you said. On those busy days when you've got, even pick a number that's maybe less than 20%, say it's 15%, and say this is 10-15%, we still have plenty of parking. And those types of weekends, and I'm sure you'll hear from the operator, that's when you begin to see large groups showing up. People charter buses or come, you know, 3-5 people to a car, a family, whatever, and they're going to take two rooms. So, I mean, that's an industry known fact. And so, as I said, I think you'll have to accept it on good faith. Certainly the Board of Adjustment, whose job it is to worry about these things, said we agree with that approach. So I don't know how much more I can illuminate on this subject.

Mr. Stozek: Well they agreed to give you 16 of the 36 requested.

Mr. Bross: But what they said was that we are willing to basically allow you a variance of 20 spaces.

Ms. Feeney Roser: What they did was grant a 36 space waiver on the condition that 16 spaces for employees are offsite.

Mr. Firestone: How are the employees to get from the hotel to this offsite parking?

Ms. Feeney Roser: We don't know where this offsite parking is at this point so it's very difficult to say. They could get them next door. There are issues that will need to be addressed but they can't be addressed at this juncture because we don't know where those spaces are.

Mr. Bross: However if they're sufficiently distant, we'll run a shuttle. The hotels run shuttles routinely.

Mr. Stozek: Okay.

Mr. Bross: They're going to run them for guests, and they'll run them for the employees.

Mr. Stozek: I thought I also heard you say you were going to run a shuttle around the town to take the guests to Main Street.

Mr. Bross: Yes. And if you'd like to hear some more...

Mr. Stozek: Is that the same shuttle? How many shuttles are you going to have?

Mr. Kalogeropoulos: I wish I have ten. What a great problem to have. We're going to have at least...

Mr. Stozek: I mean you're obviously going to plan for something.

Mr. Kalogeropoulos: Because if our customers, the key here is how to have customers that return to your business. How do you make them comfortable? You know we don't want them going around in cars and driving. I want the customer to come in. They come by train. If the university is busy, you have, I don't know, 20-30% of the students in this university that come from another country altogether, so people are going to come by airplane or they're going to come by trains from New York or Baltimore or Philadelphia. And they come to the place. We have shuttles to pick them up from the points of origin. So if we reach the point where we need a second shuttle, that means we're doing tremendous business. Our employees will get picked up wherever their offsite place is because we want them to be on time and we want them to go home on time. So we're going to pick them up

and that will be part of the process of the interview. Because the employee, obviously, first thing you're going to say, because you have to tell them, when you come to work here, by the way, you're not parking at the hotel. You're going to park there and we'll pick you up. So it's an operational issue. The last thing we want to have, remember, a customer that's going to have a parking issue is a customer we're going to lose. It's the last thing we want to have in that investment that is made for the hotel. I'm old enough to know that when it comes to parking, the Christiana Hilton which we run for the last 20-25 years, it's a big hotel. You've got 247 rooms going. You've got ballrooms going. You've got restaurants going. You've got bars going. Believe me, that parking, if you had to take it to court or put it in there, is never enough. But people are coming by air, they're coming by trains, and they're coming by buses. And we have three shuttles, I think, because it's a bigger hotel. So if we have to go from one shuttle to two shuttles to satisfy the customer, who is spending a lot of money on our room, to come back, that's very easy.

Mr. Stozek: But right now you're planning to have one shuttle?

Mr. Kalogeropoulos: Absolutely. You start with one and hopefully if you're good, you go to two. It's a car, that's all.

Mr. Stozek: And the shuttle will be operating what hours?

Mr. Kalogeropoulos: After the point of midnight, whatever the time is.

Mr. Stozek: Well, I'm just going from the point, you're talking about shuttling...

Mr. Silverman: Excuse me. Commissioner Stozek, we're not critiquing their business plan. We're not critiquing their management. We're here to deal with a total land-use issue of the hotel.

Mr. Stozek: And I'm trying to get to the issue of...

Mr. Silverman: What is your point?

Mr. Stozek: There is a shuttle that is going to be taking customers to restaurants or whatever on Main Street.

Mr. Kalogeropoulos: Absolutely.

Mr. Silverman: How does that affect this land-use decision?

Mr. Stozek: Well it affects traffic. It affects...

Mr. Silverman: Then it would appear to be positive if they're going to produce a shuttle. The gentleman has already said they will produce as much offsite transportation as their business needs.

Mr. Kalogeropoulos: Absolutely.

Mr. Firestone: With all due respect, I thought you were recusing yourself from any...

Ms. Feeney Roser: I advised Chairman that he is able to run this meeting. And if he feels that we're going off the bend...

Mr. Silverman: We're getting off topic.

Ms. Feeney Roser: On one particular issue when they haven't gotten through their presentation yet, I suggested that he was able to say that.

Mr. Firestone: I think he's stepping over the line.

Ms. Feeney Roser: Well then I'll say it for you. I think we should move forward with the presentation and then we can get back to questions.

Mr. Bob Cronin: Excuse me, while we're still on parking, can you take a few more questions?

Mr. Silverman: What do you have left in your presentation?

Mr. Kessler: Quite a bit, probably half of the Comprehensive Plan and traffic.

Mr. Silverman: Okay, let's go through the planning issues and then we will come back after they've completed their presentation to the Commissioners and questions.

Mr. Kessler: Okay.

Mr. Bross: Okay, let's talk about traffic. You've heard the report from the Department and DelDOT's comments on traffic. Again, we thought it would be helpful to the Planning Commission to go through the traffic issue. Clearly I've heard the word mentioned a couple of times already this evening. So we took a look at both morning peak hour, AM peak hour traffic, and the afternoon peak hour traffic. On this slide and the next slide we want to spend some time and go through the traffic numbers so the Commission understands them.

Based on the Institute of Traffic Engineers' requirements and formulas which obviously we use, DelDOT uses, and most traffic professionals use, the hotel and restaurant are anticipated to generate 89 peak hour trips during the morning rush. Now that assumes we have a restaurant that has, let's say, a breakfast operation. We don't know that but, again, in the interest of being conservative, we have made the assumption that the restaurant will have morning service. And most of these trips, by the way, are the result of the restaurant, not the hotel. But previous use on the site generated 31 trips during the morning peak hour, so the change in land-use has a net increase during the morning peak hour of 58 trips. The traffic on the adjacent roads of Ogletown Road and Capitol Trail totals 5,522 trips during the morning peak, which is, our trips are about 1.1% of the frontage road traffic, or the traffic on the roads adjacent to the site. This is one of the reasons why DelDOT sites that no further traffic studies are needed, because the impacts are essentially de minimis. Now if we look at the afternoon PM peak hour, the hotel and restaurant generates 70 trips. The previous land-use generated 55. So we have a net increase of 15 trips in the peak hour. And, again, we go to the traffic during peak hour on the adjacent roads totals just a little under 6,000 trips. Our trips constitute less than 0.3% of the frontage road traffic. So, again, it's a de minimis impact and, again, part of the reason why DelDOT made the determination that no additional studies are needed.

With that, I'd like to turn it back to Mr. Kessler to address the plan's conformance. Did anybody have any questions, I apologize, on traffic? I'm almost afraid to ask, but I will.

Mr. Silverman: Let's hold off until the end.

Mr. Bross: That's fine, I'm happy to do that.

Mr. Silverman: Apparently this discussion may get very involved and I'd rather have all the questions at the end where all of the components of your presentation are available.

Mr. Kessler: Okay, thank you Mr. Chairman, and thank you, Jeff. So let's run through the Comprehensive Plan. What I've done is I've broken it down into key components of the Comprehensive Plan. We're dealing just with the existing Comprehensive Plan. We're not going to go into the new Comprehensive Plan yet. Obviously it's not binding but we have it in draft form and will address it at the very end, but this is the existing Comprehensive Plan.

The first key component that we wanted to address is economic. The Plan states that one of its goals is to encourage high quality business and industrial growth. Marriott is targeting, for its Springhill Suites product, business traveler guests during the week, in addition to families and tourists, with an average income of \$94,000 and an average of nine business trips per year. Bearing in mind that most of these business travelers during the week will be operating on expense accounts, which if you've ever operated on an expense account, it can be a lot of fun. Being in close proximity to Main Street would probably be even more fun than usual. So, with the hotel encouraging guests to walk or take the shuttle to Main Street, based on the forecasts for the number of guests per year, we've estimated between \$1.2 and \$1.5 million in new annual revenues to Main Street businesses.

The next key component is jobs. One of the goals of the Plan is to provide employment opportunities for Newarkers. The current jobs on the site are being relocated to the new Toyota dealership, so the hotel jobs are entirely new to the City. The project currently forecasts about 200 construction jobs and will bring approximately 50 new permanent

operational jobs to the community. The estimated five year payroll for the hotel is \$5,648,000.

The next key component is preservation. To preserve and protect the natural environment, including our streams and waterways. This was a very important slide for us to go through. We put a lot of time and effort into this. The property currently has no stormwater controls and is not required to have stormwater controls. But this project will incorporate both stormwater quantity and stormwater quality controls pursuant to Delaware's new stormwater regulations, which will make it fully up-to-date as far as stormwater controls. In addition to that, the landscape plan proposes 20% more trees and 775% more shrubs than currently are planted on the site. The redevelopment allows 11 larger existing trees to be preserved on the site. Again, something that was very important that went into the planning. Finally, Marriott, as a matter of corporate policy, requires a number of conservation and environmental programs as a part of hotel operations. These would be things like low flow showerheads, low flow toilets, things of that nature, as part of the operation, which we feel will also reduce the environmental impact that the project will have on the surrounding community.

The fourth key component is revenue. To maintain adequate municipal revenue. Now estimated property taxes for the project, based on property taxes that we've seen for similar properties in the City, would mean between 700% and 1,000% higher property tax than the current property tax for the site. I know the numbers look a little shocking but that's what we've calculated, that's what we've estimated. The estimated five year lodging tax is \$1,975,000 and the project also will involve, obviously, multiple City permit and license fees.

The fifth component is limiting sprawl. To limit, insofar as possible, unattractive sprawl development that unnecessarily disperses services, utilities and increases traffic congestion. So, as we've discussed tonight, this project employs the highest architectural standards with attractive and desirable development. It redevelops a prior site, meaning that the existing utility and infrastructure will remain in place or be improved. The project will encourage pedestrian traffic to City attractions on Main Street. With group guest arrivals in the percentages that you've seen and the hotel shuttle service to and from transportation hubs, we will reduce the traffic impact on the local road network. And the project is consistent with smart growth and new urbanism planning principles, incorporating infill and redevelopment with emphasis on reducing congestion.

The last thing I wanted to do, one more thing before the last thing. Key Component 6 is our planning section. We're in Planning Section J under the Comprehensive Plan. Planning Section J encourages commercial development, auto-oriented, consistent with a proposed hotel project. The property is part of the downtown district and, we hope, will be an iconic gateway addition to Main Street.

Last two slides. The new draft Comprehensive Development Plan, which we know is underway. Although it's not formally adopted, we felt it was instructive, at least, to just generally address some of the directions that the City may be going. To address parking and transportation issues; to encourage economic growth; and to encourage architecturally pleasing, smart redevelopment was the general sense that we got of the new draft. And this project will help with parking issues by encouraging pedestrian use of Main Street. When I say parking issues, I mean downtown parking issues. We're encouraging people to be on-foot on Main Street patronizing the businesses. That's what we hope to do. Guests, again, will arrive by shuttle or arrive in groups. We will provide jobs, revenue and growth, and provide an iconic new gateway to the City of Newark with a design, again, utilizing many elements of smart growth and new urbanism planning principles. And that's all I have on the Comprehensive Plan section.

The last slide is just a shot of the rendering you can see, again. And at this point I think it makes sense to open it up to questions. Thank you for hearing us and bearing with us. We appreciate it and we appreciate your time.

Mr. Silverman: Okay, back to the Commissioners. Any questions on the balance of the presentation?

Mr. Cronin: Mr. Chairman, Bob Cronin. I guess one question on the balance of the presentation, on page 23, the five year lodging tax. Does any of that go to the City of Newark, or does it all go elsewhere?

Ms. Feeney Roser: It goes to the State, doesn't it? The State tourism office.

Mr. Cronin: Alright.

Mr. Kalogeropoulos: Its 8% taxes. Five percent goes to the tourism for the State. One percent goes for the beach replenishment. One percent goes to the County tourist office. And another percent goes to another entity.

Ms. Feeney Roser: But I don't think any of it goes to the municipality.

Mr. Kalogeropoulos: I don't think so. Not directly. Maybe it goes through the State. But it's the taxes that the businesses are paying.

Mr. Cronin: Okay, thank you. And my other three points go back to some thoughts on parking. Maybe I missed it, but does the hotel have any meeting rooms where you're going to have group events in the evening or something like that?

Mr. Kalogeropoulos: No, the hotel will have a very small conference room. I don't think it will be more than 600-700 square feet. It's not something we sell outside for people to come in and do meetings. It's not big enough. It is there to provide a small meeting space for people that stay in the hotel and have a place to meet. It's for internal use pretty much. So it's not something we're going to market and sell.

Mr. Cronin: Okay, thank you.

Mr. Kalogeropoulos: As a banquet room, so to speak.

Mr. Cronin: Sure. That certainly answers any concern I had in that direction.

Mr. Kalogeropoulos: Yes, indeed.

Mr. Cronin: As for the offsite parking, I know we don't know where it's going to be but wherever it is arranged, I mean, I take a long-term view of things and wherever it's arranged, if they change ownership, I know if there is a lease, the lease has to be honored. But at some point, unless it's forever memorialized and sort of some arrangement that cannot be altered ever, it's subject to being cancelled or not renewed or something at some later point in time. Whether its three years down the road or five years down the road, ten years down the road. In my long-term view, and one more thing before you respond to that. The shuttle. Are some of the six employees going to be shuttle drivers? Or do we allocate parking spaces for shuttle drivers, too.

Mr. Kessler: I'll address the first one and then I'll let you speak to the shuttle drivers, Kostas. On the first issue, pursuant to a development agreement with the City, we will have to have a parking arrangement in place. That will be required and that will be a document that is recorded on the public record. So we will have to honor that arrangement no matter what the circumstances.

Mr. Cronin: So that means once it's recorded with somebody, it's immutable, cannot be changed regardless of ownership changes in the property and so forth, going forward?

Mr. Kessler: Our obligation can't change. We will be obligated to the City to provide it in some way pursuant to our development agreement. So we'll have an ongoing obligation to make provisions.

Mr. Silverman: Commissioner Cronin, from the mechanics of doing business, we can request, we, as a group, can request that that be a note on the record plan, and that memorializes it. That goes with the property, with the parcel, regardless of owner. It's a condition of use. So if the group chooses, they can specify that some wording be developed to make sure that that's part of the record plan. That 16 spaces must be provided offsite.

Mr. Cronin: Right. My concern is the owner of the 16 spaces elsewhere. If they don't want to renew and all of a sudden we've got 16 spaces that are a mile away, two miles away, because that's the best we could find.

Mr. Silverman: I would guess that there is the potential of losing their occupancy certificate if they don't conform to the specifications of the contract of the site plan. So there is incentive for whoever in the future would occupy that site to find 16 spaces.

Mr. Danneman: If one lease ends, then we would find a lease somewhere else. And, in worst case scenario, we would pay the employees to park in municipal lots until we could get another lease. I mean there are other parking options farther away from the downtown district.

Mr. Cronin: Thank you. One more aspect of the shuttle with the employees? If you have six people leaving a shift and maybe six coming, with an overlap, how do the logistics of an overlap work? An employee is late, somebody is not ready to go on the shuttle yet. It just seems to be a little bit of a can of worms. But that's not my area of expertise and how you might operate that. But if you have any encouraging words to share, I might be happy.

Mr. Kalogeropoulos: Well the hotel is not a store that opens at 9 o'clock and the employees have to come and clock in and punch their card at ten of nine. It's an ongoing, organic, around-the-clock business. So nothing is specific shift, same time of arrival and same time of departure. It's an ongoing thing. You have night workers, you have night managers, split shifts. Sometimes you have a heavy check-in or heavy check-out so you bring somebody in. We do shifts. Somebody works half in the morning, half in the afternoon. It's very variable. We will not have a problem.

Mr. Cronin: That works for me. Thank you.

Mr. Danneman: One quick addition. There are also several park and ride options within a few miles of the site that don't cost us any money that we could also utilize. There are a lot of different options and we'll definitely be making sure that we have those options available to the employees.

Mr. Cronin: Thank you.

Mr. Frank McIntosh: Yes, a couple of questions. One...

Mr. Silverman: Frank, your microphone please.

Mr. McIntosh: Oh, there it is. Nice to see you.

Mr. Cronin: And your name.

Mr. McIntosh: I'm all set up to go this way and I'm sorry. I'll put the microphone over there. Frank McIntosh. Just confused, so I'm sure you can help me. You say you're having 50 permanent employees in the Comprehensive Plan document and then you talked about 16 employees. Six and ten, restaurant and hotel. So what's the difference besides the obvious number? And what am I missing?

Mr. Kalogeropoulos: It's a math problem.

Mr. McIntosh: It is a math problem. Yes.

Mr. Kalogeropoulos: So we've got 16 employees. That means we need to run our business for the 16 employees every day. That's 16 shifts.

Mr. McIntosh: Did you say six employees?

Mr. Kalogeropoulos: No, no. We said there are 16 employees per day.

Mr. McIntosh: Okay.

Mr. Kalogeropoulos: Okay, the 16 employees per day, if you need them every day, to make a point, you multiple this by seven days. That makes it 70 and 42. Its 112 shifts. People take days off, vacations. So when we take the, make it 120 shifts, and you divide that by eight hours a shift, although some of them are part time, you will come to what?

Mr. McIntosh: I don't know. You're the mathematician.

Mr. Kalogeropoulos: No, I'm not. So we have, you need 120 shifts a week.

Mr. McIntosh: Okay.

Mr. Kalogeropoulos: Divide by eight, that's eight, yeah it comes to about 14 or 15 employees.

Mr. McIntosh: Okay, so where are the 50 permanent jobs?

Mr. Kalogeropoulos: Sixteen employees per day.

Mr. McIntosh: Yes? Times seven days is almost...

Mr. Kalogeropoulos: It's 120.

Mr. McIntosh: Yeah, whatever it was.

Mr. Kalogeropoulos: I need a...

Mr. McIntosh: Never mind. It's not that important.

Mr. Kalogeropoulos: Well it is, I can figure it out because...

Mr. McIntosh: No, no, really it's not that important. It was a curiosity as to how you can have 16 employees and...

Mr. Firestone: It's 112.

Mr. Kalogeropoulos: Hmmm?

Mr. Firestone: It's 112.

Mr. Kalogeropoulos: It's 112.

Mr. McIntosh: It doesn't matter. I withdraw my question. But I do have a question that I'm not withdrawing.

Mr. Firestone: Can we stick on this for a minute just so we're all clear.

Mr. McIntosh: Did I raise an ugly head here?

Mr. Firestone: Yeah. I mean if you do 16 times three shifts, then you get 48. And then if you're counting the weekend, you multiply that by 1.4 and I come up with somewhere around 57.2, but the restaurant is not open all the time. I don't know how many...

Mr. Kalogeropoulos: The restaurant does not run 24 hours.

Mr. Firestone: Yeah, how many hours does it run?

Mr. Kalogeropoulos: The restaurant, if it serves lunch and dinner, they're going to open about up to prep about 10 o'clock for some employees. The rest will come at 11. They will be shutting down last meal by 10 or 10:30 and close down by 12. So I'll call it 10 to 12, which would be 14 hours.

Mr. Firestone: So you have basically two shifts.

Mr. Kalogeropoulos: I have two shifts, yes.

Mr. Firestone: So anyway I still don't quite get 50 once you adjust for that shift and the fact that ten of the employees are restaurant.

Mr. Kalogeropoulos: Plus you have part-time employees. Especially...

Mr. Firestone: Right, but presumably your 50 number was, I assumed when you presented, it was FTE, full time equivalents.

Mr. Kalogeropoulos: No.

Mr. Firestone: No? It includes part-time, then. Okay. Then that fixes the math problem.

Mr. McIntosh: It might fix it for you. Don't you be including me in your equivalent scenario.

Mr. Silverman: Frank, your other question?

Mr. McIntosh: Oh, sorry. This one it's intriguing. I come from Boston and I suffered through the I-93 debacle coming into the central artery in the City of Boston. And I'm kind of feeling like when you say you're going to have a left-hand turn onto Ogletown Road from your property or a right-hand turn onto Capitol Trail from your property at any time of the day, pretty much, you're going to create a problem.

Mr. Silverman: Hold it, Frank. Can we go back to your slide showing the site plan and the entrance? It's a little easier to look at a picture.

Mr. McIntosh: So far it's not helping.

Mr. Silverman: So we're talking about the entrance that's in the upper right-hand quadrant of the screen?

Mr. Bross: Mr. McIntosh, this entrance right now is a full movement entrance, currently functions as full movement. And the proposal is to have it continue to function as it currently does.

Mr. McIntosh: Precisely where is that?

Mr. Bross: Well, actually, this entrance has shifted just a little bit but this entrance is out onto Ogletown Road.

Mr. Silverman: The firehouse is at the top.

Mr. Bross: The fire station is right here. You can see, I guess there's a skylight.

Mr. McIntosh: Okay. Jeff, what I'm trying to understand is how does it go, leaving that property to go across Ogletown Road? You've got a whole lot of traffic there. And you've got medians and all kinds. I mean, it's just...

Mr. Bross: Well there isn't a median.

Mr. McIntosh: Not a median. No, you're right, there's not. But you still have to cross three lanes of traffic or two lanes anyway. Well it is three if you get the right-hand turn.

Mr. Bross: Again, you have to have a gap to make that movement. And if you don't have that gap, you end up going right. It's self-regulating because someone is only going to sit there for so long and say, I'm not going to get a gap, I'm going to have to turn right and go out another way. Now, I guess it would be, I need to add, as I said during my presentation, that the actual configuration of these access points and their operation, left turn, right turn, are going to be ultimately decided by DelDOT. I mean, they have jurisdiction over the geometry, the safety, the operation of these intersections. And right now they have not had a problem with this but they may before the, you know, the end of the project and the final design. We're going to be working with them to address that. So, I mean, it's a legitimate concern. It currently functions that way. And by all accounts, it functions reasonably well with not a lot of accident history. So I understand what you're saying. Empirically, you might come to that conclusion but it does work.

Mr. McIntosh: I would, okay, I'll accept you're saying that but I don't, personally, believe it. And I'll go back to my friends up in Boston who thought that I-93 would work. Right? It was the biggest disaster that ever occurred in the history of...

Mr. Bross: Totally understand. I mean, the one thing, again, that we as traffic engineers look at is, you know, a lot of the, there is congestion around here. There is no mistaking that. But the traffic basically adjusts to the congestion. When you have congestion, speeds slow down, you do have signals to provide gaps, and there are opportunities to make the kinds of turns you're talking about. But not in all cases. And when you can't, you don't. You find an alternative movement. And that's what happens.

Mr. McIntosh: Any my problem is that it's one thing if you've got somebody who is a local resident that's there trying to do that, and then you have somebody who is not familiar with it at all. Right? And people do really stupid things. Right? We all know that.

Mr. Bross: Make no mistake.

Mr. McIntosh: And I can see a lot of stupid things happening there. I'm not saying it's the end of the world, but it might be for several people.

Mr. Bross: If I can give you any comfort, at the end of the day, DelDOT is worried, as we are, all of us, about safe operation of ingress and egress. But at the end of the day, DelDOT is the ruler. It's their road and they're going to decide how these movements occur.

Mr. McIntosh: Speaking of worries, go on. Alright. So, that's it.

Mr. Johnson: Can I just ask one question?

Mr. Bross: Yes.

Mr. Johnson: Your egress onto Ogletown Road. Where is that in relationship to the post office egress? The post office is further east?

Mr. Bross: Yeah, I think so. Mike?

Mr. Cronin: The post office is in the top corner, the top corner.

Mr. Johnson: That's it, that's the corner, further up?

Mr. Cronin: No, up. Right there.

Mr. Bross: Oh yeah, you can see it pretty well right here.

Mr. Johnson: Just to help Frank out a little bit. I go to the post office quite frequently and take a left out of the post office going down Main Street, going west. I cross myself, say a prayer and take the left, and it's been working, Frank.

Mr. McIntosh: And that doesn't explain those dents. I thought you were supposed to get them fixed when you got the insurance.

Mr. Cronin: Mr. Chairman?

Mr. Bross: Yes, Mr. Stozek?

Mr. Stozek: One of the things you said in your plan is you wanted to encourage pedestrians to go to Main Street. How are the pedestrians going to cross to get to Main Street?

Mr. Bross: Well, again, the principle, I'm sorry, sir, I didn't mean to shine that in your eyes. Clearly you've got that traffic refuge island and you've heard mention that DelDOT said that they are looking for some pedestrians improvements. That's going to be because you're going to have pedestrian crossing signals there. That's going to be the only real safe crossing and the one that we would encourage.

Mr. Hurd: Okay, I'm just going to sort of piggy-back on Mr. Stozek's comment. I don't see in the site plan any safe way for the pedestrian to get from your front door to that island and to Main Street. You have not created, in my mind, a pedestrian-friendly site. It's not there.

Mr. Bross: Well there are sidewalks that ring the site.

Mr. Hurd: No, no. You'd have to cross parking, there's no, I don't see striping to get to the parking. There's that steep drop-off. You've got an entrance-way. You've got...

Mr. Bross: You have sidewalk right here. And it comes into the existing ring sidewalk.

Mr. Hurd: It does not feel to me that you've created a building that is connecting to the pedestrian network. When it gets to me I can talk more about that. The architectural parts.

Mr. Bross: Well, and again, I guess I would just stress this is not the final design plan. This is a site plan. There are some details that have not been fully shown here.

Mr. Hurd: Agreed.

Mr. Bross: For instance, I mean most of your pedestrian movement across the parking lot is going to be using cross-hatch pedestrian crossings or else some impressioned paving with some striping or coloration. As you know, there's a lot of way to provide...

Mr. Hurd: I agree, but I think also if you're going to come here and say you're creating a pedestrian connection to the Main Street, I want to see a stronger [inaudible].

Mr. Bross: And one of the things we haven't shown is the offsite pedestrian, you know, egress and movements. Because, again, those are going to be developed with DeIDOT as the project moves forward. You heard mention of the Transportation Improvement District. The money to be spent to produce an improved pedestrian safety and crossing. That has yet to occur. That is something that is done with DeIDOT. So it hasn't been shown on here.

Mr. Stozek: When do you expect that to happen?

Mr. Danneman: The pedestrian connection is not the exact words we use. The shuttle taking 50,000 people to Main Street is creating pedestrian traffic on Main Street without adding cars to Main Street. We are creating pedestrian traffic.

Mr. Hurd: I would beg to disagree that, well...

Mr. Stozek: That's not what it says.

Mr. Hurd: I think that you've been very clear that you're saying you want to create pedestrian connections to the City. And that's...

Mr. Kessler: And that may be one way of getting to the City...

Mr. Silverman: Microphone, please.

Mr. Kessler: Oh, sorry. That may be one way of getting to Main Street, but the hotel shuttle is designed to, also, bring guests to Main Street. The goal here, when we talk about pedestrian friendly, is getting pedestrians onto Main Street. Having them not take their cars onto Main Street. Getting people to Main Street. And there are various ways that people are going to get there. One of those, of course, being the hotel shuttle.

Mr. Hurd: Then I would say don't say pedestrian traffic to City attractions, because that's exactly the opposite of what you're saying there. You're saying people are walking from your hotel to Main Street, and I'm saying I don't see that it's clearly set up or supported.

Mr. Kessler: That's not what we mean. We mean getting pedestrians, having pedestrian traffic on Main Street. Not necessarily walking there. That's why we're offering a hotel shuttle.

Mr. Cronin: Mr. Chairman? While we're on the ingress and egress, I've got one question that's perhaps mostly for Maureen. Maureen, on page 9, if you would look at the report, Item #8 talks about ingress/egress issues raised by DeIDOT will need to be addressed and shown on the plan in the approved configuration prior to City Council review. Does it come back to the Planning Commission before it goes to City Council? After they have that?

Ms. Feeney Roser: No, it will not.

Mr. Cronin: Okay, this is our one shot to look at it then.

Ms. Feeney Roser: No, you'll make your recommendation and then it will go to Council. Now if Council decides they want to remand it back to you, that's fine.

Mr. Cronin: But it already says it has to be approved. So I understand the applicant will go get DelDOT's revisions or work-up and so forth, and then it goes to Council directly. It doesn't come back through Planning Commission for comment at all.

Ms. Feeney Roser: Right. Now when it goes to Council it should have the final ingress/egress. You know, the resolution of whatever they and DelDOT decide. So Council knows when it gets to them how people are going to get in and out of the site.

Mr. Cronin: Certainly they would know. But we have to make our decision, apparently, on a preliminary rendering and without any DelDOT input at all. Is that correct?

Ms. Feeney Roser: Well DelDOT had a lot of input. They just haven't finished what they want to do about that at this point. They haven't done the final design for ingress and egress.

Mr. Cronin: So once that's done...

Ms. Feeney Roser: And the developer is asking for full egress from both areas.

Mr. Cronin: Okay so once it's done by DelDOT it just, again, doesn't come back to Planning Commission at all for second look or anything like that.

Ms. Feeney Roser: Unless Council wants to remand it back to you or you don't feel comfortable making a recommendation. But that's the only way it would be back here.

Mr. Cronin: Thank you.

Mr. Firestone: Would we have the option of not making a decision tonight?

Ms. Feeney Roser: Well it's always the Commission's option to postpone a decision. I think that there are mitigating circumstances here that you want the applicant to address before you made the decision to do that. But it certainly is within your purview to make that decision.

Mr. Firestone: Thank you.

Mr. Silverman: One thing I would like to point out as Chair, as the applicant has very clearly indicated, DelDOT is the final arbitrator. It's an engineering decision, essentially, from them. We can say, yes, there must be a connection with any project, just as DelDOT says there must be handicapped accessibility with depressed curbs and all that. We can say that should be there but it's up to DelDOT to make that final determination as to the, literally, the construction details and the location. So even if it came back to us and we decided we didn't like what DelDOT recommended, we have no say.

Mr. Cronin: We don't have to vote in favor of it if we don't like the recommendation. We can make that decision.

Mr. Silverman: Of the entire...

Mr. Cronin: If we chose to, just as City Council can make the decision.

Mr. Silverman: Yes. Yes, you can.

Ms. Feeney Roser: Or you can make suggestions on what you would like to see happen if you have an opinion about that, rather than just not voting on it.

Mr. Silverman: We have no control, literally, over what DelDOT does. DelDOT is a very independent agency. With respect to timing on some of these issues, however they will dictate exact specifications to the applicant. You remember we had a project down on 896

where the applicant had to come back another 15 feet, 150 square foot kind of thing. That was DeIDOT.

Mr. Cronin: I know that. I remember that.

Mr. Silverman: Yeah, so we...

Mr. Cronin: But it came back to the Planning Commission too. It didn't get...

Ms. Feeney Roser: It came back to Planning Commission because there was an objection.

Mr. Cronin: It had expired. Too much time.

Mr. Silverman: No.

Ms. Feeney Roser: No, it was an objection, but there was also an expiration date. It was back here a couple of times as I recall.

Mr. Cronin: Okay.

Mr. Silverman: The group can make it very clear that there should be foot traffic connections between this site and those pedestrian foot traffic facilities that exist to convey people off the site onto Main Street and other facilities and services. If somebody wanted to go to the library, for example. We can condition the approval on something like that. But the mechanics of how it gets done, because it's within DeIDOT's right-of-way, is 100% up to DeIDOT. We could recommend it be on one side of the intersection or the other...

Mr. Cronin: Oh, I understand that, but even if DeIDOT makes, in their wisdom, has their blessing or whatever is done, there is no guarantee or assurance that even City Council is going to vote for it, is it?

Mr. Silverman: No.

Mr. Cronin: Alright, so therefore even if they had it done before they came before us tonight, there'd be no guarantee or assurance that we would recommend even what DeIDOT has designed.

Mr. Silverman: That's correct.

Mr. Cronin: That's my point.

Mr. Silverman: Yes.

Mr. Cronin: Okay. We're not telling them what to do or how to do it. We have the wisdom or judgment to decide whether we think it's workable and good and best for our community.

Mr. Silverman: That's correct.

Mr. Cronin: Thank you.

Mr. Silverman: As project.

Mr. Cronin: Yes.

Mr. Silverman: And if you clearly state on the record that the pedestrian crossing is the single issue, that would clarify the issue.

Mr. Cronin: Well I hear you but I haven't mentioned that subject myself. If anything, it's the safety of the ingress and egress and the speed of people traveling around that perimeter of the property. I've seen that from my own experience many times throughout the day and cars flying through lights at 35 miles an hour to get through a light before it changes. That sort of a thing. And all of a sudden you come across...

Mr. Silverman: You have the option as a Commissioner of stating for the record those particular concerns and that makes it very clear to Council and others what the specific concerns are, when you make your judgment on your vote.

Mr. Cronin: Thank you.

Mr. Hurd: So I think I have one thing just to say on a couple of points still to cover. I think for the car access points, I would feel more comfortable if I saw a plan that was really sort of taking some of DelDOT's comments to heart and shifting them. Because I can say I've been the result of a collision of someone making a left turn out of that entrance through three lanes of traffic. They wove through a gap, I was coming up to make the left turn and banged right into them. And it was someone from New Jersey, so not familiar with the roads. So I see that that is a concern of mine. That people unfamiliar with that road are going to try to make that left turn. So I would be more comfortable if you had a site plan that didn't let them do that. Because I think DelDOT hit it on the head saying the left turn is a problem and the turning onto Capitol Trail is going to be a problem as well.

I think my issue, really, with the pedestrian connections goes back to the Comp Plan. That area is zoned as commercial auto-based. And if you start saying pedestrian connections in an auto-based area, you're having a conflict right there. We're seeing it. We're saying how do you get people safely from the hotel to Main Street? You can't. It's a car-based area. So you almost want to say stop talking about pedestrian connections and talk about shuttles. And just keep it all car-based and limit that access. Because I think putting pedestrians out on those streets is a problem.

I do want to talk about the building because no one's talked about the building and Kevin is getting lonely over there. I want to say, first off, it's a great design. And I know you're working within the standards and such, but I think you did a really good job there. And I'm going to play armchair architect here, because I get to do that. And I know you've spent time thinking about the site and thinking about the orientation and all that. But when you say that you're creating a gateway to the City, the part of the building that's the gateway, that's the entrance, that has the sign and everything else, is on the wrong end. It's at the back end of your site. If I'm coming down Ogletown Road, I see the parking end and the backside of the restaurant. I don't see that great sign. I don't see that porte-cochere. Because this rendering is taken from someplace on the railroad track. And it's, as renderings do, it's kind of deceptive. That's a very dense forest that's really Ogletown Road back there. So there is a perception of like, oh look at this. This is not what you're going to see. No one is really going to see this. And I want people to see this. I want people to drive into the City and see this view, see that porte-cochere, that sign, that great end, with the under-parking away from the street. And I don't know what that does to the site and where it puts the restaurant and everything else, but I think that's going to make it a stronger project and really one that I could get behind. I think right now you've got people driving in and your gateway is, essentially, it's the butt of the building. And I don't think it's really effective. When you say gateway, you're not giving them the gateway part of the building. So that's my architectural stuff. We could have a conversation, too, if you want.

Mr. Wilson: No, I think that's a very good observation, Will. And I can tell you that this is the subject of many, many iterations of the site and really trying to maximize the parking and really trying to make the site circulation work, vehicular circulation, and create a separation between the different functions on the site. That all went into it. The building was oriented on the opposite end at one point in time. It didn't work. It produced many less parking spaces. And I think you're absolutely right. The rendering is looking at it from somewhere up on Kirkwood Highway. But we talked a little bit earlier about the Ogletown Road and the importance of signage and maintaining that same sort of aesthetic. So it's my hope and my goal as the architect to try to maintain that nice looking façade on both ends so that you really don't have the back end, so to speak, of the building facing Ogletown Road. I think that would be a mistake. And, additionally, that's going to be kind of a feature or focal point for the corner of the restaurant there. And that's something that hopefully will, sort of, also highlight, architecturally highlight, that corner.

Mr. Hurd: Well then, to that point, it would be useful if we saw that view, to work with that. Because I'm working off this and the elevations and making some assumptions about what it could look like if you did something to it, which isn't really a lot to work with, for making decisions.

Mr. Silverman: Any other Commissioner comments before we open up.

Mr. Johnson: I have just one question. DeIDOT said the traffic would increase by 570 trips a day beyond what the automobile dealership did. If you take away the 73 peak hour AM and PM, that leaves 497 trips per day generated by the hotel and restaurant. How is that divided up between the hotel and restaurant? We don't know? Should we care? I'll tell you how I got 497. I took 570 and subtracted your 73 peak hours from it and I came up with 497. So the math is consistent. And then my other question is, actually two more questions, but the other question is, what is the definition of AM peak hour and what is the definition of PM peak hour?

Mr. Bross: Well the AM peak or the PM peak hour is the hour in the afternoon or in the morning where you have the highest traffic count.

Mr. Johnson: And that is when?

Mr. Bross: Well typically in this locale it's probably between 5:30 and 6:30 in the afternoon, and probably between 7:30 and 8:30 in the morning. But it varies. I mean it's a floating peak hour and it varies by location. Sometimes it varies day-to-day, just kind of, school is in, school is out, you have a snowstorm, or you have rain. But it is the maximum traffic within an hour in the morning and in the afternoon.

Mr. Johnson: I like to quantify things. You have a floating peak hour but you come up with specific numbers for a floating peak hour.

Mr. Bross: Well the number is the highest number in any given hour within the morning or in the afternoon. And that becomes, by definition, the peak hour.

Mr. Johnson: Okay.

Mr. Bross: Correct. By definition.

Mr. Johnson: And the other question has nothing to do with traffic. It has to do with Springhill Suites. I'm not familiar with the brand, I'm very sorry, sir. But do you serve breakfast?

Mr. Kalogeropoulos: Oh, yes. We serve breakfast to our customers.

Mr. Johnson: Yes?

Mr. Kalogeropoulos: But not to outside people.

Mr. Johnson: No, that's what I mean. That's fine.

Mr. Kalogeropoulos: Not to outside. Just guests.

Mr. Johnson: Okay, so my, I was just worried about making sure your customers got breakfast, that's all. I may have a relative stay there. I don't want them to...

Mr. Bross: To your earlier question, Mr. Johnson, about the traffic, it's roughly split between the restaurant and the hotel. And then obviously it's spread throughout the remainder of the day beyond the peak hours.

Mr. Silverman: Okay, hearing no further questions from the Commissioners, Dr. Morgan has put in a slip to be heard. We'll hear him first and then we will open up the floor to anyone else who would like to speak.

Dr. John Morgan: Thank you. John Morgan from District 1. And there's a lot to like about the project and also some concerns expressed by many members of the Planning Commission with which I largely agree. Especially about parking and traffic. And I'd like to begin with some of those.

I read the attachments for the agenda, which includes two letters of support – one from the Price Automotive Group and the other from the president of the Aetna Hose Hook and Ladder. And I was struck by the fact that sentence after sentence in those two letters are absolutely identical or with slight variations in wording. If these were two submissions for a writing course at the University, one would suspect plagiarism. But my question is, did the author of one letter copy the other letter, or were they both provided with templates by the

Danneman Hospitality Company? And I think we should get an answer to that. Because I would be more impressed if they were actually independent letters. There's also a third letter that I would like to see. And that's a letter from the responsible official in the post office, across the street, who thinks that this project will have no negative impact on the use of the post office by the citizens of Newark. And I think those alone are reasons to possibly postpone further consideration of this project.

And I think the traffic issues have already been pretty well explored and I would like to say that the obvious place for overflow parking is next door at the Aetna Hose Hook and Ladder. I would feel a lot better about this if I saw a written agreement with Aetna Hose Hook and Ladder that said we will provide 20 or 30 or 40 parking spaces, as needed, for the hotel. And if I saw a site layout where there wasn't a green space between this property and Aetna Hose Hook and Ladder, so there was an obvious way for people who have driven into this complex and can't find a parking space to go immediately into the Aetna Hose Hook and Ladder lot, as opposed to having to come back out onto Ogletown Road, make a left turn and then do something, I guess a U-turn or something, and then come back around to get back into the Aetna Hose Hook and Ladder site.

And if it's not inappropriate, I would also just like to ask a question. Because this is a Marriott development and I am familiar with the other Marriott development. Namely the one up on the Laird Campus of the University. And I made some color print-outs of those sites, which I can give to Chairman for distribution to the others. And if you look at the Google satellite view for the Marriott at the Laird Campus, and I've stayed there for a few days myself, it's surrounded by trees and it's relatively quiet. If I look at this site, it is surrounded by major roads which are going to be busy 24 hours a day. Capitol Trail. Kirkwood Highway. Ogletown Road. And moreover, immediately to the north of the site, literally within maybe a dozen or two dozen yards, is the CSX train line, which has very noisy trains going by at all hours of the night. And I just wonder what has been done to think about soundproofing. I mean if there is something like quadruple pane windows, or something. Because I would worry, frankly, if I were a guest, about getting a good night's sleep there. And if I didn't, I would never want to go back.

I would also say on the parking issue, I made this suggestion before but I guess it wasn't taken up, which is that one could address a good part of the parking issue if one had not a ground level restaurant, but a rooftop restaurant. Also on the issue of having convention space, because there's just going to be one small meeting room there, right? If you had a top floor with which roughly one-third was a restaurant and the other two-thirds was a large meeting area, it would greatly reduce the need for people to come out of this complex and somehow get to some meeting room all the way down in the University or whatever, and back and forth. And it's more than a mile to the University, so it's not a very convenient [inaudible].

And I think all of those are things that one should be thinking about as one looks at this site. I mean it obviously has some potential for development but I'm not at all sure that this is the best way to do it. Thank you.

Mr. Silverman: Is there anyone else in the audience who would like to speak? We'll start from the back and move forward. Okay, thank you. I have your exhibits, Dr. Morgan, and I'm going to give these to the Planning Director. Your name, for the record, please.

Ms. Jean White: Okay. Jean White, Radcliffe Drive. I wasn't happy to see that there were 570 more cars added at peak AM times, even if this is supposedly a small percentage of the total that goes by. But I have the same concern that DelDOT voiced. A left turn out on Ogletown Road across three lanes of traffic. One is a turning lane coming the other way and, to go there, I think this is a recipe for disaster. I think it's actually a detriment, at least. I actually think it's very dangerous because of trying to make this left turn when actually there is a lot of traffic most of the time. Maybe not late at night. But it's very difficult. I also have had the experience, many times, coming out of the post office and trying to make a left turn, in this case, toward the intersection. And just as you think you have it, its okay, then now the light changes and they're coming around from Kirkwood Highway. Or they're coming around from the other direction, Library Avenue. Or now the light changes down by the 84 Lumber. So what I've taken to doing, instead of trying to get out and being worried that I might be hit by one of these many cars, I actually take a right turn and go down by the Wawa and that's how I manage that for myself. But in this case there isn't an opportunity to do that. And I think that, absolutely, the developer should eliminate the left turn out onto Ogletown Road. Similarly things have been talked about for the right turn onto Kirkwood by other people but I won't get into that.

Let me just see here. Again, I would like to bring up this statement that is in the Planning Department report and it has been said by the developer that downtown is accessible to the pedestrian hotel guest. I think that this is, at least, an exaggeration and is, again, a dangerous thing to do. We're asking people who generally do not live in Newark, who are coming to stay in the hotel, to negotiate crossing, if you're going across to the McDonald's triangular island, that's crossing, I believe, five lanes. I think it's five lanes. And there's not a place, there is a little tiny triangle there just to get there. But once you get out between the lanes that are going north and the lanes that are going south, there is no safety place to be. I think there would need to be a safety place with posts around so if you got caught there, a car couldn't hit you. I have, when coming out from the post office or coming from further away, noticed people I felt very sorry for. One was a woman with a stroller and a child in it, trying to cross from the so-called McDonald's island across there. Also, of course, this is a problem further up by the library. And, you know, those people are really taking their life in their hands to do this. And so I think we shouldn't talk about this as being pedestrian, not only pedestrian friendly, but accessible to the pedestrian hotel guests.

The blueprint showed a swimming pool noted on the plan. It didn't show it but it was printed there at the rear, what I'll call the rear, of the building. But there were 17 parking places that were also listed there so I didn't know if the swimming pool was to be in the main building further up or whether it would be over. I didn't know where the swimming pool was going to be and why there are these 17 parking places. And so that's just a question that I ask.

And let me just see. One last thing here. And I can't read my writing. Oh, I know what it was. Several people for the developer talked about the industry standards and that this percentage of people would come from trains or airports by transportation and some percentage by vans and buses. And I think that since this is an assertion, perhaps an assertion that is true, by the developer, that there should be a document that is given where this appeared and who was the author and what was the date that this was done and what was the locality, larger the country, you know, the State of Delaware, Pennsylvania, New Jersey, and everything, of where these statistics come from. Because even though they may be true, I think at this point, sitting there listening to it, you all and we in the audience, it's an assertion that should be said. It seems to me, for example, at University events such as commencement, Parent's Day and whatever, that the bulk of people would be coming in their own car and they wouldn't be taking a van from the, or say a taxi or whatever from the airport. And they would not be coming in vans with large numbers of other family members. So anyway, in terms of these statistics that were given, I think there should be some official document that is given to the City for this. Thank you.

Mr. Silverman: Thank you, Ms. White. Is there anyone else who would like to speak?

Ms. Carol McKelvey: My name is Carol McKelvey. I'm in District 4. And I am in favor of this project. It is a parcel of land that it's in the middle of a difficult space. We all know that. We live here. So you, unless you're thinking utopia, must have some idea of something that you think would be an alternative idea for this parcel. And there really isn't, unless you want a mortuary there, something that isn't going to contribute somewhat to the difficulties that just exist. They're there. It's a difficult thing. If you want to say to the owner, voluntarily stop left hand turns, I think that's fair. But just to keep going over and over and over again that there is difficult traffic there seems to me that you have some utopian idea of what will work in that space.

This is a really exciting project that we haven't entertained how exciting it is. It's an exciting project. And I think that we have to clearly understand that when the Board of Adjustment gave them the waiver, all of your concerns about parking, you could talk for another 45 minutes. The Board of Adjustment gave them the waiver. It's a done deal on the parking unless you want to talk another 45 minutes about it. It cannot be changed. They have the waiver. We cannot change that the traffic there is terrible. We all know it. Just tell the man to voluntarily not let left-hand turns out. But to keep belaboring how difficult it is. It is difficult. That is a very difficult place and unless you're going to suggest to Mr. Danneman that he put a mortuary there, I think you have to begin to get excited about an exciting project.

Mr. Silverman: Thank you. Is there anyone else who would wish to speak? I'd like to give the applicant the opportunity to respond to some of the issues that were raised by the public.

Mr. Wilson: I'm just responding to a couple of the issues. I wanted to clarify that the swimming pool is an indoor swimming pool. It's contained on the ground level. It is right in this approximate location of the building, and it's adjacent to an indoor fitness center and also an outdoor patio. It's connected to an outdoor patio. There is no relationship to any parking spaces onsite. Okay, that may be where there is existing parking spaces that are being taken away. Okay, I'll take a look at that.

Additionally, the issue of sound, sound mitigation and sound from the railroad tracks, was brought up. And that is, again, something that we've spent time talking about and studying and, at this point in time, I want to let you know that this entire north wall is a masonry wall and there's a masonry stair tower that goes up the entire five floors. There's masonry on all four sides. And also a laundry room on the northeastern corner that we feel very strongly will help reduce any impact from the train onto any of the hotel sleeping units. None of the sleeping units are on the north wall and, again, they don't open up in a northerly direction.

Mr. Kalogeropoulos: You know one of the hotels right before that I'm running is a Marriott Courtyard at LaGuardia Airport, and 747s fly right over the building. I'll bet if you were on the roof of the building, you could touch the plane. And they go bam, right across the street from the Grand Central Parkway and they land out there. And when you're in your room you don't hear a thing. There are such things and materials to be able to buffer any sound, otherwise you would never find any hotel around the airport or train stations or wherever you have. Noise is noise. Go to New York City for a visit for a while and you hear the sirens, the fire departments and a bunch of other people. You know, our job is to make sure our customer is always happy. To build a hotel and invest the money and to have them check into your hotel and leave unhappy and not come back, is not the answer of our industry. But that's not why I got up to talk.

There are three very, very important things that I need to bring to your attention. First of all, we thank you very much for the time you put up tonight so late to listen and ask great questions. There are three major things to make a project like this happen. First you have to obtain a franchise because you're not going to call it the Acropolis Hotel. You know, it doesn't work here. So you have to go get a franchise. The process to get a franchise is about, I don't know, six months. They will put you through the wringer because these people don't take their flag and their brand and put it on a place when it's going to fail, because that's not what they do. So what do they look at? First they have to make sure that the developer who is going to put the hotel together is a viable developer, is a sound developer, and is a developer with depth. And Marriott Corporation found that in George.

The second leg of the stool, so to speak, is that they have to find the right operators that understand hospitality. They understand what it is to have great guest satisfaction and make money for your owner who made the investment. And that is what we are. And, by the way, we have to be approved by the brand. Not anybody can go in and manage a hotel with the name Marriott, Hilton or Hyatt. You have to be an approved operator because they don't play around. They have standards. It's a ton of things you have to obtain and continue.

The third leg of the stool, after the operator, the management and the franchise, you have to find a financial institution. Who is going to finance this project? They're going to give you, I don't know, 65-70% equity to loan cash to go finish your project. So they're taking a risk with you. Most likely if it's a local bank, some local bank who understands the area, understands the locale, Marriott came here with all their experts and approved, through their feasibility standards, that this location would make a great Springhill Suites. They don't need to be here because they're opening 300-400 hotels a year. They don't need us. But they felt this is a, they call it, kick-something site. That's how much they liked it. So now comes the financial institution. Financial institutions, they have experts and people who know every nook and cranny of every corner of everywhere you are – its value, viability, traffic, crossing across, post offices, bicycles, and walkers. I don't care what it is. They are not going to write you the check if they think they're putting their money at risk and this man is not going to perform and take the keys and give it to them and say thank you very much, I lost \$3-4 million and you lost \$16 million. Have a nice day. It's not going to work. It's a lot of people, a lot of expertise, a lot of time and a lot of people make commitments – financial, reputation of the brand – to make this project viable and possible. I'm here to tell you when you come as a guest of the hotel, you're going to love it. We're going to treat you and your loved ones with the best of care and you're going to be proud of the hotel here in Newark, Delaware. And I wanted to share that with you. Thank you.

Mr. Silverman: Any other discussion or comments? What I'm going to do is ask the Director to read the recommendation as it's written on your report. Based on your discussions as Commissioners and the information presented by the applicant and the questions and information generated by the public questioning, you can choose to alter that recommendation through caveats. You can vote it up. You can vote it down. So I'm going to ask the director to read the recommendations. There are, how many?

Ms. Feeney Roser: The whole thing?

Mr. Silverman: Yes. Please read the entire thing.

Ms. Feeney Roser: Recommendation. Because the proposed 400 Ogletown Road major subdivision and special use permit plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project, with the recommended conditions, conforms to the land-use recommendations in the Comprehensive Development Plan IV, because with the variance issued by the Board of Adjustment on March 17, 2016, the plan meets all applicable Code requirements, and because the proposed use conforms to the development pattern in the nearby area, the Planning and Development Department suggests that the Planning Commission take the following actions:

- A. Recommend that City Council approve the 400 Ogletown Road major subdivision as shown on the Duffield Associates plan dated February 4, 2016, with revisions through March 21, 2016, with the Subdivision Advisory Committee conditions in this report; and
- B. Recommend that City Council approve the 400 Ogletown Road special use permit as shown on the Duffield Associates plan dated February 4, 2016, with the conditions in this report.

Mr. Silverman: Okay, you've heard the recommendations as described in paragraph A and paragraph B. Is there a motion?

Mr. Johnson: So moved.

Mr. Silverman: Okay, it's been motioned. Is there a second?

Mr. Hurd: Second, I guess.

Mr. Silverman: Okay, it's been moved and seconded. Is there a Commissioner who would like to add a condition?

Mr. Hurd: I would like to propose I think probably one, maybe two things. Regarding the major subdivision and the site plan, I would like to have it say that the entrances conform with DelDOT's preferences, which is a right turn in and a right turn out onto Ogletown, and an entrance-only on Capitol Trail. Just a personal comment, I think getting ahead of DelDOT on this might be preferable to waiting for DelDOT to decide what is minimal.

Mr. Silverman: Okay, so in addition to the recommendations from the Department, you are recommending that the Ogletown Road entrance be a rights in and rights out only?

Mr. Hurd: Yes.

Ms. Feeney Roser: And the Kirkwood Highway right turn out only?

Mr. Hurd: No, entrance only.

Ms. Feeney Roser: I mean entrance only. Right turn in.

Mr. Silverman: That's Capitol Trail.

Mr. Hurd: Capitol Trail. Good point. Yes.

Mr. Silverman: And that the egress from the site onto Capitol Trail eastbound be an exit only. I'm sorry, an entrance only.

Ms. Feeney Roser: I just did the same thing.

Mr. Silverman: An entrance only.

Ms. Feeney Roser: It's a right turn in only.

Mr. Hurd: Right. And then for item B, I guess for the special use permit, I would say with, not sure how to phrase this but basically Kevin had spoken about how they were planning to do more signage and improvements to the end of the building that's facing Ogletown Road. I want to be sure that that is captured and required.

Ms. Feeney Roser: Is that a condition of the special use permit or for the subdivision?

Mr. Hurd: Well because it's the hotel, the special use permit is what's allowing the hotel to be there. So if the hotel is going to be there, we're talking about the building and the usage. That's why I thought it fell into item B.

Mr. Johnson: I don't know that I can agree with you, Will. Because there is a mid-turning lane that allows you to take a left into the post office. Why wouldn't the mid-turning lane allow you to take a left into the hotel? The same turning lane. It's the fifth lane in the five lane highway there.

Mr. Hurd: What do you mean left?

Mr. Johnson: So if I'm coming from, traveling west on Ogletown Road, I can take a left into the post office. If I'm traveling east on Ogletown Road, why can't I take a left into the hotel? There is a turning lane there.

Mr. Hurd: There is. Not to get technical but I think you're getting very close to the light and getting very close to where people are getting into that lane to turn left at the light.

Mr. Johnson: It's the same entrance for the car dealership. It's the same entrance for Danneman Fabrics. It's the same entrance. It hasn't changed in 50 years.

Mr. Hurd: I know, but it's terrible. I'm just saying...

Mr. Johnson: And you had an accident there. I've never had an accident. It doesn't mean I won't, but I just don't think that restricting a left turn into the hotel and the restaurant makes any sense. It doesn't make sense for the restaurant, for sure.

Mr. Hurd: Not to belabor this, but if you want to get into the hotel and you're coming, I don't know, you're coming down Library Avenue, you go straight onto Capitol Trail and you turn in.

Mr. Johnson: You could do that. That is correct.

Mr. Hurd: But you can't come up from Main Street.

Mr. Johnson: That is correct.

Mr. Hurd: So you're coming either Ogletown or you're coming Library...

Mr. Johnson: And I have to be smart enough to know that. So I have to be not from Jersey.

Ms. Feeney Roser: Commissioner Hurd, DelDOT's concern was with the left turn out, as I understand it. Not the left turn in off of Ogletown.

Mr. Hurd: Right.

Mr. Johnson: I can support, Will, no left turn out because it would be the left turn out, not in. I support a left turn in. But coming out that same entrance, it could be a right turn. Just like the Embassy Suites. You can only take a right turn exiting the Embassy Suites. Why would we say there's a difference, same difference, here?

Mr. Hurd: My primary concern is that this is going to end up like the Wawa intersection, which has got, you know, you can only turn right. And I see people come out and cut

across Ogletown and make a left. And it burns me up because I know that they got that intersection to only go in one direction and they're still doing stupid stuff. So I'm just trying to cut down on the stupid stuff.

Mr. McIntosh: I don't disagree with cutting down on stupid stuff at all. As a matter of fact, it's a really good idea. But people are really stupid so they're going to do it anyway if they want to.

Mr. Hurd: They are.

Mr. McIntosh: I think I can be in favor of most of what you've said, Will, but I'm, kind of, of the opinion that taking the left onto Ogletown from the property makes absolutely no sense to me whatsoever, and it is going to cause a problem. It's that much further down the road. It's that much closer to the light. It just doesn't make sense. And I haven't lived here that long so I don't know what it was light 'back in the day.' But 'back in the day' we didn't have the traffic there that we have today. So making a left-hand turn out onto Capitol Trail, or coming out on Capitol Trail, doesn't make a lot of sense to me either. But making a left turn in there, I think that can be handled.

I do think this is an exciting project, by the way. And I do think that having that there, I feel better about it after your presentation, by the way, than I did when I was walking through the door earlier. But I really can never get my arms around that left turn coming out of that...

Mr. Hurd: I would say, I think my concern really is about egress. If the Commission is supporting a full use entrance and a right turn only exit, I can get behind that.

Mr. Silverman: So we're at, with respect to the Ogletown Road access and egress to this site, we are supporting a left turn access from Ogletown Road into the site?

Mr. Hurd: Full access, I think, is what you call it.

Mr. Silverman: Full access.

Mr. Hurd: So you can turn right in or you can turn left across Ogletown and come in.

Mr. Silverman: But we're prohibiting a left turn leaving the site onto Ogletown Road heading easterly. Okay.

Ms. Feeney Roser: That's the amendment?

Mr. Silverman: That's the amendment. That's the recommendation.

Mr. Hurd: And then an entrance-only on Capitol Trail.

Mr. Silverman: And an entrance-only on Capitol Trail.

Mr. Johnson: Again, I just want to say this. I'm at the post office three days a week. I exit the post office and take a left. Yes, sometimes I have to wait three minutes to take a left, but I can wait three minutes to take a left. If I don't want to wait and I'm in a hurry, I go around the block. So it doesn't make sense to me that on one side of the street I can take a left and on the other side of the street I can't.

Mr. Firestone: I would concur with that and would rather leave it to DelDOT to make the ultimate decision rather than this Commission.

Mr. Johnson: I'm the same way, Jeremy. Let DelDOT make that decision. I mean we have our preferences. DelDOT doesn't always do the right thing. Somebody point out when they do the right thing, let me know. But I just have to trust the experts at DelDOT, and experts is in quotations.

Mr. Silverman: So the motion is back to the wording as expressed in paragraphs A and B, correct?

Mr. McIntosh: No, I don't think so. Some people might feel that way but other people might not. I don't see that as, necessarily, a requirement. You know somebody made the

point that we should be suggesting to DelDOT that they pay close attention to that. And that's really what I would like them to do. That's their job, in the end, to make that decision. But I think that they should know, if it is so true, that the Planning Commission does not like the idea of a left-hand turn coming out of the property. And I really mostly hate it there on Ogletown. On Capitol Trail I still haven't quite figured out the new light configuration there, so I'm not sure how all that works either. But be that as it may, I'm okay with DelDOT saying this, but I think they should know that we had a lengthy discussion about it and didn't care for that left-hand turn. That's all.

Mr. Silverman: I'm going to ask the Director to assist us in some wording here.

Ms. Feeney Roser: Okay, what we have is a proposed amendment that has not been seconded to the original motion. So if Will is willing to withdraw that, then we can issue another amendment to say that with this recommendation the Commission would like to go on record as saying they have reservations about the left turn out onto Ogletown Road. I don't know how you feel about the right turn going onto Capitol Trail. The egress.

Mr. McIntosh: Well I'd be happy to second it if Will is willing, hmm, Will is willing. Will, Will, are you willing to agree to amend your own motion to be...

Mr. Silverman: But there was no second on that motion.

Mr. McIntosh: But I said I would, simplifying the matter, so that it just deals with the egress from the property.

Mr. Hurd: Yes, I thought I had revised my amendment to say that full access in, right turn only out onto Ogletown.

Mr. McIntosh: I second that.

Ms. Feeney Roser: So then you would vote on the amendment.

Mr. Silverman: Okay, a question on the amendment?

Mr. Stozek: I have another amendment, but do you want to do this one first?

Ms. Feeney Roser: I think it would be easier for us who have to keep track of it if you do one at a time.

Mr. Stozek: Yeah. Okay. Fine.

Mr. Silverman: Any discussion on dealing with the egress from the property? Any additional discussion? Okay, we'll move to the question. All those in favor, signify by saying Aye. I am withholding my vote. Opposed?

Ms. Feeney Roser: Can I have a show of hands, please, of all those in favor? One, two, three.

Mr. Stozek: In favor?

Ms. Feeney Roser: In favor of the amendment. So it's four. And then you're abstaining. And then I have Nay as two. Four to two. It passes.

MOTION BY HURD, SECONDED BY MCINTOSH, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING AMENDMENT TO THE MOTION:

THAT THE EGRESS BE RESTRICTED TO PROHIBIT LEFT TURNS OUT OF THE SITE ONTO OGLETOWN ROAD AND ALLOW ENTRANCE-ONLY ACCESS FROM CAPITOL TRAIL.

VOTE: 4-2

AYE: CRONIN, HURD, MCINTOSH, STOZEK
NAY: FIRESTONE, JOHNSON
ABSTAIN: SILVERMAN
ABSENT: NONE

AMENDMENT PASSED

Mr. Silverman: Okay. Mr. Stozek?

Mr. Stozek: Similarly, relative to the special use permit, I would like to insert some sort of words recommending to DelDOT to examine and recommend, in the interest of health and safety, pedestrian crossing from this property to Main Street going west at that intersection.

Ms. Feeney Roser: So that would be that you would recommend in favor of the special use permit with the conditions in the report and with the additional condition that DelDOT make recommendations for the developer to make pedestrian improvements for the connection to the downtown?

Mr. Stozek: Improvements, right. Pedestrian improvements.

Mr. Silverman: As point of information, that's requiring the developer to make those improvements, or requiring the developer to participate in the packaged project for improvements at that intersection? And by that, I mean the developer would be solely responsible for bearing all costs of construction through completion, or working through DelDOT to ensure that occurs, or the developer would contribute the dollars share that was discussed in the earlier part of the application to allow DelDOT to make that happen?

Ms. Feeney Roser: That's for you to clarify, please.

Mr. Silverman: Clarify that, please.

Mr. Silverman: I know I'm getting into the weeds here but DelDOT has many approaches. DelDOT, from time to time, has required a single developer to make offsite improvements. DelDOT, from time to time, has essentially collected fees from a group of people who affect an intersection and then DelDOT has taken responsibility to cause that project to come about.

Mr. Stozek: I don't know that I can recommend who should pay for it. I don't know what it is at this point.

Mr. Silverman: I'm not talking about paying for it. You were saying it had to be in place. It had to be built.

Mr. Hurd: Or considered.

Mr. Silverman: Considered.

Mr. Stozek: Examine and recommendation for improving the pedestrian safety.

Mr. Silverman: Okay. Second on that?

Mr. Hurd: Second.

Mr. Silverman: Okay, it's been moved and seconded.

Ms. Feeney Roser: Did you get that?

Ms. Michelle Vispi: Yes.

Ms. Feeney Roser: Michelle has to type this up. Be nice to Michelle.

Mr. Silverman: I am. Any other discussion? Okay, all those in favor of the additional amendment, signify by saying Aye. I'm abstaining. All those opposed, Nay. The amendment carries.

MOTION BY STOZEK, SECONDED BY HURD, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING AMENDMENT TO THE MOTION:

THAT THE DEVELOPER WORK WITH DELDOT TO EXAMINE AND RECOMMEND IMPROVEMENTS FOR PEDESTRIAN SAFETY AT THE SITE.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, JOHNSON, MCINTOSH, STOZEK
NAY: NONE
ABSTAIN: SILVERMAN
ABSENT: NONE

AMENDMENT PASSED

Mr. Silverman: Now let's go back to the main motion. With the addition of the two amendments, all those in favor of the motion, as described and amended in paragraphs A and B, signify by saying Aye. I am abstaining. All those in opposition, signify by saying Nay. The motion carries.

MOTION BY JOHNSON, SECONDED BY HURD, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE 400 OGLETOWN ROAD MAJOR SUBDIVISION AS SHOWN ON THE DUFFIELD ASSOCIATES PLAN DATED FEBRUARY 4, 2016, WITH REVISIONS THROUGH MARCH 21, 2016, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT; AND**
- B. THAT CITY COUNCIL APPROVE THE 400 OGLETOWN ROAD SPECIAL USE PERMIT, AS SHOWN ON THE DUFFIELD ASSOCIATES PLAN DATED FEBRUARY 4, 2016, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, AND WITH THE ADDITION OF TWO CONDITIONS:**
 - 1) THAT THE EGRESS BE RESTRICTED TO PROHIBIT LEFT TURNS OUT OF THE SITE ONTO OGLETOWN ROAD AND TO PERMIT ENTRANCE-ONLY ACCESS FROM CAPITOL TRAIL; AND**
 - 2) THAT THE DEVELOPER WORK WITH DELDOT TO EXAMINE AND RECOMMEND IMPROVEMENTS FOR PEDESTRIAN SAFETY AT THE SITE.**

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, JOHNSON, MCINTOSH, STOZEK
NAY: NONE
ABSTAIN: SILVERMAN
ABSENT: NONE

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you.

Mr. Johnson: Good luck.

Ms. Feeney Roser: Okay, Tom.

Mr. Silverman: Do we want to take a break?

Ms. Feeney Roser: That's up to the Commission.

Mr. Silverman: Would the Commissioners like to take a five minute break? Okay, we will stand in recess for 5-10 minutes.

3. REVIEW OF AN AMENDMENT TO THE ZONING CODE TO CLARIFY EXCEPTIONS FOR HEIGHT AND SETBACK.

Mr. Silverman called the meeting out of recess at 9:35 p.m.

Mr. Silverman: I'd like to call our meeting out of recess. Tom, you've got 2 ½ minutes. No, take...

Mr. Tom Fruehstorfer: Vote yes.

Mr. Silverman: Vote yes.

Mr. McIntosh: Call the question.

Mr. Hurd: We're back. Hey, Tom is still awake.

Mr. Fruehstorfer: Still? I didn't realize I was awake the whole time. You ready?

Mr. Silverman: Yes, please.

[Secretary's note: During the course of his presentation, Mr. Fruehstorfer referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public, as well as the Planning and Development Department report.]

The Planning and Development Department report on the proposal follows:

**REVISIONS TO CHAPTER 32, ARTICLE XVI – AREA REGULATIONS; EXCEPTIONS,
ZONING CODE OF THE CITY OF NEWARK, DELAWARE REGARDING HEIGHT OF
BUILDINGS AND BUILDING SETBACK LINES**

Recently, questions arose regarding how to interpret Code exceptions to allowable building heights. In addition, the somewhat recent Board of Adjustment ruling on the Trader's Alley building setback, highlighted some other areas of concern for the exceptions criteria regarding Code intent and clarity, and height-triggered setback requirements. The following report summarizes these concerns and offers potential Code amendments to address them for Planning Commission and Council consideration. Each issue is discussed separately, and then a comprehensive amendment proposed.

Height of appurtenances designed for architectural detail and/or to hide mechanical equipment

The first proposed amendment relates to roof appurtenances, designed to add architectural detail or interest and/or to screen mechanical equipment located on the roof of buildings. As you know, as part of the overall development approval process for major subdivisions citywide and for all subdivisions in the downtown district, applicants are required to submit color and scale elevations of all proposed buildings, showing the kind, color and texture of the materials for all sides of the building visible from public ways. Often these elevations show an architectural feature to embellish the design and/or to screen mechanical equipment on a flat roof. Historically, Code Section 32-56.2, which provides for exceptions to zoning area requirements, has been interpreted to permit appurtenances designed for architectural detail and/or to hide mechanical equipment to exceed height restrictions, if such appurtenances were included on the architectural elevations approved by Council during the development process. In the past, these exceptions were interpreted to include "false roof structures," or features which appear to be a roof when viewed from the ground, but which are, in fact, architectural details. The issue is that Section 32-56.2(c)(2) does not specifically exempt "false roofs" or appurtenances from height restrictions. Therefore, while buildings are approved to present a certain image and including roof features, the features or appurtenances are not always calculated into the building height, and yet, are not expressly exempt from height requirements.

Specifically, each zoning district provides for a maximum height of buildings, and Section 32-56.2 (c)(2), which applies to all zoning districts, provides for exceptions to maximum height as follows:

"In any district the maximum height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, water tanks, or towers, observation towers, transmission towers, silos, antenna and the necessary supports, solar collectors, defined as any device, or combination of devices, structures, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes to a structure's energy supply, or a parapet wall extending not more than four feet above the limit of the height of the building on which it rests; nor shall these provisions apply to elevator enclosures, water tanks on roofs, or scenery lofts which occupy an aggregate of not over 25% of the ground floor area of the building, broadcasting, and telecommunications towers."

Therefore, appurtenances, including false roofs, are not specifically exempt from Code height requirements, as are other types of architectural features listed. They also do not meet the definition of a parapet wall and yet, because approved elevations depicting the visualized design of the building have included them, these embellishments have been interpreted to meet Code for building height. Part of the confusion concerning this interpretation may stem from the previous Code definition of building height, amended in July 2013, and which now more clearly defines how the height of structures is calculated. Specifically, height of a building is now defined as: “the vertical distance from grade plan to the average height of the highest roof structure.” Having said that, and regardless of the reason for the confusion, the matter should be addressed and clarified for future developments.

Analysis

To address this concern, staff believes that either appurtenances must be calculated in the overall height of the building, or Code Section 32-56.2(c)(2) must be amended to permit appurtenances to exceed height restrictions. Regarding the first option (including them in the height calculation), recent building practices have encouraged increased floor-to-floor heights in both the commercial and residential marketplaces for mechanical systems and overall design of new structures. Including appurtenances into the height calculation, therefore, will force smaller floor-to-floor heights, which may not be desirable or constructible. In addition, over the years, the City has encouraged the use of architectural features to enhance the design and appeal of proposed buildings and to encourage diversity of building styles and rooflines. Indeed, as noted above, we require color and scale elevations of all facades of proposed buildings to insure that the community knows what a proposed building will look like when constructed, and to insure that what is built is what Council approved. Including roof appurtenances in the overall building height calculation may therefore, discourage developers from perusing more distinct and varied rooflines and the community presented with less unique designs in new buildings.

Suggested approach to issue

Staff believes, therefore, that the appropriate approach to the matter is to amend Section 32-56.2(c)(2) to exempt appurtenances of a certain size from height requirements. We suggest adding the words “**...or similar roof appurtenance that may be designed to provide architectural detail or hide mechanical equipment**” to Section 32-56.2(c)(2) after the reference to parapet wall and therefore, subject to the same height restrictions as parapet walls (which are permitted to extend up to four feet above the limit of the height of the building on which it rests). The Commission may wish to discuss the proposed height limitation for appurtenances at the meeting, as it may be more appropriate to allow roof appurtenances to exceed the four foot height limitation and relate more to the scale of the building itself, but for the purposes of beginning that conversation, staff suggests applying the four foot limit.

Section 32-56(c)(2) organization and clarity.

In addition to appurtenances, several other concerns for clarity have been raised over the Code section 32-56(c)(2). For example, the Code clearly defines the allowable height of towers on buildings in zoning districts where they are permitted, but Sec. 32-56.2(c)(2) indicates that “In any district the maximum height provisions shall not apply to spires, or towers, observation towers, transmission towers... broadcasting, and telecommunications towers.” Therefore, the exemption applies to all zoning districts and appears to be in conflict with some Code sections. For example, for BB zoning, Sec. 32-18(b)(8)b requires that, “The tower must be installed on a building or structure at least three stories in height. Towers shall not extend beyond 22 feet above the highest point of the building or structure.” Sec. 32-56.2(c)(2), as written, eliminates this specified height restriction.

In addition, Section 32-56(c)(2) was originally adopted in 1978 and amended over time to add exceptions as they were submitted, and as such, does not group like structures together. The section also applies to structures, which are separate from primary structures as well as those structures added to buildings. For simplicity and clarification, staff suggests that towers, utility poles, and public water tanks should be grouped together and included in a separate subsection. The action will make it clear that Sec. 32-56.2(c)(2) refers to details that are added to buildings, and not items that are “stand-alone” and separate from any buildings.

Finally, for clarity, we suggest that the term “scenery loft” be deleted from the exceptions clause. The term scenery loft was included in Code section 32-56(c)(2) in 1978, and at that time, may have been a commonly understood term, but it is not defined in Code or in Webster’s Unabridged Dictionary, and therefore its meaning has been the subject of considerable debate. Staff believes that if the recommendation to add appurtenances to provide architectural detail to the exceptions clause is approved, structures akin to what we believe a scenery loft to be would be permitted subject to the 4 foot height restriction.

Suggested approach to issues

For clarification and organization purposes, staff suggests that we remove all references to towers and scenery lofts in Sec. 32-56.2(c)(2) and add and new Sec. 32-56.2(c)(3) to read:

“(2) In any district the maximum building height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, elevator enclosures, water tanks on roofs, silos, roof antennas, solar panels or collectors (on roofs), wind turbines (on roofs), or a parapet wall or similar appurtenance that may be designed to provide architectural detail or to hide mechanical equipment, extending not more than four feet above the limit of the height of the building on which it rests.

(3) In any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district.”

Building setback requirements for buildings over three stories

Sec. 32-18(d)(4) provides provisions for increasing the height of buildings to over three stories in the BB zoning district. Further, Sec 32-18(d)(5) then requires a 20-foot setback for all buildings above 3 stories or 35 feet in height, presumably to minimize the visual and practical impact of the larger structure on the built environment. However, Sec. 32-56.2(d) includes an exception to allow a building’s setback to mirror the average of buildings within 200 feet and within the same zoning district, regardless of height. While the average setback exception makes sense in many situations, such as a residential development built prior to Zoning Code area regulations, the Department does not believe it makes sense in all situations. Particularly, because the exception clauses apply to all zoning districts, as written, it will permit structures taller than three stories to meet only the average setback, regardless of height of the building or the zoning district in which it is located. For example, because of the average setback in downtown, the exception, as written, could permit structures as tall as seven stories or 79 feet in height, without a setback.

Analysis

While provisions for the average setback applied to pre-zoning Code structures, or more specifically, applied where existing neighboring properties have a reduced setback, provides uniformity in setbacks, it seems quite clear that intent of the Code is to require a setback for buildings over a certain height. Therefore, staff believes that an amendment to the Code still permitting the average setback for buildings 35 feet in height or less, but requiring a setback for taller buildings is appropriate.

Suggested approach to issue

Revise Sec. 32-56.2(d) to read: **(changes in italics)**

“(d)Building setback lines.

- (1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:

- a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, **and**

- b. the proposed building or structure does not exceed 35’ or three stories in height.***

RECOMMENDATION

In order to insure consistency in the application of the City's Zoning Code and to provide more clarity in building height regulations, the Planning and Development Department suggests that Planning Commission recommend that Council amend Chapter 32 as follows:

- Add a new definition Section 32-4(4.2) defining roof appurtenances as follows: Roof Appurtenance: Anything attached to a portion of the roof of a building to screen mechanical equipment and/or provide architectural detail, such that it becomes a part of that building, and is passed on to a new owner when the property is sold. A roof appurtenance shall not provide leasable space.
- Delete Sections 32-56.2(c)(2) and 32-56.2(d) and replace them with revised Sections. 32-56.2(c)(2) and 32-56.2(d) to read (**changes in bold italics**):

Sec. 32-56.2. (c) *Height of buildings; exceptions to height limits.*

(1) In all districts, a public school, private school, parochial school or college may have a height of four stories not exceeding 50 feet.

(2) In any district the maximum ***building*** height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, ***elevator enclosures, water tanks on roofs***, silos, ***roof antennas, solar panels or collectors (on roofs), wind turbines (on roofs)***, or a parapet wall ***or similar appurtenance that may be designed to provide architectural detail and/or to hide mechanical equipment*** extending not more than four feet above the limit of the height of the building on which it rests.

(3) In any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district.

(d) *Building setback lines.*

(1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:

a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, and

b. the proposed building or structure does not exceed 35 feet or three stories in height.

Mr. Fruehstorfer: We're here to talk about revisions to Chapter 32, Article XVI – Area Regulations; Exceptions. Let's start with height issues. Height of appurtenances designed for architectural detail. Recently questions regarding interpretation of Code exceptions to allowable building heights have come up. As you know, applicants are required to submit color and scale elevations of proposed buildings. Elevations often include architectural features to embellish design or screen mechanical equipment on a flat roof. Code Section 32-56.2 has been interpreted in the past to permit appurtenances designed for architectural detail or to screen mechanical equipment.

Section 32-56.2(c)(2) includes a list of allowable exceptions to height limits but does not include a false roof, which is a detail we commonly see to hide mechanical equipment. You'll see in this list, Code includes spires, domes, cupolas, belfries, chimneys, smoke stacks, flag poles, water tanks, towers, observation towers, transmission towers, silos, antennas, solar collectors, parapet walls, elevator enclosures, water tanks, scenery lofts, broadcasting and telecommunication towers. But nowhere in there does it say anything about false roofs.

What is similar to a false roof is a parapet detail, and that's what I put up here just so everyone sees what we're talking about. This is something that came out of one of those

drawings in the past and this is a parapet detail, which is a low wall or railing to protect the edge of a platform, roof or bridge, called a parapet wall.

In contrast, this is an example of a false roof detail. While this detail provides the same function as a parapet wall, it does not match the definition of parapet wall. So right now, Code is not allowing this.

So, to address the concern, either appurtenances (false roof) must be included in the calculation of the overall height of the building, or Code Section 32-56.2(c)(2) must be amended to permit appurtenances to exceed height restrictions. Now considering including the false roof in the calculation, we should keep in mind that recent building practices have encouraged increased floor to floor heights in the commercial and residential marketplaces. So including appurtenances in the building height calculations could force reduced floor to floor heights, which might not be desirable.

And just so everyone understands the difficulty we're having now with measuring building heights, this is an example of a cross section of a building. It's 35 feet to the top of the roof right here. If you measure the height of this building as defined by Code, which is from the average grade plane to the average height of the roof, this is 10 feet here, or 35 plus five, is a 40 foot high building. So rather than the 35 foot building which is allowed by Code, we're up to 40 feet.

So our suggested approach is to amend Section 32-56.2(c)(2) to include appurtenances and list exemptions. So we're adding the words "... or similar roof appurtenances that may be designed to provide architectural detail or hide mechanical equipment" after the reference to the parapet walls. You should keep in mind, though, that this would limit the height of an appurtenance or false roof to 4 feet. This is something that we'll discuss in a few minutes. But for now, I'm just going to go ahead and show what this looks like. Just starting right here is "or a parapet wall or similar roof appurtenance that may be designed to provide architectural detail or hide mechanical equipment extending not more than 4 feet above the limit of the height of the building on which it rests."

So this picture is taking a look at a parapet versus a false roof, so we can start talking about whether or not that 4 foot height limitation makes sense for the false roof. You'll see here the parapet. This is a 4 foot parapet. So this is the height of the parapet allowed by Code. And this is an example of one of the false roof structures submitted to the Department. This is about 8 feet high. If the purpose of the height limitation is to limit the impact of the building from the street, notice that the parapet wall probably actually has more of an impact from the street than this false roof structure with the false roof structure set this far back. If this false roof was up here, it would be a different story. So when we start thinking about how we're going to allow, how we're going to pick how many feet high this is allowed to be, it starts getting difficult. As a start, I think it might make sense since in Code we measure building height from the average height of the roof, you start with maybe 8 feet as an idea, as a possibility. This is just something that I'm throwing out for discussion. Something to start thinking about. For now, ignore these words in the middle here. So, in addition to what we've already added for the parapet wall or similar roof appurtenance, at the bottom I'm suggesting a possibility of a roof appurtenance that resembles a roof may extend to no more than maybe 8 feet above the limit of the height of the building on which it rests if its slope does not exceed. And that's something we can talk about, whether it's a 1:1 slope or whatever.

So at this point, it might make sense to pause for you to start deciding if we agree that a 4 foot height is adequate or if we wanted to start thinking about alternatives.

Mr. Hurd: Well, I'll jump in because I did have some thoughts on this. My first thought was to limit that false roof, if we're just talking about false roofs, to basically the lowest floor-to-floor height in the building because typically what I've been seeing is that that roofline is looking a little bit like another story of the building. It's typically how they draw that. So if you sort of have 15 on the first floor and then it's 12, 12, 12, then 12 is the highest you can go as a starting point for the peak of the roof, at least.

Mr. Fruehstorfer: So then if they put that up here, it's going to have quite an impact.

Mr. Hurd: Well, but then you're talking about slope and I think you're probably right. If it gets more than a 12 and 12 slope, then we have to start thinking it has to come down. And I'm thinking about Kate's Place where they did that very steep mansard roof but it comes down the building's side.

Mr. Fruehstorfer: So I had another idea about two hours before the meeting started today. Another way to write this. And my thought was, the height of a roof appurtenance in the form of a false roof structure, cannot exceed the distance of the appurtenance's peak from the edge of the roof, not to exceed a maximum of the floor height. So if the peak is 10 feet from the edge of the roof, it can't exceed 10 feet, with a maximum of...

Mr. Hurd: I was thinking the lowest floor-to-floor height in the building to keep it from being as big as the first floor.

Mr. Fruehstorfer: And rather than complicating it, we just pick 10?

Mr. Hurd: I don't think you're going to find much that is doing 10. Probably 12 is typical.

Mr. Silverman: Are you talking about feet or slope?

Mr. Hurd: Feet.

Mr. Fruehstorfer: I think with a 35 foot building, we typically do have some 10 foot...

Mr. Hurd: The residentials, I guess, get 10 feet.

Mr. Fruehstorfer: The residential floors are around that, I think.

Mr. Hurd: Okay.

Mr. Fruehstorfer: Am I wrong? Maybe 11?

Ms. Feeney Roser: Yes, somewhere in there. Every building is different. It depends on how tall they want that first floor.

Mr. Hurd: And the first floor is always going to be taller because you've got larger ducts because ventilation codes have been increasing. But, yeah, the residential floors. My concern about picking a particular number is that if you start [inaudible] proportional to the building's scale. So if the building is scaled to have a 12 foot residential floor, I think that that roof should be in conjunction with it.

Mr. Fruehstorfer: Okay.

Mr. Hurd: I'm sort of looking for harmony.

Mr. Fruehstorfer: So not to exceed the lowest height of the, what's the wording?

Mr. Hurd: The lowest or smallest floor-to-floor height?

Mr. Cronin: Shortest?

Mr. Silverman: I prefer performance standards as opposed to absolute numbers. For example if you're trying to hide a mechanical room and you say 4 feet is the max, that defeats the whole purpose.

Mr. Hurd: Right, you can't hide it.

Mr. Fruehstorfer: So does one of the wordings I've suggested work then? So I guess the one I read...

Ms. Feeney Roser: May I?

Mr. Fruehstorfer: Go ahead.

Ms. Feeney Roser: Because Tom and I sort of tag-teamed this and then he had put more thought into it than I did. So your idea is to leave the addition of roof appurtenances that are not false roof type structures to be 4 foot.

Mr. Fruehstorfer: Sure.

Ms. Feeney Roser: But those that are [false roof structures], we're going to come up with a formula that makes their height equivalent to the floor-to-floor of the shortest floor, for lack of a better term.

Mr. Fruehstorfer: Lowest floor-to-floor height.

Ms. Feeney Roser: We also have to say something about slope, right? So that's what we're doing here. We're saying that other appurtenances can be 4 foot high but if it's supposed to look like a roof, we're going to make sure it's to scale. Right?

Mr. Hurd: Right.

Ms. Feeney Roser: So what other kinds of roof appurtenances do we imagine...

Mr. Hurd: Since you're talking about mechanical, you can have mechanical equipment screens.

Ms. Feeney Roser: That's an appurtenance?

Mr. Hurd: They are free-standing, or not necessarily free-standing, but are located on the center of the roof. What else do you have? Gargoyles.

Mr. Fruehstorfer: There have been details on Delaware Avenue that it looked like a roof. It was lifted up off the roof.

Ms. Feeney Roser: Campus Edge. Is that what you're talking about?

Mr. Fruehstorfer: I think so, yes. There have been things that have been used in the past...

Ms. Feeney Roser: On the north side of the street or the south?

Mr. Fruehstorfer: South.

Ms. Feeney Roser: So 201 East Delaware? The one that was just built?

Mr. Fruehstorfer: No, I'm sorry, it's on the south side of the building. So the building is on the north side but it's on the south side.

Ms. Feeney Roser: Okay. It's Campus Edge. Okay. So I apologize. I wanted to make sure I understood.

Mr. Fruehstorfer: I think the second wording that I read that's not on the screen is probably easier. Right? Does that make sense?

Mr. Cronin: Read it again.

Mr. Fruehstorfer: The height of a roof appurtenance in the form of a false roof structure cannot exceed the distance of the appurtenance peak from the edge of the roof, not to exceed the lowest floor-to-floor height.

Mr. Hurd: Distance from the peak? Say that one again. You're trying to say, basically, that the highest point has to be as far back from the edge as it is tall.

Mr. Fruehstorfer: One-to-one slope. Yes.

Mr. Hurd: Okay.

Mr. Fruehstorfer: If this is getting too complicated we don't have to decide this tonight.

Mr. Cronin: Which is a 45 degree angle.

Ms. Feeney Roser: We can just discuss it tonight and make the changes. I think that, given the hour, that might not be a bad idea. Let's just go through what we think we might want.

Mr. Hurd: Yeah. I'm tending to agree that if there is some way you can just write in that, in some way it's clear, that it's a 45 degree angle is the greatest slope that you can do. You know, a 12 and 12 slope roof is the steepest you can do and call it a false roof.

Mr. Fruehstorfer: So we have agreement on that then? Finding wording that will say that we can go up to 12 feet and 45 degrees.

Mr. Hurd: I'm in agreement.

Ms. Feeney Roser: So would that be another definition?

Mr. Hurd: Sorry, I'm saying 12 and 12 because typically roofs are measured as inches of rise over a foot of run.

Mr. Silverman: Forty or forty-five degrees.

Mr. Hurd: It's a 45 degree angle. It depends on who you're writing for.

Mr. Fruehstorfer: The 12/12 is the proper terminology for architecture.

Mr. Hurd: Yeah. But then you're saying that's the maximum slope and then the maximum height of the peak is what I'm proposing is the height of the lowest, the smallest floor height.

Mr. Fruehstorfer. Okay. And any opposition to that? So if I came back to the next meeting with something that said that, would there be opposition?

Mr. Silverman: Consensus as long as you do a drawing that also illustrates it.

Mr. Fruehstorfer: Okay. Right.

Mr. Silverman: Do we need a definition in the Code of [inaudible]?

Ms. Feeney Roser: That's coming up.

Mr. Fruehstorfer. It's next on the screen. We have a definition for roof appurtenance. Anything attached to a portion of the roof of a building to screen mechanical equipment and/or provide architectural detail such that it becomes a part of the building and is passed on to the new owner when the property is sold. A roof appurtenance shall not provide leasable space.

Next I'm going to move onto organization and clarity issues. First section 32-56(c)(2) is in conflict, we found, with Section 32-18(b)(8)b. What that is, 32-18 is the BB district, (b) is the special use allowing #8, which is a tower. And the next b is just a special requirement which reads the tower must be installed on a building or structure at least three stories in height. Towers shall not extend beyond 22 feet above the highest point of the building or structure. And 56.2(c) says that in any district the maximum height provision shall not apply to towers, observation towers, transmissions towers, broadcast towers and telecommunication towers. So, basically, I think the intention was clearly to limit the height of towers in the BB district and 56.2(c) takes that all away. So I'll suggest a recommendation to improve this in a second, but first I'm going to talk about the other organization and clarity issues.

Section 32-56(c)(2) was originally adopted in 1978, amended several times and, as a result, is poorly organized. So some similar items are not listed together. If you look at that list, there are towers all over the place. There are tanks all over the place. We have some separate structures. We have some items on roofs. So we're eventually going to recommend an improvement for that.

And the third thing I want to talk about here is scenery lofts. So if you read our report, you saw that we didn't know what a scenery loft was. I Googled it. I checked dictionaries. I talked to engineers. I talked to architects. We couldn't find anything, so we were going to take it away. But we happen to have an architect who builds stage sets with our Planning Commission and he knows that the scenery loft is now known as a fly loft, and it's the area above the stage of a theater where the overhead rigging is located. So ignore our recommendation in the report to take it away.

Ms. Feeney Roser: I thought it was like a widow's walk.

Mr. Fruehstorfer: There were lots of ideas of what it was and this is not one of them.

Mr. Silverman: And some of us refer to blacktop as amosite, also.

Mr. Fruehstorfer: So this makes sense. So, recommendations and our suggested approach. First of all, we're going to take the towers out of (c)(2) and move them down to (c)(3). And you'll notice the stuff in red here is the stuff that is not in the Planning and Development Report. So I put it back in for the meeting tonight. I've added theater scenery loft or fly lofts which occupy not over 25% of the ground floor area of the building. You'll see that I've listed everything together. It makes more sense. Spires, domes, cupolas, belfries, chimneys. Closed things up a lot. And then (3) down below, in any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permit are subject to tower height limitations as indicated for each individual zoning district. Go ahead.

Mr. Silverman: If I can direct my question to Will?

Mr. Hurd: Yes?

Mr. Silverman: Do you have any fire stops that project beyond the roof's surface?

Mr. Hurd: Typically a separating fire wall usually goes to about 4 feet above the roof.

Mr. Silverman: So we will not be in conflict with any of that?

Mr. Hurd: We shouldn't be. That's also not on the front. That's usually on a common wall between the properties.

Mr. Silverman: Okay, so this would not apply to common walls necessarily.

Mr. Hurd: Well, it would.

Mr. Fruehstorfer: It sounds like a parapet.

Mr. Hurd: I think you're safe with 4 feet.

Mr. Fruehstorfer: It sounds like that fire stop wall, if its 4 feet, is going to look just like a parapet.

Mr. Silverman: That's what most people think of when they see the division separating one building from another. That answers my question.

Mr. Fruehstorfer: And, if nothing else, that would be a roof appurtenance.

Mr. Hurd: No, it's structural.

Mr. Silverman: No, it's structural. It goes right to the foundation.

Mr. Hurd: If I've got two buildings next to each other and I need to separate them because of Fire Code, I need to build a fire wall that extends all the way up and continues past the roof so that fire doesn't cross over. I think 4 feet is the magic number.

Mr. Silverman: I think it is too. I just wanted to make sure we weren't accidentally tripping up in the meeting, Tom.

Mr. Hurd: You may just want to run this past the Fire Marshal and double-check that to make sure we're not.

Mr. Fruehstorfer: I don't think we've taken anything away that would have been there before.

Mr. Hurd: I mean if 4 feet is what was in there, I think we're probably okay.

Mr. Fruehstorfer: Right.

Mr. Stozek: I notice in this one, all of a sudden, wind turbines appear.

Mr. Cronin: Wind turbine.

Mr. Stozek: No building height provision shall apply to wind turbines.

Mr. Fruehstorfer: Maureen, did you add that in there or was that taken from the...

Ms. Feeney Roser: No, I'll look in the Code but I think maybe it's there already.

Mr. Fruehstorfer: You think you just took what was in there?

Mr. Hurd: It's not in the original that you have listed here.

Mr. Silverman: Yeah. You're talking about roof vent turbines, not mechanical?

Mr. Hurd: No, wind turbines.

Mr. Johnson: Wind turbines, for electricity.

Mr. Silverman: No, not wind turbines that collect electricity.

Mr. Hurd: Yes, that's what that is.

Mr. Fruehstorfer: It says wind turbines on roofs. That's what I assumed that was.

Mr. Hurd: But I will say that is not in your original paragraph.

Mr. Silverman: My thinking on wind turbines was the mushroom cap that sits on a roof. That's a wind turbine.

Mr. Hurd: Well, no.

Mr. Johnson: A turbine creates energy

Mr. Stozek: Yeah, it's adjacent to solar panels. That's the reason I brought that up.

Mr. Firestone: But you wouldn't put one on the roof. And you really wouldn't put one in Newark anyway. It's not windy enough.

Mr. McIntosh: I thought it was pretty windy the other day.

Ms. Feeney Roser: I don't know where that came from because it's not in the original Code. So let's remove it.

Mr. Fruehstorfer: Okay, so we'll take out turbines. Wind turbines on roofs is gone.

Mr. Hurd: Well I'm actually in favor of, if we're going to do this, getting out ahead of that. Because someone is going to come along and say I want to put a wind turbine up. And they're going to say it's not a tower and it's not a thing, and it's all different.

Mr. Firestone: They're going to want to put it on a pole, though.

Mr. Johnson: I would leave wind turbines in. What's the University going to do? They're building new buildings. They might put wind turbines instead of solar panels on top of the roof.

Mr. Stozek: Well, solar panels I don't have a problem with. But you're saying heights will not apply to this. And I have no idea what they're proposing to do.

Mr. Fruehstorfer: Wind turbines, if they're putting it on a roof, it's not going to be one of the ones you typically see out on the side...

Mr. Stozek: Yeah, it's not going to be Lewes. Right.

Mr. Fruehstorfer: It's going to be one of those vertical spinning ones that is just a few feet high.

Mr. Stozek: Maybe there's a better definition or terminology.

Mr. Fruehstorfer: If someone wants to add it at some point, then we've got it in there.

Mr. Silverman: Are they called sail turbines? The ones you're talking about that are vertical.

Mr. Fruehstorfer: I'm not sure.

Mr. Silverman: Because most people think of a wind turbine as being the airplane propeller.

Mr. Firestone: Well whether they're vertical or horizontal...

Mr. Fruehstorfer: I mean it's just a, there are lots of types of them.

Mr. Cronin: In Holland they call them windmills. Windmills with sails.

Mr. McIntosh: That's what I'm familiar with.

Mr. Fruehstorfer: Okay. So moving on.

Ms. Feeney Roser: I'm sorry, did you want to leave that in or are you going to take it out?

Mr. Fruehstorfer: It sounds like we're leaving it in.

Ms. Feeney Roser: Leave it in? But it needs to be noted that it's new. Because it's not in the Code now.

Mr. Fruehstorfer: So we should probably also add a definition? Would that need a definition?

Ms. Feeney Roser: Yes, I think a definition if we're going to add that. Because it's not in the Code now as exempt. If you're going to do it, you need a definition of it as well.

Mr. Hurd: To keep people from putting up a big propeller turbine.

Mr. Fruehstorfer: If it were big enough that the propellers were extending outside your property, you wouldn't be allowed to do it.

Okay, so we've added a definition for scenery loft here. I'm not sure if it's necessary or not. You can decide it.

Mr. Hurd: I think it's safe to put it in.

Mr. Fruehstorfer: I added the theater in there and it makes it a lot clearer. But we can also add a definition out here. Scenery loft or fly loft, the area above the stage of a theater where the overhanging rigging is located.

And the final thing I wanted to talk about tonight is the building setback requirements.

Mr. Silverman: Can we step back a second?

Mr. Fruehstorfer: Sure.

Mr. Silverman: Insert the word live theater as opposed to motion picture, etc. You don't need a scenery loft in a motion picture theater.

Mr. Fruehstorfer: What if they decided they did, then...

Mr. Hurd: You might have a theater that does both.

Mr. Stozek: Yeah, theaters are doing weird things these days.

Mr. Silverman: A combination. Okay.

Mr. Firestone: The theater of the absurd.

Mr. Silverman: Okay. Moving forward.

Mr. Fruehstorfer: Okay. Like I said, these are the building setback requirements for buildings over three stories. Section 32-18(d)(4) provides provisions for increasing the height of buildings to over three stories in the BB zoning district. Things like parking on the first floor, apartments all being two bedroom or less. But then (d)(5) requires a 20 foot setback for all buildings above three stories or 35 feet in height. And this is presumably to minimize the visual impact of the larger structure on the built environment. But then 56.2(d) comes along and includes an exception to allow building setback to mirror the average of buildings within 200 feet and within the same zoning district, regardless of height. This basically allows buildings to be built higher than three stories or 35 feet, with no setback, even if the other buildings within 200 feet are only three stories and 35 feet.

Mr. Silverman: What's the performance standard here? In reading the City Code, I don't see a requirement for the wedding cake style. Where you can have zero, the first three floors can be...

Mr. Hurd: Check on this but I think the Code is that as soon as you cross 35 feet, the whole building moves back. It's not New York. Because New York is really set up for light to the street and so that's why it's stepped.

Mr. Silverman: Right.

Mr. Hurd: This is, my impression of it is, it's leaning more towards creating a wider space so that the building doesn't come up to the street so close.

Ms. Feeney Roser: Yes.

Mr. Hurd: And so it's a proportional thing. When it's tall, you want it further back so that visually it doesn't create a canyon.

Mr. Fruehstorfer: Right. And as it is now...

Ms. Feeney Roser: That was the intent.

Mr. Hurd: Right.

Ms. Feeney Roser: You know, when the BB district was altered in order to allow taller buildings for, you know, giving bonuses for heights, that was the intent. But, as we found in the Trader's Alley case before the Board of Adjustment, because the other buildings on Main Street are not set back, they didn't have to set back either. Because the average setback applies. Because the exception clause overrides the individual clause. And while that makes sense in a lot of developments, particularly residential developments that were built before the Zoning Code, that makes sense to have that. But the idea was you wouldn't be putting a much taller building with zero setbacks downtown. I don't believe that was the intent of it. So we were trying to address that so we don't start getting very tall buildings with no setbacks.

Mr. Silverman: Okay, I'm getting tired. No, no, I getting confused tired here.

Mr. Fruehstorfer: So this might clear it up. In our analysis, it seems quite clear that the intent of the Code is to require a setback for buildings over a certain height. That's the intent of the Code. Therefore, staff believes that an amendment to the Code still permitting the average setback for buildings 35 feet in height and less, but requiring a setback for taller buildings, is appropriate.

Mr. Silverman: Yes.

Mr. Hurd: Yes.

Mr. Fruehstorfer: So, our suggested approach. This used to read, this was all under #1. What we have under "a" here was at the back end of section 1. It got kind of wordy. So we broke that in half to provide that,

- a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, and
- b. The proposed building or structure does not exceed 35 feet or three stories in height.

So if the new building is the same scale as the rest of the buildings, it can have the same setback as the rest of the buildings. If it's taller, it needs a bigger setback.

Mr. Silverman: And it is residential district?

Mr. Hurd: No, this would be all districts. Right? Because it's basically going to cover everything.

Mr. Fruehstorfer: This is 56.2(d). It's all districts.

Mr. Hurd: But by keeping it to 35 feet you capture all the residential, and then BB comes along with its special...

Mr. Cronin: If you're going to have the word "and" there, why do you need A and B? Why don't you just make it one? "A" only. A and B is usually for an "or", isn't it?

Mr. Silverman: You don't need the "and" in there, do you? It's either/or.

Mr. Fruehstorfer: I think the "and" makes it very clear it's got to be there. If we think the "and" can go away, I guess we can take it away.

Mr. Cronin: If you put the "and" in there, why don't you just make it all one big condition?

Mr. Fruehstorfer: They're separate issues and when it was all in one thing, it was really hard to read and understand.

Mr. Cronin: I like the colors.

Mr. Fruehstorfer: But if you want it all in one big thing, we could do that. I thought this was making it more clear.

Mr. Hurd: I like clear.

Mr. Fruehstorfer: We'll be coming back to it. And our recommendation, we're at the end here. So back to the summary at the end. Our recommendations, we're adding a new definition for roof appurtenances. We may also be adding a definition, what did we add a definition for? For wind turbines. Adding a new definition for scenery loft or fly loft. And then we're deleting sections 56.2(c)(2) and 56.2(d) and replacing them with revised sections, with 56.2 having sections 2 and 3. These will read something like this. The final sentence of that #2 will switch to some better wording and this shows our 12/12 pitch and the lowest height of the floors. And then this is what we were recommending for the building setback lines.

Mr. Cronin: Tom, from a real estate perspective, whenever a property is sold, anything that is attached to the structure is automatically included unless you exclude it. If anything is attached, you don't have to say when the property is sold it's passed on to the new owner. An attachment is always included, by convention.

Mr. Fruehstorfer: You're saying that it should just be such that it becomes part of that building and "period".

Mr. Cronin: Yeah. The word attached does it.

Mr. Fruehstorfer: Okay.

Mr. Cronin: If you want to say such that it becomes part of the building, that's okay.

Mr. Hurd: They may be trying to make sure you don't include signs in this. Because a sign is attached and it can extend up and then...

Mr. Cronin: Well, if you buy it, the sign will come with it and you'd have to change the sign. The new owner changes it.

Mr. Hurd: I'm just, I'm kind of agreeing with Tom because the definitions I've seen, it's about permanent pieces of the building that are, you know, permanent to the building and pass from owner to owner. And I think that's to keep it from being, I don't know, antennas that are clamped on or signs.

Mr. Fruehstorfer: Yeah, actually, does our sign Code allow signs to be up above a roof? It may not.

Ms. Feeney Roser: I don't know. At this time of night, I'm afraid to even guess.

Mr. Fruehstorfer: But we don't...

Ms. Feeney Roser: We'll look into that because we're going to come back with this anyway, right? You're not making a recommendation tonight?

Mr. Silverman: No.

Ms. Feeney Roser: We'll look into it.

Mr. Fruehstorfer: Does anyone else think that this definition needs to change? Or are we generally thinking the definition is okay?

Mr. Johnson: I'm good with it.

Mr. Fruehstorfer: Any other comments, suggestions or changes anywhere?

Mr. Silverman: With respect to signs, if you add the words "architectural feature" in there, that separates it from signage or anything bolted onto the building.

Mr. Fruehstorfer: We have architectural detail. That just becomes part of the building. And I think that's the wording, Maureen, you've come up with this, right? This is examples of other places. This is a similar definition.

Ms. Feeney Roser: I did some research on it. I googled it. I had enough trouble learning to say appurtenance, so I did Google what it meant. And we played with it.

Mr. Hurd: Tom, can you go forward to your revised Section 56.2(c)? Because I had made a mark-up on my report. It seemed to me that you were repeating the definition of appurtenance inside there when you talked about appurtenance. You say a similar appurtenance that may be designed to provide architectural detail or hide mechanical equipment, and that's already in the definition.

Ms. Feeney Roser: So it's not necessary.

Mr. Hurd: I didn't think it was necessary there. I think you could also probably drop the plural on fly lofts and just say scenery loft or fly loft.

Mr. Fruehstorfer: Okay.

Mr. Silverman: You used plural and singular in the same sentence.

Mr. Hurd: Yeah. That's just my two quick comments.

Mr. Fruehstorfer: Okay. So if we make those changes and bring it back clean, we'll be happy? Sounds like it.

Mr. Silverman: You know, given the hour, shall we continue to Item #4 on the agenda?

Mr. Cronin: Yes, please.

Mr. Silverman: I'm sorry, did...

Ms. Feeney Roser: Can we have a motion to delay the discussion on the Zoning Code clarifications to the next meeting? I think you have to.

Mr. Hurd: I so move.

Mr. Firestone: Second.

Mr. Silverman: If there are no objections...

Mr. Cronin: Well, Mr. Chairman, I think if these citizens have waited this long to make their point of view, we ought to at least let them make their remark before we do that.

Ms. Feeney Roser: Dr. Morgan wants to talk about Item #4. Or did you want to talk about this?

Dr. John Morgan: I'd like to talk about Item #3 for just one...

Ms. Feeney Roser: Oh, okay. I'm sorry.

Mr. Silverman: I'm sorry.

Ms. Feeney Roser: You signed up for 4.

Dr. Morgan: A couple of years ago when I was looking up issues about noise and turbines, I was brought to websites about noise from wind turbines, and there are many small towns in various parts of the country which have had their own issues with folks putting up wind turbines of various kinds. Either the propeller kind, or the spiral kind or whatever. And I think this is something that you ought to get ahead of the curve on. I would be nervous exempting wind turbines from any height requirements whatsoever for fear somebody would put up a 100 foot wind turbine, or something like that. So I would give it some further research. I can share with you the results of the research I did a couple of years ago.

Mr. Fruehstorfer: Noise is the issue...

Dr. Morgan: There are all kinds of other issues, right? Somebody puts up a big turbine in his back yard or something, or up on his roof.

Mr. Fruehstorfer: I've seen complaints of the disco ball effects and lights flashing in rooms.

Dr. Morgan: Yeah, okay. I mean, I think it's a serious issue and if we can get ahead of the curve on it.

Mr. Silverman: Tom, so you'll get together with Dr. Morgan and exchange information?

Mr. Fruehstorfer: Sure.

Mr. Silverman: Ms. White.

Ms. White: [inaudible]

Ms. Feeney Roser: We need to switch the microphone.

Ms. White: Jean White. On what's before you, it lists architectural detail and then hide mechanical equipment. I would like to reverse those. The public can understand, well let's say, what's the difference? I feel there is an understanding difference. I think everybody feels that mechanical equipment should be hidden. But architectural detail, although a real thing, is a somewhat more subjective thing by both the developer and the architect and everything else like that. So I think that's important to me. And how typically high are mechanical equipment? Will it be, can it be 12 feet high?

Mr. Hurd: Yes.

Mr. Silverman: Yes.

Ms. White: Okay, because I am concerned about adding to the height of a building with this 1 to 1, you know, the floor is 12 feet, then it's 12 feet back. And, of course, I think architects understand how it would look but I'm concerned about adding heights that might not necessarily be added.

And, let me just see, on page, what you are now changing, it describes solar collectors as any device or combination of devices, structures, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes to a structure's energy supply. Well that's very good. That sort of should be in that section but therefore when you get to your definitions, you didn't put a definition of, what are we talking about, solar collectors or panels. So I thought there should be a definition section that took that whole long part and put there. But when you got to your definitions, you didn't put that. Does anybody understand what I'm trying to say?

Ms. Feeney Roser: Yes, I understand.

Mr. Hurd: Yes.

Mr. Silverman: Yes.

Ms. White: Okay. And let me just see here. And then I just wonder with all of this talking, does any of this, would it have applied to the tall, and from the point of many people in the town, this too-tall building to the left of National 5&10, that is a blot on the landscape and is sticking out and...

Ms. Feeney Roser: It would not. That building has a parapet wall, so this...

Ms. White: Okay but if you look at it, it's really 4 ½ stories and something happened. I don't know how that happened. I know that parking was put under it, but something should have prevented this visually heightened, ugly, not the bricks of it but the height. And when I think about that, to prevent any other such thing from happening on Main Street. Okay, I guess that's it. Thank you.

Mr. Silverman: Thank you.

Ms. Feeney Roser: Got it, Tom?

Mr. Fruehstorfer: Hopefully Michelle's got it.

Mr. Hurd: Just read the notes at the end.

Mr. Silverman: With deference to Dr. Morgan, the hour is getting late and do we want to get into the parking and parking waiver?

Mr. Firestone: We still need to vote on that question to defer.

Mr. Hurd: Vote.

Ms. Feeney Roser: To postpone.

Mr. Silverman: Thank you. We were at the point of, we had a motion and we had a second. If there are no objections, by consensus, the motion stands approved.

4. **RECEIPT OF DRAFT OF PROPOSED PARAMETERS AND METHODOLOGY FOR CODE MANDATED PARKING REQUIREMENTS AND PARKING WAIVER PROGRAM STUDY FOR DISCUSSION AT A FUTURE PLANNING COMMISSION MEETING.**
5. **INFORMATION REGARDING WEDNESDAY, APRIL 13, 2016 PLANNING COMMISSION TRAINING, WHICH WILL BE HELD AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS.**

Ms. Feeney Roser: If I could, for the next one?

Mr. Silverman: Please.

Ms. Feeney Roser: We have to put the agenda to the newspaper very early in the month for the following month. And at the time I thought that Kirsten, the grad/intern who has been working with Mike on the parking study parameters, would come and talk with you about it tonight, that they were both going to be here. They are both at the American Planning Association conference. So they won't be here until next month to talk with you about it. But I wanted to give you what we had received first, so that you could look at it and have time to prepare. So I really did not plan on having any discussion tonight other than to receive it or for brief comments about something that you would also like to include. That was all I had intended for that.

And #5 is just to tell you that we're going to have pizza before the 6:00 training session, so you could come early. That's all I wanted to say about that.

Mr. McIntosh: What time should we be here? What time?

Mr. Firestone: How early?

Ms. Feeney Roser: I would say 5:30 we'll have it all ready.

Mr. McIntosh: 5:30? You going to have a lot of pizza?

Ms. Feeney Roser: Michelle and I will be sitting here, chowing down.

Mr. McIntosh: That's great.

Ms. Feeney Roser: I didn't know if Dr. Morgan did have a few things he asked to say about Item #4.

Mr. Silverman: In deference to Dr. Morgan coming out, I'd like to offer him some time to speak and then we will consider adjourning.

Dr. Morgan: Thank you very much. So the first comment I have is on the memo. I think your next meeting in May is on the 3rd of May, not the 2nd of May. Isn't the 2nd a Monday?

Mr. Cronin: That's correct.

Mr. Hurd: Yes, that's right.

Dr. Morgan: Okay. Thank you. I just have a couple of, first of all I very much welcome bringing forward this review of our City's parking waiver program. I would like to make the following request because the only thing I'm able to look at is the attachment to the agenda. I noticed that, first of all, it would be good to have more complete references. I don't really know, off-hand, what abbreviations like Transportation Master Plan mean or where there's a link to it. Or something like Shoup 2005. I really don't know what that is. It would be good if there was a bibliography attached to the next version of this so we can actually easily find them. And I would also hope that the data that are presented are up-to-date. I mean, for example, at the bottom of the second page there is a reference to Shoup in 2005, which is already 11 years old, and he is referring to a study in 1996, which is 20 years ago, for prices and parking spaces and so on. We really should be looking at up-to-date numbers adjusted for inflation. And also I'd have to say that on this issue of various Shoup studies, it seems to have been confined, at least from the citations here, to various cities on the Pacific coast. I'd like to see some studies of what's happening here on the east coast, which might be more relevant. And I guess those are things it would be good to be in touch about because, ultimately, what's important is not that we do what is right for a dozen other cities 3,000 miles away, but that we do right for what's in our own town. Thank you.

Mr. Firestone: One thing. When you said bibliography, did you mean glossary?

Dr. Morgan: Well, I mean something that would tell me what Shoup 2005 is. A complete reference so I could actually look it up in the library. Or order a book, if that's a book online.

Mr. Firestone: Okay. Thank you.

Dr. Morgan: And I think it would be good, also, to make sure that that's publicly available here so that members of the public can come and take a look at it and make knowledgeable comments.

Mr. Silverman: And I'm going to take the opportunity, very quickly, to reiterate some of my earlier requests are not included in that. That's a policy statement document that's being proposed as a work program. I'm interested in nuts and bolts. How many parking places do we have that are non-university parking places in town? Where are they located? That's hard information I need when I'm looking at alternative offsite parking places. I like some of the ideas in there of considering doing away with parking requirements in the BB district completely. I know that sounds crazy on the surface but, as we saw tonight, these parking ratios, parking numbers, number of seats at your counter, they're all magic, fairy numbers that somebody generalizes. We need to look at what works for us in Newark and what will drive the private sector to continue to produce parking.

One of the urban legends that continually comes before this group is you build living quarters for college students who live off-campus and you've automatically increased the automobile load in the City. I contend that the life of a student and the occupancy of a student is much different than someone who goes to work every day during peak times and has a regular job. If we generalize the national stats to our population that we're serving at the university, 25% of those kids don't even have a driver's license. Of those who have a driver's license, another 25% don't own an automobile or have access to an automobile. And what I suggested, and I've got something I'll submit for our next meeting, is that we actually go to three major landlords, and I'm going to pick some contemporary landlords just off the top of my head – the Tsionas Group, the Prettyman Group and Jeff Lang – and have the student create a survey of those students and see how many actually bring an automobile with them. How many have access to an automobile. How often they take it offsite, the times of day and day of week, to see whether there is really that kind of relationship that everybody seems to think that there is between standard housing and university housing. There is an article in this week's Post whereby the Opera House was the discussion before Council and there was discussion of the need not to have parking spaces because of a certain percentage, I believe, of the occupants who don't own automobiles. So this is something I'd like to see us really get into in detail. We seem to think we know what the automobile driving and parking habits are of people who inhabit primarily college student housing, but I don't think we really do. And I've done a lot of Internet Google type searches and there doesn't seem to be any tight information out there or even generalized information.

Just anecdotally, looking at the apartment complex behind us here, I drive up and down this road regularly. I notice at 2 o'clock in the afternoon there are a substantial number of cars still parked there. At 9 o'clock in the morning, the same number of cars. Those folks don't seem to crowd our streets. And then the other thing we talked about earlier was changing our parking lot parking bay or parking stall standards to encourage compact car parking. Here we've had a lot of discussion about building parking garages. We've jokingly talked about, to find out what you can build in Newark, you look at the parking standard, see how many parking places you need on your property and see if a lot's even big enough to put a structure on by the time you meet the parking requirements. Yet we can do things that do not require bricks and mortar. We can encourage development by looking at the number of parking spaces required and the size of those parking spaces. I'd like to increase the City-owned parking lots by, the literature says, as much as 25% by repainting the lines. We're talking about the cost of thousands of dollars to increase the number of parking spaces available versus millions of dollars to build a parking structure. So I'd like to see our study encompass those kinds of nuts and bolts things.

So the inventory, the looking at the population of student housing and how it uses parking, and also look at really tightening up or looking at offering compact car parking mixes. And they're the three things I'd like to see added. The rest of this stuff on figuring out costs of parking, and there is one study out there that says if you want to control your housing costs, to offer more affordable housing, that you really eliminate or restrict parking requirements for rental properties. Because, again, the literature suggests that as much as \$100-200 a month that's in someone's rent is to pay for that parking space that's onsite for their building. One that experience tells us the person will not be using. So there is an opportunity to offer less expensive rental housing. So they're just some ideas that I think should be included in the study.

Mr. Johnson: Alan, be prepared because I'm fighting you on the compact car spaces. You and I will wrestle to the death.

Mr. Silverman: Well instead of driving your big, honking truck, call me and I will come over in my compact and drive you anyplace you want to go.

Mr. Stozek: I think there's one other parameter, if you're going to do some sort of student survey, there's one other parameter to look at, which is how many of these kids have jobs and need a car to get to their jobs.

Mr. Silverman: Yes, that would be included in it.

Mr. Johnson: And the other thing is, don't think that living in student housing off-campus is just University of Delaware students. There are students from Wilmington College living here as well because of our town and the environment our town, the student-friendly town that we are.

Mr. Silverman: Well I'd like to have some survey work to, you know, let's come up with some hard data rather than anecdotal or speculation. Now...

Mr. Firestone: Motion to adjourn.

Mr. Silverman: I hear a motion to adjourn.

Mr. Cronin: Second.

Mr. Silverman: Okay. If there is no objection, we stand adjourned.

Ms. Feeney Roser: Thank you.

There being no further business, the Planning Commission adjourned at 10:26 p.m.

Respectfully submitted,
Michelle Vispi
Planning Commission Secretary

/mv