

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

April 1, 2008

7:30 p.m.

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

Acting Chairman: Ralph Begleiter

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

Commissioners Absent: James Bowman

Staff Present: Maureen Feeney Roser, Interim Planning Director

Acting Chairman Ralph Begleiter called the Planning Commission meeting to order at 7:30 p.m. Mr. Begleiter then introduced and welcomed Maureen Feeney Roser, the Interim Planning Director.

1. THE MINUTES OF THE FEBRUARY 5, 2008 PLANNING COMMISSION MEETING.

Mr. Begleiter: There are two minor corrections to the minutes. Page 10 in the very first line, “the Commission wants to have an upset limit,” although I wasn’t here, I feel certain that that should be “upside” limit. Unless any Commissioner recalls differently, I think we should correct that record.

And on Page 21 in the very last paragraph about a dozen lines from the bottom, “what we are proposing is parameter landscaping.” I feel quite certain that should be “perimeter” landscaping. If any Commissioner recalls differently, please correct that.

MOTION BY DRESSSEL, SECONDED BY SHEDDING TO ACCEPT THE MINUTES OF THE FEBRUARY 5, 2008 MINUTES WITH THE CORRECTIONS NOTED.

VOTE: 6-0
AYE: BEGLEITER, DRESSSEL, McDOWELL, OSBORNE, RUSSELL,
SHEEDY
NAY: NONE
ABSENT: BOWMAN

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE CONCERNING CITY COUNCIL REVIEW OF PARKING WAIVERS.

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

“Background

At its January 14, 2008 meeting, during the course of the review and public hearing for the 102 E. Main Street (Bank of Newark Building), major subdivision and

special use permit, several Council members asked that the Planning Department propose a Zoning Code amendment that would more clearly specify that Council may request review of BB (central business) district parking waivers approved by the Planning Commission. Under the current Code language, Council may review (and revise) Planning Commission actions on parking waivers upon the recommendation of the City Manager or Planning Director. In addition, our development review process typically couples parking waivers with other forms of Council required approvals with the result that, in most instances, Council in effect “approves,” or “disapproves” the parking waiver as well. In any case, however, in order to more directly stipulate that Council may review such waivers on its own initiative, the Planning Department has provided a proposed Zoning Code amendment for the Planning Commission’s review and recommendation.

Proposed Amendment

Delete Zoning Code 32-45(b) *BB central business district off-street parking option*, subsection (6), which reads as follows:

6. “Within 45 days, the city council may also review, modify or deny the planning commission’s approval, disapproval, or approval with conditions upon the recommendation of the planning director and/or the city manager. In reviewing the planning commission’s action, the council shall consider the criteria established in Section 32-45(b)(2) herein.”

and substitute the following language for subsection “6” [the new language is in **bold**]:

6. “Within 45 days, the city council may also review, modify or deny the planning commission’s approval, disapproval, or approval with conditions upon the recommendation of **a member of council**, the planning director or the city manager. In reviewing the planning commission’s action, the council shall consider the criteria established in Section 32-45(b)(2) herein.”

Recommendation

The Planning Department suggests that the Planning Commission review this report, receive public input and recommend **that City Council approve the amendment to Section 32-45(b)(6) of the Zoning Code as described in this report.**”

Mr. Begleiter: Does anyone on the Commission have a question about this procedural change?

Maureen, the sole effect of this is to allow a member of Council to initiate the process. It does not change the way the process operates or anything of that sort.

Ms. Feeney Roser: No, it doesn’t change it at all. Really, it would only effect those stand alone parking waivers where there is nothing else attached, which very rarely happens. Usually when you have a parking waiver, it is coupled with a special use permit or a subdivision which Council would review anyway. If they, in fact, don’t approve those, then the parking waiver doesn’t really matter.

Mr. Begleiter: The Council itself expressed an interest in doing this. So, this is not something that the Commission is initiating or foisting upon the Council.

Ms. Feeney Roser: No, it actually came up during Council’s review of 102 E. Main Street.

Mr. Begleiter: Does anyone in the community care to comment on this parking waiver procedural issue?

Mrs. Jean White: 103 Radcliffe Drive. This came about because at the January 14th City Council meeting when the 102 E. Main Street historic building that is in the process of having an addition put on next to CVS was discussed, it was mentioned, of course, that the parking waiver, which is for 20 parking spaces, had already been approved by the Planning Commission. I spoke on a number of different points about that. A lot of it had to do with the historic preservation aspect, but one point I made germane to this was that I thought that the parking waiver should be something in all cases, whether it is a project or whether it is just the parking waiver, that should be a special use permit that Council approved. My argument was that the only thing that the Planning Commission does that then doesn't come to Council, the only thing that you do that stops here, of all your recommendations and everything, is a parking waiver. Although I think the Planning Commission should have something they do, which you decide and can't have overturned some place else, I did not think that the parking waiver should be that thing. So, that argument resonated with several Councilmen, and that is how this has come to you tonight.

But, in the form that it came to you is not the form that I envisaged. I envisaged that it would be a special use permit for a parking waiver and that a single Councilman would not have to request that they review it in order to have it come, that every single parking waiver would have the full debate of the Mayor and Council, the seven people there, even, in fact, if they felt that that was beneficial. As it is now, a single Councilman will have to stick out their neck and say, but we want to discuss this. I think it is better to have the full discussion and that would be true either if it is a parking waiver that stops here and there is nothing else about the project that would come to Council or whether it is something like 102 E. Main Street or, we could name a number of other projects where there are other aspects that get discussed as well. What I was hoping to see is that, just as we have a special use permit for apartments on the Main Street – the 102 E. Main Street has ten apartments. They got approved, but they had to have a special use permit. Later tonight you are going to have a special use permit for having alcohol, which is a change that has happened in the last year or two. I feel this should be a special use permit, too.

Although I support in spirit what is here compared to what was before, I am disappointed in the form that it has taken.

Mr. Begleiter: Mrs. White, before you leave the podium, do you oppose this resolution?

Mrs. White: I support it, as I was trying to say, in spirit and in concept but in the sense that I preferred it to be a special use permit rather than there is not going to be a discussion unless a single councilman brings it up. In that sense I oppose it. I would like to have the discussion every single time. If it is a foregone conclusion, there can be the first, the second, no discussion, very little discussion and they will pass it right away. It will take no time. But, I feel that it should be an official agenda item. Parking is a big issue for those on Main Street and all of us that live in Newark and I feel that it should have official approval of a special use permit. I don't know if that answers your question, but if you can at least try to understand what I am trying to say.

Mr. Begleiter: Are there other members of the community that would like to speak on this issue? Any members of the Commission want to comment on this issue?

Ms. Dressel: I have a question, Maureen. I am not sure I understand what the difference is in the way this is worded and what Mrs. White has proposed.

Ms. Feeney Roser: Mrs. White is proposing that instead of having a parking waiver you have, in effect, a special use permit that has to be approved by Council to provide a parking waiver. In 1986 when the parking waiver system was established with Planning Commission review and approval, it was done to streamline the development process, which the department continues to be asked to look into by Council. The only time that Council doesn't see the parking waiver request is if it is a stand-alone process, which has happened. I think Caffé Gelato had a stand-alone waiver. They didn't need a special use permit or subdivision, but in most cases, Council is going to have the parking waiver as part of a package of requests in front of them anyway. The idea here was simply to make sure that it was clear that a member of Council can initiate the waiver review, which I

think was implicit anyway. Had Council asked for it at any one of their reviews, we would review the waiver again. Basically, Mrs. White is looking for an extra step in order to get the parking waiver through as a special use permit which has to be approved by Council.

Ms. Dressel: So then, because right now we have the special use permit which can include the parking waivers, they would need to go through a separate process for that independent parking waiver.

Ms. Feeney Roser: They would have to go to Council in order to have the waiver approved.

Ms. Dressel: Rather than just coming here.

Ms. Feeney Roser: Yes.

Mr. Begleiter: Any other comments or questions by members of the Commission.

Ms. Sheedy: How long would be added to the process if it was reviewed by Council?

Ms. Feeney Roser: It depends on the requirements for advertising, but generally you add another month. It is one meeting of Council for a special use permit so it is about a month longer.

Mr. Begleiter: This process or the proposed process?

Ms. Feeney Roser: No, the process that Mrs. White is suggesting.

Ms. Dressel: With this change there is no additional time.

Ms. Feeney Roser: Nothing changes. It just clarifies the language that says that Council can review and revise the Planning Commission's action based on a request by a member of Council, in addition to the Planning Director or the City Manager. That is all it does. It just makes it clear that Council can do that, although in practice they can do it anyway.

Mr. Begleiter: Angela, what this does is, it could lead to more time if a member of Council or Council decided that it wanted to spend more time on it. Of course, it would be free to do so. To me, this sounds like a permissive kind of change, that is, it merely permits the Council to do what it prefers to do about these matters rather than requiring the Council to do what we want them to do. Since we are an advisory board anyway, I think that permissive approach is the right way to handle it. Anything else from the members of the Commission? If we are ready for a vote, can I ask for a motion to approve or decline the recommendation?

MOTION BY DRESSEL, SECONDED BY OSBORNE, THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND ZONING CODE SECTION 32-45(b)(6) BB (CENTRAL BUSINESS DISTRICT) OFF-STREET PARKING OPTION SO THAT IT READS:

“WITHIN 45 DAYS, THE CITY COUNCIL MAY ALSO REVIEW, MODIFY OR DENY THE PLANNING COMMISSION’S APPROVAL, DISAPPROVAL, OR APPROVAL WITH CONDITIONS UPON THE RECOMMENDATIONS OF A MEMBER OF COUNCIL, THE PLANNING DIRECTOR OR THE CITY MANAGER. IN REVIEWING THE PLANNING COMMISSION’S ACTION, THE COUNCIL SHALL CONSIDER THE CRITERIA ESTABLISHED IN SECTION 32-45(b)(2) HEREIN.”

VOTE: 6-0

AYE: BEGLEITER, DRESSEL, McDOWELL, OSBORNE, RUSSELL, SHEEDY

NAY: NONE
ABSENT: BOWMAN

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF A PARKING WAIVER AND SPECIAL USE PERMITS FOR AN UPPER FLOOR APARTMENT AND THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES FOR A BUILDING ADDITION BETWEEN THE PROPERTIES AT 173-175 E. MAIN STREET.

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

“One February 28, 2008, the Planning Department received applications from Schlosser & Dennis, L.L.C., for a parking waiver and special use permits for a proposed building addition to be constructed between their existing buildings at 173 and 175 E. Main Street. The applicant’s building addition is to be leased for an expansion of the Ali Baba Restaurant currently located at 175 E. Main Street and to add one two-bedroom apartment to the building addition’s second floor. The applicants are applying for the required BB zoning special use permit for the upper floor apartment and a special use permit for the Ali Baba Restaurant’s sale of alcoholic beverages in the new addition. The applicants are also applying for the required five space parking waiver.

Please see the attached 173-175 site development plan, submitted on behalf of the applicants by Tetra Tech, Inc., as well as the applicants’ supporting letter.

The Planning Department’s report on this project follows:

Property Description and Related Data

1. Location:

The proposed two story addition to be constructed between 173 and 175 E. Main Street is located in the alleyway between these two buildings with a small portion of the addition extending to the rear of the 175 E. Main Street building.

2. Size:

The total site owned by Schlosser & Dennis, L.L.C., at this location, is 1.0161 acres in size; the addition will occupy approximately .0262 acres.

3. Existing Land Use:

Paved alley between two buildings fronting on E. Main Street.

4. Physical Condition of the Site:

This is a developed property that currently serves as a walkway from a rear parking area to E. Main Street.

In terms of topography, the site is quite level with almost no discernable slope.

Regarding soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service, the 173-175 E. Main Street site consists of Matapeake Sassafras Urban Land Complex soil. The Natural Resources Conservation Area indicates that this is disturbed soil that has been used for development purposes; no development limitations for the use proposed are indicated.

5. Planning and Zoning:

The 173-175 E. Main Street property is zoned BB. BB is a central business district zone that permits the following:

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

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

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

Regarding BB zoning area requirements, other than off-street parking for the change in use at the site, the 173-175 E. Main Street development plan meets all the applicable Zoning Code specifications. Based on the applicants' submittal, the plan would normally require five additional off-street spaces.

In addition, regarding area requirements, because a restaurant with alcoholic beverages is proposed to be expanded to the 173-175 E. Main Street alleyway, a Council granted special use permit is required and the following regulations will apply.

“Facilities selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements [this property is less than 300 feet from the St. John's Roman Catholic Church at the intersection of E. Main and S. Chapel Streets]:

(1) Live night club or floor show type entertainment defined as electronically amplified musical dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or non-electronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section, shall be provided with all permitted live entertainment.

(2) There shall be no carry-out liquor service.

(3) No bar facilities, defined as any counter in which alcoholic beverages may be stored, displayed, prepared, and served, and at which patrons sit and/or stand and consume alcoholic beverages, shall be permitted.

(4) There shall be no less than 50 seats in the facility.

(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m.

(6) New and existing restaurants located as specified herein shall be limited to no sale of alcoholic beverages on the premises after 12:00 midnight, unless such restaurants receive a special use permit permitting sales after 12:00 midnight, subject to the procedural requirements in Zoning Code section 32-56.4 (b) and (f)."

Regarding nearby properties, the adjoining BB zoned 173 E. Main Street building contains the Days of Knights retail store. The applicants also own the building further to the west, zoned BB, which contains the Camera's Etc. business fronting on Main Street and several food and retail businesses at the rear. Further to the west on E. Main Street, again zoned BB, is the balance of the Trader's Alley subdivision [the full Schlosser & Dennis, L.L.C. property and the adjoining property to the west share that name from a prior development approval], containing a two-story facility with first floor commercial uses, including the Iron Hill Brewery, and upper floor apartments. The parcels immediately to the east of the site fronting on E. Main Street include the BB zoned Sinclair's Café, the Main Street Cleaners, and a commercial/office property at the southwest corner of E. Main and S. Chapel Streets. Several BB zoned commercial properties are located north of the site across E. Main Street from the property.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for "commercial (pedestrian oriented)" uses at the 173-175 E. Main Street location. In addition, the Plan's Downtown Economic Strategy suggests "Downtown Core District" land uses for the site. The Strategy describes the district as:

"... [the] center of Newark's central business district that is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments however, must be carefully and closely evaluated in terms of their impact of downtown parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the

downtown economic environments; and potential significant negative impacts and nearby established businesses and residential neighborhoods.”

BB District Off-street Parking and Option Procedure

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

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

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

Also regarding the requested parking waiver, the City’s procedure specifies that applicants receiving such approvals must make a “payment in lieu of spaces” to the City to be used to improve parking downtown. The required payment in this case, based on an estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$2,678), is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	<u>\$669.50</u> (5% of cost)
Total:	\$669.50

Comments regarding the parking waiver request appear below under Departmental Comments.

Status of the Site Design

Please note that typically at this stage in the Newark subdivision review process for projects fronting on Main Street applicants are required to show the general site design and architectural character of the project. In this case, however, because the applicants are not required to apply for subdivision they are not formally required to submit color elevations of their proposed building addition. Fortunately, in the view of the Planning Department, in order to meet the spirit of our Subdivision and Development Regulations for downtown, the applicants have submitted, on a voluntary basis, the attached building elevation drawings for the Planning Commission's review and recommendation. The Department suggests, therefore, that the Commission evaluate the proposed building architectural design based on the design review criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix III (d).

Please note, in this regard, that also on a voluntary basis, the applicants agreed to review their proposed building elevation drawings with the Downtown Newark Partnership's Design Review Committee. After reviewing the drawings, the Committee indicated that because the proposal meets the DNP Design Guidelines, they recommend in favor the project. The Committee noted that the project was an "excellent example," of an in-fill development.

Be that as it may, the 173-175 E. Main Street development plan calls for a small two-story L-shaped building addition to be constructed in the alleyway between the 173 and 175 commercial properties. The parking area to the rear will need to be slightly redesigned to accommodate the bottom portion of the "L." The plan also shows that the existing curb cut on E. Main Street at the alleyway location will be replaced with raised curb. Please note, as well, that the applicants have indicated that they will place all existing electric lines in the alleyway underground. As indicated in the applicant's supporting letter, the Ali Baba restaurant will be expanded into the new first floor commercial space proposed in the alleyway.

Departmental Comments

1. To help limit the impact of the proposed apartment on downtown parking, the Planning Department suggests, as a condition of approval, the proposed dwelling unit should be deed restricted to a maximum of four tenants and tenants shall be informed in writing that no reserved off-street parking will be available at the 173-175 E. Main Street site for their use. In this regard, as the Commission will recall, this proposed condition has been utilized for similar uses in the recent past for Main Street projects to help ensure that proposed upper floor residential uses for which parking waivers are requested are "pedestrian oriented." This means, in our view, that prospective tenants must understand that if they wish to live at these locations, they must store their vehicles at off-site locations. For University of Delaware students, remote parking is available at south campus and, perhaps, other locations.

In this regard, therefore, we also suggest that the Planning Commission recommend, as a condition of approval, that the Schlosser & Dennis, L.L.C. portion of the Trader's Alley site be redesigned to eliminate all existing parking currently set aside for upper floor apartment tenants. These spaces, unfortunately, are often left vacant when tenants are not in residence at the property – especially when the University of Delaware is not in session – and, perhaps more importantly, they eliminate off-street parking vital for downtown businesses.

2. The Planning Department suggests that the Planning Commission recommend as special use permit site design conditions:
 - A. The architectural design of the proposed facades of the buildings should be carried out on all building elevations visible from public ways.
 - B. Storage areas, mechanical and all utility hardware shall be screened from view from public ways in a manner consistent with the proposed architectural design.

3. The Planning Department suggests, as a condition of the parking waiver, that the property be deed restricted to require any commercial tenants to validate parking for customers for the nearby City municipal parking facilities.
4. The Public Works Department indicates the following:
 - In conjunction with the Planning Department's suggestion above (1), the Public Works Department notes that any stacked parking, if it is to be used on the site, should be set aside for employee parking only.
 - The existing dumpster location for the site should be shown on the subdivision plan.
 - If not already in place, the applicants should secure a cross access agreement between themselves and the adjoining property owners at 177 E. Main Street for shared use of the existing parking area to the rear of their properties.
 - The Department indicates that the building addition will require handicapped accessibility from the street and the rear parking area.
5. The Electric Department indicates the following:
 - The developer will be required to pay all costs for pole relocation required in the parking lot.
 - Existing and proposed electric service meters must continue to feed from E. Main Street.
 - The developer will be required to pay for radio read meters for any new services. The cost of such meters will be determined when the type of meter is specified.
 - No trees growing over 18 ft. at maturity can be planted under the aerial lines on E. Main Street.
6. The Building Department indicates the following:
 - The addition must be constructed in accordance with the International Building Code.
 - All new construction at the site will be required to be sprinkled.
 - Additional information will be necessary during the Building Permit review process regarding the impact of the new addition on the existing wall openings in the building at 173. E. Main St.
7. The Parks Department indicates that the developer will be required to protect the street tree in front of the Ali Baba site during construction. "Tree protection details" will be required through the construction improvement or building permit process.
8. The Water and Wastewater Department indicates that sanitary sewer and water service can be made available to the location.

Recommendation

Because the proposed 173-175 E. Main Street parking waiver and special use permits, with the departmental recommended conditions, will not have a negative impact on adjacent and nearby properties, because the proposed use conforms to the development pattern in the immediate area, and because the proposed use conforms to the land use guidelines in the City of Newark's Comprehensive Plan, the Planning Department suggests **that the Planning Commission approve the 173-175 E. Main Street parking waiver,**

with the relevant conditions in this report; and that the Commission make the following recommendations to City Council:

- A. That City Council approve the 173-175 E. Main Street special use permit, for apartments in the BB district, with the relevant conditions in this report, as shown on the Tetra Tech plan dated, February 20, 2008; and,**
- B. The City Council approve the 173-175 E. Main Street special use permit for the sale of alcoholic beverages for consumption on the premises, with the relevant conditions in this report, as shown on the Tetra Tech plan, dated February 20, 2008.”**

Mr. Paul Schlosser: Paul Schlosser, part owner of Schlosser and Dennis, LLC. I have no corrections to make on this except under Departmental Comments on page #6 where it indicates that it should be deeded to a maximum of four tenants. It is not intended for that apartment to be for four tenants. It is only big enough for two people. It is going to be a two bedroom apartment, but there really is not going to be enough space for four people.

Mr. Begleiter: So, would have no objection . . .

Mr. Schlosser: I have no objection to you putting down that it is a two-unit apartment. We would like to not eliminate our parking for our existing apartments that we have above 175 (Days of Knights). If it is recommended and you would like for me to do that, we would put it in the leases to find parking some place else. Right now, we currently have parking places for the tenants. We would like to keep it that way, but so be it, I will do what you want me to do.

Mr. Begleiter: Members of the Commission, do you have any questions for Paul?

Mr. Osborne: I have not been to Ali Baba. I was just wondering if the current property where the restaurant is permits the sale of alcoholic beverages.

Mr. Schlosser: Yes, it does.

Ms. Sheedy: If I take the comment that Paul just addressed about not having parking for the apartments.

Mr. Begleiter: The apartments in his other property.

Ms. Sheedy: Am I correct that what it means is that there will not be any reserved parking but there will be no prohibition for the residents to park. Is that correct?

Mr. Begleiter: As I understand it, he would open public parking.

Mr. Schlosser: I am pretty sure that it is restricted like you are not supposed to park after one or two o'clock at night. Every once in awhile we have to go through and clean out the parking lot and tow a few cars because if you don't do that then everybody from all the other apartments slowly kind of creep in and park. So, the places we have designated for our tenants that is where our tenants park. You couldn't park there over night. It would not be 24 hour parking.

Ms. Feeney Roser: But, that is something you govern. If you wanted to give your tenants a permit so that you would know that it was okay for them to park there, you could do that. It is just that their space wouldn't be reserved. So, if they came home and there wasn't any place to park . . .

Mr. Schlosser: They would have to find some place to park, but then if they came home and found an open space, they could stay there and we wouldn't have them towed.

Mr. Osborne: So, they could stay in the parking spot up until that time at which the cars are supposed to be out of the parking lot for the reserved spaces. Right?

Mr. Schlosser: The spaces would be unreserved at all times. Let's say my tenant came home at midnight and they found an open space and they parked, it would okay for them to stay there. They would get a sticker in the window and the towing company would know not to tow them. They could stay in the parking lot over night, but people from other apartments that happened to park there could not do that.

Mr. Osborne: Under this proposal they would need a permit or sticker in the window that would allow them to keep their car in the parking lot?

Ms. Feeney Roser: They would have to have some identification on it so that Paul's towing company would know that they actually belonged there, but the space itself would not be reserved for them. As it stands, in the summertime or at other times when student tenants are not around, the spaces are still reserved and therefore, not available to serve the parking needs of downtown customers, even though the spaces are vacant. It is most noticeable in Traders Alley on the other side of you. That is what we are trying to get away from.

Mr. Begleiter: To me that sounds inconsistent. Either the spaces are not reserved or they are reserved. What does the sticker have to do with anything? Late night parking in any space in the lot not in any particular space.

Ms. Dressel: Because there is a sign that says reserved.

Mr. Begleiter: But, that would be removed under this recommendation.

Mr. Osborne: There would be more flexibility, basically, in the parking lot under the department's recommendation.

Mr. Schlosser: Say a tenant went away for a week, now, with a reserved space, that space is never used. Nobody can park there.

Ms. Dressel: Do you also own Traders Alley?

Mr. Schlosser: Yes.

Ms. Dressel: That is the property that we are talking about, then, for the parking?

Mr. Begleiter: There are two parking issues – one is the parking issue related to the property that is before us tonight and the discussion we just had is not related to that but is related to the adjacent Traders Alley property that Mr. Schlosser owns, and that is recommended as part of the Planning Director's recommendation on Page #7.

Ms. Dressel: In your first paragraph you talk about that this addition would be where Ali Baba's is expanded to.

Mr. Schlosser: Yes.

Ms. Dressel: So, there would be an opening between these two buildings. I am wondering, are these buildings going to be completely open to one another or is there actually going to be a wall? I think you also said that if you cannot negotiate terms with Ali Baba, you would use this space as additional retail. You would have an opening there?

Mr. Schlosser: Currently there is block wall construction. That wall would not be totally removed. We have been talking to Ali Baba and we think there will be three separate openings. Like I say, if we can't come to terms, we would still like to build the building and we would lease it as retail. We do not intend to put a restaurant in there. We totally intend to work it out with Ali Baba, but I don't want anyone to be surprised in case it doesn't. Then we would come back and would want to do something else. For all intents and purposes Ali Baba is going to be the tenant.

Ms. Dressel: It appears to me that the other side of Ali Baba is not your property. Is that correct?

Mr. Schlosser: No.

Ms. Dressel: Do you have an agreement with them for access to the parking?

Mr. Schlosser: No. Adele Armstrong owns that property. We have never had any type of agreement with her. She lives in Florida, I believe, when needed; we have maintained things for her in the parking lot. It has been a good neighborly situation. Though, I must say, it would be a good idea to have a parking agreement.

Ms. Dressel: That is what I am thinking because I know when I go to Ali Baba, I normally park in the back and walk through the alley. You are not going to have any potential access if there is a building there and anything happens with the owners of that other building. My thought is that it would be a good idea to have an agreement.

Mr. Schlosser: Right now we don't have any access because the alleyway is blocked off. But, obviously we could take those bollards down and we could get in. It is much better to have an agreement. I agree. Everybody may not be as cooperative as Adele Armstrong.

Mr. Begleiter: I wanted to ask also about that parking access agreement. What happens if the property currently occupied by Sinclair's and the laundry mat (the property next to you), were to come in tomorrow or next week and decide they wanted to build a building with an L-shaped back to it, or do something different on that property that would, in effect, eliminate all the parking spaces behind your proposed building because there would be no access?

Mr. Schlosser: We could get to it from going around Traders Alley, if you look at that site plan.

Mr. Begleiter: I see that it says remove and replace bollards. What you could do is remove them and make that into a driveway which would eliminate four spaces.

Mr. Schlosser: We would lose spaces to get access to the back of that.

Mr. Begleiter: So, there is an issue here, I think. I, at least, want to raise the question Madam Director for your consideration. Would you want to permit a construction based on a certain number of parking spaces, which is the policy in Newark? You have to have a certain number of spaces. The developer does not have it in his power to actually make that commitment for that number of spaces because whatever happens next to him could eliminate at least four spaces, and perhaps, cause other parking problems there. He could, then throw up his hands in the future and say, gee, I'm sorry, in good faith we promised this number of spaces but we don't have them. How does the City deal with that?

Ms. Feeney Roser: We would take that into consideration when we were considering the next development.

Mr. Begleiter: Adjacent property? If that is the case, then I think not only should it have a parking agreement, I think the City must insist that there be a parking agreement and that that agreement in some way bind the adjacent property. Otherwise, we can't grant and you can't promise the required number of parking spaces. Neither one of use has that within our power to do. I am not sure how you do that. How can you bind an adjacent property?

Mr. Schlosser: I don't think you could. I don't think I could ask Adele to do that.

Mr. Begleiter: You could ask and she could even agree, but next week she could sell her property. I am not suggesting anybody is behaving in bad faith there in any way, shape or form. I don't want that to be the intonation, I am just saying that we can't predict what is going to happen next week, next month or next year.

Mr. Schlosser: In my case, with my property, say I wanted to extend Traders Alley all the way back to my property line and remove all that parking, would you let me do that?

Mr. Osborne: You would have to ask for a waiver, right?

Mr. Schlosser: I would have to ask for a waiver.

Mr. Begleiter: Then this Commission would act on it and the Council would act on it. We don't know what would be done but, in all likelihood with rules the way they are now the City would say sorry, you can't do that.

Mr. Schlosser: So, the same thing. When somebody buys or Adele does something, they would come to you and say we want to eliminate half that parking in the back.

Mr. Begleiter: We could say no, but do we have the power. I guess this is what I am asking Maureen, does the City have the power. We could say to a future developer, no you can't eliminate your parking, but we can't say to the adjacent developer, you can't eliminate your next door neighbor's parking, or can we?

Mr. Osborne: Excuse me, Mr. Chairman, remind me why we are debating parking on another property owner's property that it is not in the scope of this?

Mr. Begleiter: If we do not debate this, then there is zero parking behind the proposed building because the only access to that parking lot at the moment is through a kindhearted and generous adjacent neighbor's property.

Ms. Feeney Roser: Although, if they were going to redevelop that property they would most likely need a parking waiver as well and, we have the ability not to approve a parking waiver that is going to adversely affect the adjacent property owners. We can say no to that and require that some access to the property is left. That is part of our procedures and options to do with the parking waiver. But, I agree with you. I think that the agreement between yourself and Ms. Armstrong is a good thing to run with the land.

Mr. Schlosser: As I am thinking about this agreement, the only wording I can think in the agreement is that we share maintenance and we are allowed that access across that property to get to ours. I don't think I can put in the agreement – nobody would sign it – that she can't take away my parking.

Mr. Begleiter: There must be precedence for this.

Ms. Feeney Roser: Cross easement agreements would generally say that you would be allowed to transverse her property which would mean that you would have to be able to do that. She couldn't block that off.

Ms. Schlosser: My one tenant would be allowed to cross over that to get to his restaurant.

Ms. Dressel: The old gas station property on Main Street, that was the property that we were also talking about a parking situation and asking an adjacent property owner to allow access so that we could eliminate the driveway for that new property and have them go through to Burger King's back lot. And, because it was going to have to go through the corner at Season's, we said we couldn't do that because that was insisting that an adjacent property owner followed a recommendation from the City Council. This seems to me to be a little bit different in that he is already, essentially, landlocked.

Mr. Begleiter: He is not landlocked if he has self-imposed bollards in place. What we could do is to require you and the owner of the adjacent property to assure access to your own parking lot from the back. What that doesn't do is replace the four missing spaces. You can't make more spaces in the Traders Alley lot. You could do stacked or something back there and you could be required to do that.

Mr. Schlosser: We could change the parking arrangement. We would lose spaces. I am sure of that. I don't think we would be able to have the same amount of spaces if we came around from the back, just the way the parking is.

Mr. Begleiter: Maureen, would it be a good idea to suggest that you take a look at similar situations in other parts of the City – maybe the site that Angela was referring to. Maybe

there are some other kinds of agreements, some language you could draft that could be implemented here.

Ms. Dressel: My only concern with this proposal that we are now making is that it is now a cut-through if we do that. If we recommend that we take these bollards out of the way between Traders Alley and Ali Baba, then you have a straight away.

Mr. Begleiter: But it goes nowhere.

Ms. Dressel: It would go from Chapel Street to wherever Traders Alley goes out to. It goes to Main Street. Does it also go to the back?

Ms. Feeney Roser: To Delaware Avenue.

Ms. Dressel: So, does that become a problem?

Mr. Osborne: So, are you proposing as part of this plan that you are relocating those bollards from where they are now over to the property line adjacent to the Armstrong property?

Mr. Schlosser: We are leaving them where they are.

Mr. Osborne: Why not consider relocating those bollards to that location so that effectively you prevent the throughway?

Mr. Schlosser: It is prevented now. The bollards are there now and the bollards are going to stay.

Mr. Osborne: But, if you left them there like they are now the only way to access those parking spaces behind Ali Baba is from the Armstrong property.

Mr. Schlosser: If for some reason Adele Armstrong said, listen you can't cross over my parking lot anymore, we could take those bollards out, put them on the property line and we would still have access from our property.

Mr. Osborne: My recommendation is that it seems like something to consider up front in terms of the recommendation here on the table so that you don't lock yourself in incase the Armstrong's have a change of heart.

Mr. Schlosser: We could change that quite easily.

Ms. Dressel: I would, actually, think that if we did that that would make their parking area really confining. My recommendation was incase anything was to happen to this other property, I would want to make sure there is a way to park behind this building because, if we were to cut it off and bollards between the two properties behind Ali Baba, then it is just a turnaround for the other property. I don't know how useful that would be for that building. It seems like they work pretty well together as it is now.

Ms. Sheedy: It seems to me that having the option and a commitment from the owner to open up that back entrance, should access be eliminated from Chapel Street, is the best option because doing it now and having access now from both directions is going to incredibly crowd up that parking lot. Everybody in back of Ali Baba is going to be over at the Iron Hill Brewery. It seems to me that that would really make things very difficult. As long as it is the same owner on both properties and we have a provision that says, if access is closed from Chapel Street then access will be created from the Traders Alley parking lot. That seems to me like it is workable.

Mr. Begleiter: I think some kind of contingent language, which is what the two of you are suggesting, is probably the answer here. There is no reason to screw up something that is working well now. We certainly should not do that and you have no interest in doing that. I'm sure your neighbor has no interest in doing that either. But, what we do have an interest in is preserving the precedent so, if we are to approve this proposal that we make it clear that

the parking access must be maintained no matter what the changes are in the future to either of your properties or your neighbor's property. So, that in the future you or somebody else who buys your property can't come before this Commission and say, my hands are tied, sorry we are going to lose all these parking spaces. We want to specifically say that that is not going to be permitted. Some kind of adjustment in the access situation is going to be required on your property's part to ensure that if the access closes in the other direction, it opens up in this direction. That would not raise the danger of a cut-through at all because if you remove the bollards, there is no cut-through.

Mr. Osborne: I have not been there but I am associating all of the parking behind Days of Knights and Traders Alley and I just kind of naturally consider the parking spaces behind Ali Baba all part of that parking lot.

Mr. Schlosser: It is except you can't drive through. You can walk, but when the alley gets closed up you can park behind Traders Alley and go out to S. Chapel Street and go around to the other side of Traders Alley.

Mr. Osborne: So, today somebody can park behind Days of Knights, and I am imagining walk through the alley and into the front of Ali Baba. Under this proposal they would no longer have an alley to walk through so they would either have to go around Traders Alley or they would have to go through the Armstrong property to Chapel Street and up and around.

Ms. Feeney Roser: Isn't there a rear access to Ali Baba?

Mr. Schlosser: We are putting a rear access in, but that rear access is for service and then we have to have rear access because we are going to have four or more apartments. So, we have to have a stair tower. My tenants will have access from the rear to get up to their apartment. They are not going to have to walk around. Right now there is a front entrance and there will be a back entrance.

Ms. Sheedy: Right now Ali Baba has a rear entrance from the parking lot for patrons. Patrons use it.

Ms. Feeney Roser: I know you can get out. I have gone out that way.

Mr. Schlosser: It may not be publicized but you can get in and out.

Mr. Begleiter: Maureen mentioned and in the report there is a reference to stacked parking. Maureen said that that was indicated on the diagram. Where does that say that?

Ms. Feeney Roser: Spaces four and five.

Mr. Begleiter: By stacked you mean one in front of the other not one on top of the other.

Ms. Feeney Roser: Stacked parking meaning one car in front of the other.

Mr. Begleiter: Does everybody understand what the term stacked parking means? You may want to find another phrase to indicate what it is because in New York they have stacked parking lots where you drive in and you get on an elevator, it goes up, and they put another car under yours.

At the top of page 7 – I don't know if you have it in front of you now – coming back to tenant parking, which we earlier discussed, about the reserved spaces in Traders Alley. I was just going to suggest that the same notice that you are going to have to give to the residents of the proposed new apartments, namely in their lease, this apartment comes with no reserved parking. I was going to suggest that that requirement be included for the tenants of the Traders Alley area also. You can choose, obviously, as you indicated yourself to give them a sticker and say after hours our towing company won't touch you if you have this sticker. But, if you are going to eliminate the reserved space, you ought to put that in the lease also and I think that ought to be part of this recommendation.

Ms. Sheedy: Would it be reasonable to say that that would be part of any future lease renewals or future leases.

Ms. Feeney Roser: You can't change the existing lease.

Mr. Schlosser: If you get two years, you are good. The current tenants will be moving out soon. It is just about that time.

Ms. Feeney Roser: So, the requirement would be for any new leases on the apartments.

Mr. Schlosser: Yes, they would not have a designated parking space.

Mr. Begleiter: Does anyone in the community want to comment on this proposal?

Mrs. Jean White: 103 Radcliffe Drive. I want to commend you on the Planning Commission for your very thorough and thoughtful examination of the parking issues that have to do with this. I wanted to point out something having to do with the item on the agenda before this. This project represents an example of the 90-95% of projects that go on to Council. Those projects, and this one, too, if there were to be – what I would have hoped – a special use parking waiver permit, in these 90-95% of the cases, it would not add an extra month, and it would all be done at the same time. There would be no additional time for advertising. Just like this has a special use permit for the alcohol, a special use permit for the expansion, and a special use permit for additional apartments that is all going to be done at the same time when it comes to Council. So, it would not need any additional time. The only time it would be that 5% or so where there is no project going on to Council. So, I just wanted to point out that the extra time would not be the case for even this project. The applicant will be happy to know that those are the only comments I have, which are more general.

Mr. Begleiter: Are there other members of the community that care to comment on this proposal?

I have one more question. Please look at your composite of your proposed building. Your proposal says that utilities that were previously going through the alley will be placed underground because they have to come from Main Street and get to the rear of the building. Where do they go underground?

Mr. Schlosser: They go underground right where the pole is.

Mr. Begleiter: At the pole not at the building.

Mr. Schlosser: Not at the building, at the pole.

Mr. Begleiter: I understand why, but the drawing shows the wires sort of magically evaporating into the brick of the building. That would be nice if we could do that, but in real life that doesn't happen. So, they will go down at the pole and go under the sidewalk and into the alley.

Mr. Schlosser: And come in the back. And then, in the back we have done a whole new meter distribution.

Mr. Begleiter: You mentioned a moment ago that there will be access to your new proposed building from the parking area. There will be a door?

Mr. Schlosser: For the apartments.

Mr. Begleiter: So there will be upstairs access.

Mr. Schlosser: There will be a stair tower in the back for the apartments upstairs.

Mr. Begleiter: Is that what causes the L to create the space for the stairs or is there something else in the L?

Mr. Schlosser: There is something else in the L. Ali Baba wants to get a little more storage space. That is the reason for the L. Because they are taking more space, they are probably going to reconfigure the kitchen. They kick the kitchen out.

Mr. Begleiter: They may have their access from the rear but in the older part of the building rather than in the new part of the building.

Mr. Schlosser: Yes.

Ms. Dressel: I was waiting for you to tell him to put the pole in the front. The wires.

Mr. Begleiter: I would be the last one to suggest that. What I didn't want to occur was to see a beautiful façade of a really nicely designed building then fixed up the way we have fixed up many other facilities in and around Main Street with these enormous ugly downspout type of wire containers. I wanted to make sure that was done on the utility pole and not the building. That was the only reason for the question.

MOTION BY DRESSEL, SECONDED BY McDOWELL, THAT THE PLANNING COMMISSION APPROVE THE 173-175 E. MAIN STREET REQUIRED FIVE SPACE PARKING WAIVER; AND FURTHER, THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE:

- A. THE 173-175 E. MAIN STREET SPECIAL USE PERMIT FOR AN APARTMENT IN THE BB DISTRICT, WITH THE RELEVANT CONDITIONS IN THE PLANNING DEPARTMENT REPORT, AND SHOWN ON THE TETRATECH PLAN DATED FEBRUARY 20, 2008, WITH THE ADDITIONAL CONDITION THAT THE PROPERTY BE DEED RESTRICTED TO ALLOW ONLY TWO TENANTS TO RESIDE IN THE APARTMENT AND THAT A CROSS EASEMENT OR OTHER ARRANGEMENTS ARE MADE TO ENSURE ACCESS TO THE EXISTING PARKING AREA; AND,
- B. THE 173-175 E. MAIN STREET SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES, WITH THE RELEVANT CONDITIONS CITED IN THE PLANNING DEPARTMENT REPORT, AS SHOWN ON THE TETRATECH PLAN, DATED FEBRUARY 20, 2008.

VOTE: 6-0
AYE: BEGLEITER, DRESSEL, McDOWELL, OSBORNE, RUSSELL, SHEEDY
NAY: NONE
ABSENT: BOWMAN

MOTION PASSED UNANIMOUSLY

4. REVIEW AND CONSIDERATION OF THE REZONING OF THE 2.87 ACRE PROPERTIES FRONTING ON LINDEN AND CENTER STREETS CURRENTLY ZONED RS (SINGLE FAMILY, DETACHED) TO RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) AND AN AMENDMENT TO THE ZONING CODE ADDING THESE ROADWAYS TO THE LIST OF PROPERTIES EXEMPT FROM THE STUDENT HOME ORDINANCE.

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

“As you can see, the Planning Department has received the attached letter and petition requesting that the RS (single family, detached) zoned properties fronting on Center and Linden Streets be rezoned to RM (multi-family dwellings – garden apartments) and that the Zoning Code be amended so that these roadways would be added to the list of streets exempt from the City’s Student Home Ordinance.

If the properties are rezoned as requested and the Student Home Ordinance list of exempt streets is amended to include Center and Linden Streets, single family detached dwellings in the areas indicated on the attached applicants' maps could be rented to up to four unrelated tenants. Without this Zoning Code change and rezoning, no more than two students can occupy such dwellings (other than units that are grandfathered).

As you may recall, the Planning Commission considered a somewhat similar request at its June 5, 2007 meeting that, if it had been approved, would have added Center Street to the list of streets exempt from the Student Home Ordinance. At that time the Commission unanimously recommended that City Council not approve this change. Subsequently, at its July 9, 2006 meeting, a motion to approve the Student Home Ordinance exempt street amendment request failed by a vote of 1-6. Previously, on April 3, 2001, the Planning Commission considered a request to add Linden Street to the list of streets exempt from the Student Home Ordinance and, at that meeting, voted unanimously against the request. Subsequently, at Council's May 14, 2001 meeting, the bill to consider the proposal died because the motion for first reading did not receive a "second."

Comprehensive Plan

As you know, rezonings are to be considered in light of the City's Comprehensive Plan. The 2003 Newark Comprehensive Plan, and the under consideration Comprehensive Development Plan IV call for single family residential (medium density) land uses within the area for which RM zoning is being requested. Since both Plans define "single family residential (medium density)" as densities ranging from four to ten dwelling units per acre and RM zoning allows up to 16 dwelling units per acre, the Planning Department believes that the proposed rezoning does not follow the guidelines in our comprehensive planning for the area.

We recognize that the applicants are requesting the RM zoning at this to increase the potential for more tenants in existing single family dwellings; however, the change in zoning would, if the parcels are combined in the future, allow for the higher density rate permitted in the RM zoning.

Recommendation

In light of the Planning Commission and Council's recent actions regarding Center and Linden Streets, and because the requested rezoning does not follow the land use guidelines called for in the City's comprehensive planning for the residential portions of Center and Linden Streets, the Planning Department suggests that the Planning Commission recommend **that City Council not approve the following:**

- A. The rezoning of the RS zoned properties fronting on Center and Linden Streets to RM, as shown on the attached Planning Department Exhibit A, dated April 1, 2008; and,**
- B. The Zoning Code amendment to add Center and Linden Streets to the list of those roadways exempt from the Student Home Ordinance."**

Ms. Feeney Roser: I have to point out that there is a typo or a mistake in your report. It says, "at that time the Commission unanimously recommended that City Council not approve this change" but in fact, you unanimously recommended that City Council approve the change but when it was considered by Council at its July 9, 2007 meeting a motion to approve the Student Home Ordinance exempt street amendment failed by a vote of 1-6.

Mr. Begleiter: Before we hear from the applicant since you corrected the record, proposedly, you have obviously reviewed that record. What was the Planning Director's recommendation to the Planning Commission at the time the Planning Commission took this issue up last on June 5, 2007.

Ms. Feeney Roser: I do not believe that there was a strong recommendation.

Mr. Begleiter: So, the Planning Director made no recommendation one way or the other in June, the Commission recommended in favor of it, the Council declined to approve it.

Ms. Feeney Roser: By a 1-6 vote.

Mr. Begleiter: Now the Planning Director is coming back and saying that it should be declined.

Ms. Feeney Roser: I think that is mainly based on the fact that it was less than a year ago that Council almost unanimously felt that they did not want to add it to the exempt streets. And, also because the Department feels very strongly that we would not recommend rezoning to RM, which are the two things you are being asked to do.

Mr. Niles Norton: I just want to say for the record, I don't want to be a single applicant. This is, basically, an area application. It is not just me alone. I did turn it in, yes.

I know that it was less than a year ago that we applied. The Planning Commission before unanimously passed and then it went to Council and Council kind of told us their feelings on the situation and they turned it down. Since that time I feel like they have made changes which would then allow for this to be brought back to the table with both Linden Street and Center Street together at the same time. What we are looking for is, there is no new development, no stacked parking, no parking waivers, no change of anything, just the majority of the homes on the street already have the permits that were requested. This change, basically, only affects, from what I figured out, five owners and seven properties of the twenty. Everyone else already has the permits grandfathered in. Overall, it would allow, should we choose to rent, there would be an increase of 11 students in entirety on Center and Linden Streets together. A year ago last June the Council said no, we want to keep this a residential area. This is what we want. Since that time, they have added a bar and housing for 40 renters seventy-five feet from my house. So, I am assuming that their feelings have changed when it comes to our area.

Ms. Feeney Roser: Are you referring to 102 E. Main Street.

Mr. Norton: Yes, which is zoned for 40. Am I correct in saying that? I think they passed for 40 people to live there, maybe?

Ms. Feeney Roser: I would have to go back and check how many apartments were approved there.

Mr. Norton: I feel that since I am well within the 300 feet that that falls under the ruling of no nightclub/bars, whatever, that the City must have had a change in feelings. That is why we brought it back. That is what we are presenting tonight. I think I have collected about 16 signatures. I am only, actually, missing three property owners that I could not get hold of. Everybody was in favor of it as you can see on there. There is a gentleman who lives on the street who is eighty-five years old that is in favor of it. We are in a student area. Even though it is zoned RS, this area, as the Planning Commission said last year, is predominantly students. It is a hardship to find families who want to move in when you have the playing fields, the tennis courts and the bars right behind your house and nobody can do anything about it.

Mr. Begleiter: Any questions from the Commission for the applicant? I counted 11 signatures. You said you had 16. Of the 11, how many properties are involved.

Mr. Osborne: It looks like 18.

Mr. Begleiter: 18 and how many of those belong to you?

Mr. Norton: 3 1/2.

Mr. Begleiter: When did you purchase the last of the properties that you own in that area?

Mr. Norton: July of 2007.

Mr. Begleiter: Was it before or after July 9, 2007?

Mr. Norton: After.

Mr. Begleiter: So, you purchased the last of these properties after the City Council unanimously declined the request to make the change you are proposing.

Mr. Norton: Yes.

Mr. Begleiter: So it is fair for me to conclude that you knew exactly what the City policy was going to be on this, and you went ahead anyway and decided that this was a good deal and a great place to invest. Is that a fair conclusion on my part?

Mr. Norton: I decided that I was tired of living next to a crack house and it needed to be fixed up. That is what I decided.

Mr. Begleiter: But, you made your last investment knowing how this was going to come out at the City Council. City Council had already voted. It was not a mystery at that point.

Mr. Norton: Actually, I am not sure of my settlement date. It was right around the time of the meeting. I had not turned in the request last time. The realtor who was selling the house was the one who requested it. I was the only one that actually showed up at the meeting, which now makes me think that the realtor, at that point, did not care. So, maybe it was already under contract. At that point I did not care what the zoning was, I cared about what I was living beside.

Are there any other questions for the applicant? Are there any members of the community that would like to comment?

Mr. Jerry Gravatt: I own 24 and 28 Center Street, which are the first two properties on the right-hand side entering off of Main Street behind Happy Harry's. I have owned the first building, number 24, for almost ten years. It has six three-bedroom apartments and it is full of students. We have maintained a very good quality building and a good selection of students. I can say from my limited experience on Center Street that the street is full of students. I know during my time there that one or two families that live across the street that back up to the practice fields for the University of Delaware have moved out because of the addition of lights, the increased activity on the street. It is not a very family oriented street. However, it is great for students. Between Niles and I, we basically keep our hands on the front of Center Street. We have done a very good job. If you do get a family to move in they are not going to stay because of the environment. Now that the Stone Balloon is gone the conditions have improved on Thursday through Saturday night. However, we still have the unfair issue of who can live there based on the location and the desirability of the area. I hope the Council considers it.

Mr. Begleiter: Are there other members of the community that would like to comment?

Ms. Francis Hart: 257 W. Main Street. I think that the zoning should remain as it is because maybe with the Washington House there more families will move in. It is important to maintain that area as it is because if there are people who want to live in downtown Newark – and I think Washington House is pretty expensive and not everyone has that kind of money – it will still be a place for people who cannot afford that kind of rent.

(Inaudible): I am the owner and occupant of 20 Linden Street. I believe I am the only owner/occupant on Linden Street. The only other houses are three rental houses. I am in favor of the change because I am going to be buying the vacant lot next door to me. I am going to be building a small house there, which I was already going to rent which I could have rented to three people as long as they were not students. I really am not looking to rent to students right now. I would really rather not deal with it. I know a number of

people who work on Main Street. I am already planning to rent to them where they can now live and work without having to drive to work creating traffic and such. So, I would be in favor of renting to four people who are not students, preferably not.

Mr. Begleiter: Why would you be in favor of renting to four instead of three?

Owner of 20 Linden Street: Instead of three? It is a more profitable use of the property. It would give more people a chance to live where they work. I am not planning on renting my house. I am staying in it.

Mrs. White: 103 Radcliffe Drive: Before you tonight, you have two separate requests, which are separate but related. Of course the first is to exempt these two streets from the Student Home Ordinance which says that in properties that have three unrelated renters that all of them cannot be college students. Two of them can be college students and the third can be a non-college student. Or in grandfathered properties of which I believe there are probably some, where four unrelated tenants are allowed. There would be four before the Student Home Ordinance was passed. Only two of the four could be college students. A student home would be defined, as I'm sure you know, as a home in which three college students live and new student homes since the Ordinance was passed have to be ten properties apart. The reason that the density is more than that is that many of those existed beforehand.

What is the purpose of the Student Home Ordinance and when it was passed? The purpose is to space student rentals so that there is a greater mix of the types of residents or potentially a greater mix as time goes on so that there aren't all student rentals, although, they can be three unrelated or four unrelated people.

The second request is to rezone Center and Linden Streets from RS to RM. This would allow instead of three, it would allow four. I am not even sure whether more than four is allowed, but it definitely allows four unrelated renters to live in each abode. By passing both of them it would allow four college students to live in them.

I oppose both requests and will explain my reasons. First of all I want to take the larger issue of rezoning from RS to RM. It would allow four unrelated renters to live there instead of three which will add to the number of cars, presumably, and potentially greater kinds of activities that comes with that increased number of renters. But, even more important and of greater concern to me and to others is that if this is all rezoned RM, if a house is torn down or properties are amassed that then apartment houses can be built in their place. This happens to be a very charming area and it fits in with the part that is behind our lovely Federal post office station and it would have the potential further down the line of destroying what is a very nice residential area. Residential includes renters. I think it is a dangerous thing. It is all very well for someone who owns property there to say that they don't intend to do it, but down the road either they or future owners, especially those who are in this for investment type of purposes, can see the potential and RM zoning can have grave consequences, from my point of view.

Secondly, exempting the two streets with or without the zoning change will allow more student homes and students to live there. I would like to make the argument about why that should not happen. Just last week, on March 26th, there was a community forum held on Main Street at the United Methodist Church sponsored by Friends of Newark, to which many towns people came. The title was "Building a Sense of Place and Economic Diversity," and its guest speaker was Donovan Rypkema, a nationally known Main Street development consultant. He made a number of interesting points, some of which I hadn't heard of. I am not going to talk about the others, but I am going to highlight two that I feel apply to this area. When he spoke, he was not talking about any particular area of Newark. That was not his purpose.

The first is that for towns to be vital and effective, towns should do everything in their power to make their town, but particularly their Main Street, preserve their individual character, that if you go to every airport, every airport looks the same. The things that make one town different from another town, particularly Main Street, the things that make them charming, their character, their historic houses, whatever it may

be, are the things that make it interesting to come to and visit that Main Street. I would submit that these two streets behind the Federal Station Post Office have a character that is interesting that is right of Main Street.

Another point that he made is that it is important to have many different types of people frequenting Main Street. He talked, first of all, to have many different types of uses. That is not germane to tonight. The other is, many different types of people, that a vibrant downtown should not just have tourists, or college students. Therefore, you want to have all ages and different types of people not just college students. Why is that relevant to tonight's issue before you? I submit that Center Street and Linden Street by not exempting them from the Student Home Ordinance means that there will be a greater likelihood and, with time, the possibility that more different types of people can live there. I do not necessarily mean that all those homes are going to convert to owner occupant families of what we think of the family with a bunch of children there. There may be one or two at the time that might do that, but what it allows is other types of renters, not necessarily whole families in the traditional sense of the whole family. For example, it could be a couple, it could be three unrelated people that are not students or it could be one student and two others. There are some examples of this already on the streets. What I am saying is that other kinds of people who would rent besides college students should find, in theory and in practice, that possibility. Once you have converted it to student rentals, it is much easier for the landlords of those streets to be catering to all college students. Whereas, this means they need to seek others, be they single, professionals, middle-aged or couples. I just want to stress that. It does not mean that these cannot be rented if you do not pass the Student Home Ordinance exemption. It does not mean that they can only rent to two people. It just means that it can't be more than two college students but there can be three.

I also wanted to correct something that was said by Mr. Norton that Council has clearly changed its view on this because it is allowing a bar at 102 E. Main Street. That was not a Council decision. That went to the Board of Adjustment. Some might think having been to that meeting that the Board of Adjustment rarely, if ever, rules on alcohol issues. Whether they made the right decision or not, time will tell. But, it was not a Council decision at all to do that.

In conclusion, I ask the Commission not to approve the zoning change and not to approve the exemption from the Student Home Ordinance. Thank you.

Mr. Ron Smith: 130 Kells Avenue. I would like to second Mrs. White's opinions. I think neighborhoods need to have some sort of balance. Right now there has been a very strong tilt towards student rentals, student housing, student neighborhoods and that particular neighborhood. I have been a resident of Newark for over 30 years and for eight of those years on Chapel Street. I know that area quite well from walking around. That was twenty years ago. At that point in time there were a lot of charming houses along Center and along Linden. They may not have the same type of charm that they had then but, I believe with changes that seem to be happening, that that kind of housing will be very attractive down the road to the type of people that Jean spoke about – people who will maintain houses in a more neighborhood way than if it were to change over to the different zoning and become exempt from the Student Home Ordinance list. I think that what we have seen is, for the most part, that anyone who does live on the streets that are owner occupied tends to leave and, of course, it become a lot more viable for investors than it does for someone to move back into those neighborhoods. It seems like an uphill battle sometimes. By letting it become exempt – at least in my opinion – seems as though you have written it of and that you endorse that to happen there. The decline and possible rebuilding of higher density, which I am not against, I think higher density downtown is good, but I think that what we have seen is not in keeping with the same things that Jean was talking about in terms of architecture of the sense of a neighborhood. So, I would also recommend against both changes.

Mr. Begleiter: Back to the table. Would any members of the Commission like to comment?

Ms. McDowell: I had a question about if a property was grandfathered. I'm not sure I understand what that means in terms of, if the property is purchased by someone else, is it still grandfathered?

Ms. Feeney Roser: It stays with the property unless the use is discontinued for more than a year. In which case, if it were vacant for a year, it would lose its grandfathered status and revert to the requirements that are in place for the district then.

Mr. Begleiter: If there is a change in the use, not just a vacancy, it also disappears?

Ms. Feeney Roser: Yes.

Mr. Begleiter: So it stays with the land, it doesn't stay with the owner.

Ms. Feeney Roser: Right.

Ms. Sheedy: When I was reviewing this the other night after going down and walking around the area, I kept being reminded of comments that were made about the Newark Country Club, "If only we had thought about this in 1949 when it was zoned, then we wouldn't have this problem now." When I look at this application and the possible change from RS to RM, I see at some point in the future people looking at it and saying, why did we change it, because now there is nothing we can do about this fairly substantial set of garden apartments are showing up where there are some pretty houses and some nice streets. I think we have an opportunity to keep something flexible, to keep part of the character of Newark. As Jean and the gentleman said, that have the potential to be very attractive at some point in the future, where people want to live close to Main Street. There is not that much neighborhood housing in downtown Newark. I would hate to see us encourage that to disappear. I understand that Niles is saying that his intent is not to tear down the buildings but merely make them more profitable. At some point somebody is going to look at this and say that that is a lot of garden apartment space. This troubles me.

Ms. Dressel: It seems to me that when we talked about this property back in June, one of the biggest issues that was concerning the owners was the fact that the University of Delaware is right behind them with big lights and a lot late evening activities and interference from the lights at the University. It seems to me that that is more of the issue than the zoning. I am wondering if there is any way – and I know that we have very little ability to tell the University of Delaware what to do with their property – in light of the new President who seems to be more in tune with the town to try to work on an agreement to, perhaps, put a barrier or redirect the lights. With the new St. Georges Bridge, they were able to redirect the light so that it does not interfere with the boaters that were in the water. Is there a way that the City could approach the University and say that this is negatively impacting these homeowners and their ability to utilize their private property? Can we work on a resolution together? That would eliminate the desire, perhaps, of the owners of these properties to keep appealing for these changes in zoning and then we would be able to retain – I think it is a beautiful street – this pretty area.

Ms. McDowell: How long have the lights been up?

Mr. Niles Norton: Since day one that those lights have been up, those of us who are residents have stood up and said, no way, don't do this to us. This isn't right. We have gotten nothing, absolutely nothing in response. They offered to give us a seven foot tall fence in lieu of a chain link fence, which does nothing. I don't know what the point of offering that is. Apparently, they say they have no rules as far as how late they can play, apparently the lights are on some kind of computer system that somebody controls from elsewhere. I do appreciate everyone saying how beautiful the street is because we take very good care of it. That is why it is as nice as it is.

Ms. McDowell: How long have the lights been up?

Mr. Norton: I want to say four years and every single year someone else leaves. It used to be a residential area. When I first moved there it was. Now it is not.

Ms. McDowell: You can say that about a lot of areas in Newark, though. I grew up in Newark and my grandparents lived in “skid row” for 50 years. I grew up on Cleveland Avenue and played with lots of neighborhood kids and there weren’t lights that drove the families out.

Mr. Norton: We have marching bands, too.

Ms. McDowell: Helicopters in the summer.

Mr. Norton: And rugby games on Saturdays. The streets are full of student parking and the Police don’t want to come and ticket because they have better things to do, understandably. You call and complain and nothing happens.

Ms. Dressel: It seems to me it is an issue with the parking and on the situation behind these properties as opposed to a zoning issue.

Mr. Osborne: It sounds like a very hopeless kind of situation. It must be frustrating.

Mr. Norton: Honestly, I just had two young teachers tell me last night that they were leaving. They had been there for one year. I had a young family with a child who up and left. They didn’t want to deal with it anymore. They told me last night that they want to move out in September. This is an unnecessary hardship trying to find a family to live there.

Ms. Feeney Roser: When I reviewed the minutes from the last time you reviewed it, this subject came up again and Mr. Lopata said that he knew there had been complaints and the City had met with the University and were not able to resolve the situation as far as he knew. It is a new administration and I would think that if the Commission wanted to suggest that staff re-approach the issue as part of your recommendation, we certainly could try to do it again. I am not sure it will be successful, but we could certainly try again.

Mr. Osborne: I don’t know if you have talked to your Council representative and whether he or she has been able to.

Mr. Norton: Our Councilman is Stu Markham. We have talked to everyone. We have had meetings with just the residents and the University that the City has not been involved in. We have had meetings with the City and the University. We have been through everywhere. It is nice to hear people say we will try to do something. That is what we have been hearing for four years. People have left because of that. I don’t know who has the power to do something about it, but whoever that person is, they are not doing anything about it as far as the University goes.

Mr. Osborne: What affect, other than managing the turnover in terms of people leaving, is that having on the street?

Mr. Norton: We are trapped between students and the University. On one side of the street you have parties, the other side you have a game going on. It is just the reality of where we are. You know where the street is. We are the walkway from Cleveland Avenue to Main Street. Every kid who leaves the bar and goes to Cleveland Avenue comes up our street throwing their beer cans.

Ms. McDowell: You know what, though, I have a friend who, I read in the Newark Histories Book, was the fifth generation to live on Choate Street, which I do believe has the zoning which I believe you are looking for.

Mr. Begleiter: Part of it does.

Ms. McDowell: Her address is right across from the ones we just discussed a few meetings ago that were being proposed. And, I was surprised to learn that she moved because she just couldn’t take all the student housing anymore. It saddened me that five generations lived there and she just couldn’t take what was happening around her and the

student housing. I bite my tongue a lot because I have seen student housing move in around the town in my entire life, and I have a hard time accepting arguments for why it is a good idea when it, pretty much, was free reign for quite awhile and now we are trying to, kind of, contain it and keep it a little more controlled.

Mr. Begleiter: Let me focus the Commission's attention for a minute. We are being asked to approve this motion to change the zoning and in effect create more student housing. We are not here tonight going to solve the lighting problem or the beer can problem or any of those things. The proposal you made, Mr. Norton, would not ameliorate the beer can problem or the walking through to Cleveland Avenue problem or the light problem. Am I correct?

Mr. Norton: Correct, but basically, the only problem is I won't have to discriminate against who I can rent to.

Mr. Begleiter: It is nice to talk about this issue but it is not what we are voting on or what we are being expected to deal with. We are not going to solve the problem that we are all talking about and so, I would suggest we focus our attention on what we are being asked to do tonight.

Ms. McDowell: I also commented on the last meeting when you were here that I was surprised that both those street were already zoned.

Mr. Norton: Most people think they are.

Ms. McDowell: I am also thinking about the references that are made for how it seems to be going against the Comprehensive Plan, and I know we have spent a lot of time over the last couple months scrutinizing the Comprehensive Plan, too. So, I am taking that into consideration as well.

Ms. Feeney Roser: That is the rezoning part of this request.

Mr. Begleiter: I will just make a comment that I agree with many of those who have spoken tonight about the special nature of this community, the residential nature of this community. People have used the word charming, special character. It is an enclave and I can't think of another one on either side of Main Street, actually, that comes anywhere close to the character of this neighborhood. I think it is important for us to keep our eye on the ball to create incentives for improving neighborhoods like this rather than move in the direction of sort of throwing up our hands and saying if you can't fight them, join them. Things are changing in the area and none of us has any idea about how they are going to turn out. Washington House is being built and, honestly, it is beyond me to understand why anybody would buy a condominium unit overlooking with their balcony the fire siren tower of the fire station, but I think it is somewhat comparable to living in one of these properties overlooking the lights of the University of Delaware. Maybe there is a solution. Maybe that last comment of mine will be proven in a year or two from now to be totally off the wall and those Washington House places will sell like gangbusters and the fire tower will be gone. So, I guess what I am saying is I think we should try to keep our focus on ways to create incentives for improvement rather than moving in the direction of throwing up our hands.

I would also like, just at this moment, to commend the residents of that neighborhood who have, in fact, maintained the area in an exemplary manner, perhaps in the face of odds that are daunting. I enjoy walking down Linden and walking down New Street and walking down Center and driving along those streets, and I would hate to see that lost as a result of what I would characterize as a kind of expedient move at this time.

MOTION BY SHEEDY, SECONDED BY DRESSEL, THAT CITY COUNCIL NOT APPROVE THE FOLLOWING:

- A. THE REZONING OF THE RS ZONED PROPERTIES FRONTING ON CENTER AND LINDEN STREETS TO RM, AS SHOWN ON THE

ATTACHED PLANNING DEPARTMENT EXHIBIT A, DATED APRIL, 2009;
AND,

B. THE ZONING CODE AMENDMENT TO ADD CENTER AND LINDEN
STREETS TO THE LIST OF THOSE ROADWAYS EXEMPT FROM THE
STUDENT HOME ORDINANCE.

C. THE COMMISSION ADDED THAT THEY URGE CITY COUNCIL TO
DISCUSS WITH THE UNIVERSITY OF DELAWARE EFFORTS TO
IMPROVE THE QUALITY OF LIFE FOR OWNER-OCCUPANTS ON
CENTER STREET.

VOTE: 6-0

AYE: BEGLEITER, DRESSEL, McDOWELL, OSBORNE, RUSSELL,
SHEEDY

NAY: NONE

ABSENT: BOWMAN

MOTION PASSED UNANIMOUSLY

Meeting adjourned at 9:25 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission