

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

December 4, 2018

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Will Hurd
Frank McIntosh
Stacy McNatt
Bob Stozek
Tom Wampler

Commissioners Absent: None

Staff Present: Mary Ellen Gray, Planning and Development Director
Mike Fortner, Planner
Paul Bilodeau, City Solicitor

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

1. CHAIR’S REMARKS.

Mr. Silverman: I’d like to call to order the City of Newark Planning Commission meeting for Tuesday, December 4, 2018. We have a rather full agenda with several proposals. Under Chair’s Comments, I’d like to bring to the Commission and the public’s attention Councilman Lawhorn housing analysis on rental and student housing that is available on the City site. This is a continuation of the earlier work that the Planning Commission has been doing.

Ms. Stacy McNatt: I don’t know if your microphone is on.

Ms. Silverman: It’s on.

Mr. Will Hurd: You just have to get closer.

Mr. Silverman: I’ll try it this way.

Ms. Mary Ellen Gray: There you go.

Mr. Hurd: There we go.

Mr. Silverman: It’s just a very awkward situation to work with, with papers spread out. I’d like to call to the Commission’s attention and to the public’s attention that Councilperson Lawhorn has done a further analysis that I understand that the Planning Commission may be seeing in the near future with respect to rental needs and student housing needs in our community. If there is any proposal for, potential proposal for workshops in January, copies are available on the City website.

Will, if we can have a very quick status report on your Green Committee.

Mr. Hurd: Oh, sure. We met last week . . . I think it was last week. It was good introductory meeting. We had a few people who couldn't make it at that meeting. I think that's going to be standard that we're going to be missing a few people. But we kind of started to talk around the areas of focus that we want to be sure that the Green Code amendments that we propose address. And no big surprise, energy is the biggest one that we're feeling needs to be addressed. And we talked a little bit about what, sort of functionally how the Code amendments need to work, which is similar to the way they are now, so that the Code Enforcement staff can review and enforce and evaluate without requiring additional training or a third-party certification.

Mr. Silverman: Okay. Thank you.

2. THE MINUTES OF THE OCTOBER 16, 2018 AND NOVEMBER 6, 2018 PLANNING COMMISSION MEETINGS.

Mr. Silverman: Moving on to the next item on our agenda, we'll consider minutes. We have two sets of minutes to consider. The Chair entertains a motion for the approval of the October 16, 2018 minutes.

Mr. Hurd: I so move.

Mr. Silverman: There are some additions and corrections that have been submitted. The copies are in your packets, Commissioners, and I believe they're on the City website.

Ms. Gray: Meeting minutes? Not until they're approved.

Mr. Silverman: Okay.

[Secretary's Note: A draft copy of the meeting minutes was posted to the City of Newark website on November 30, 2018, one week prior to the Planning Commission meeting.]

Mr. Silverman: Will, if you'll correct your motion.

Mr. Hurd: Oh, sure. I move that we accept the minutes as amended, or as corrected.

Mr. Silverman: Is there a second?

Mr. Frank McIntosh: Second.

Ms. McNatt: Second.

Mr. Silverman: Okay, all those in favor, signify by saying Aye. All those opposed, signify by saying Nay. The minutes of the meeting of the 16th of October are approved.

MOTION BY HURD, SECONDED BY MCINTOSH THAT THE AMENDED MINUTES OF THE OCTOBER 16, 2018 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 7-0

AYE: CRONIN, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK, WAMPLER

NAY: NONE

MOTION PASSED

Mr. Silverman: Moving on to the Planning Commission meeting of November 6, 2018, there are some additions and corrections to those minutes that have been submitted. The Chair will entertain a motion to approve the minutes with corrections.

Mr. Hurd: I move that we accept the minutes of the November 6, 2018 meeting, as corrected.

Mr. Silverman: Is there a second?

Ms. McNatt: Second.

Mr. Silverman: All those in favor, signify by saying Aye. All those opposed, Nay. The minutes are approved.

MOTION BY HURD, SECONDED BY MCNATT THAT THE CORRECTED MINUTES OF THE NOVEMBER 6, 2018 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 7-0

AYE: CRONIN, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK, WAMPLER

NAY: NONE

MOTION PASSED

3. PRESENTATION AND DISCUSSION LEAD BY MAX WALTON, ESQUIRE, IN CONJUNCTION WITH PAUL BILODEAU, OF CHAPTER 32, ARTICLE XXVI SITE PLAN APPROVAL PROVISION OF CITY OF NEWARK.

Mr. Silverman: We can move, then, to Item 3 on our agenda. Madam Director?

Ms. Gray: Thank you, Mr. Chair. This agenda item is the presentation and discussion of the site plan approval provision. This agenda item is a follow-up to a discussion at the November 6 Planning Commission meeting regarding the site plan approval provision of the Code. In order to facilitate this discussion, I asked Max Walton, in conjunction with Paul Bilodeau, to make a presentation on this Code provision. The goal of this presentation and discussion is to have the Planning Commission come away from this discussion with a better understanding of the Code provision, the Planning Commission's authority, and how this provision can be utilized in order to facilitate projects under this Code provision to be creative, innovative, and to demonstrate distinctiveness and excellence of site arrangement and design. Mr. Walton?

[Secretary's Note: During the presentation, Mr. Walton referred to a PowerPoint presentation being displayed for the benefit of the Planning Commission and public. A link to the presentation can be found at the end of this document. In addition, a link to the Planning and Development Department memorandum regarding the site plan approval provision of the City of Newark can be found at the end of this document.]

Mr. Max Walton: Thank you. I don't know, do I have to stand at the podium?

Ms. Gray: You need a microphone.

Mr. Walton: Oh, that's just terrible.

Ms. Gray: You can just hold onto it, though.

Mr. Walton: Oh, I can walk around like Bob Barker?

Mr. Silverman: Yes.

Ms. Gray: Yeah, if you can get it off. There you go.

Mr. Walton: Alright, this is going to be hard for me to hold the microphone and walk around and talk. So, for those of you who don't know me, I'm Max Walton. I'm with the firm of Connolly Gallagher. I have lived in Newark my entire life and I started representing the City of

Newark in 2005 and I have been litigation counsel ever since. And my first project for the City of Newark for those old enough to remember or who have been around long enough, after the City lost a \$45 million judgment against them for the reservoir, I was the guy they called to fix it. So, I got that case after trial and have been hanging around ever since. So, I appreciate the opportunity to speak. I also am a Senior Fellow with the University of Delaware's Institute of Public Administration, where I teach land-use, constitutional law and other things, and I think that's why Mary Ellen asked me to come here today.

So, site plan approval. So, the site plan approval statute was passed on November 27, 1972. I was born September 5, 1972, so we're exactly the same age. So, ultimately I represent probably, I'll take a guess, twenty municipalities as outside counsel and about five state agencies, and I will tell you that the site plan approval process in Newark is unique. It's very unique. It's different than anywhere that I've ever seen. The trend ultimately in the jurisdictions that I represent is to have flexibility in their planning because there is not, ultimately, if you do not have flexibility in planning, you can't sort of react to things and do different things and do innovative things. And usually what's been going on is that there's a master plan created and that's not a comprehensive plan. It's a master plan where we're going to try to do these things. What has occurred thus far is when people want to do downtown districts or mixed-use or what-have-you, they create a very narrow set of uses for that particular thing and there's a bunch of chopped up, ultimately, zoning districts that don't happen or that are very difficult, excuse me, those zoning districts are very difficult if somebody wants to get on one side or the other of the little line, and they get very small. Without boring you with all the history, that relates to a case called Farmers for Fairness that happened in about 2007 or 2008, and that's why we have all these chopped up districts in other places. But what they're trying to do is obtain zoning and subdivision flexibility to make the best projects that they can. So, what I tell everybody is you have to go to Newark and look at what they do in their site plan approval process, because that's where you get the flexibility that you're looking for.

So, ultimately if you look at site plan approval, and this provision has been in the Code since 1972, it's there to encourage variety and flexibility in development, and that's exactly what planners, and with my work with the APA, have been advocating across the country, especially with the density and the walkability. So, how does it work, right? So, in Newark, you really have two options if you want to build something. You can go and you have the right to build . . . and I see my friend Mr. Hoffman is back there and he's a developer's attorney and I'm a government attorney, so we don't get along all that well. Just kidding, we've known each other for years. You can build by-right and you can say I have a right to build this. And you can do that in Newark, too. You can go in and whether or not it's BB, RM, RH, whatever it is, you can build by-right. And that's set forth in the beginning portions of the Zoning Code. And whatever you're allowed to do, you're allowed to do. So, I give an example here. So, if we take, what district did I use, RH, and that's one-family housing, essentially, you can build on a minimum lot size of a half-acre. I can walk in here, I'll take my parents' farm which lies just outside the City limits . . . I said I've lived in Newark all my life but, no, I've lived in throwing distance of Newark all my life. But, ultimately I can take my parents' farm which is 15 acres, divide it up, basically, and with 15 acres, I can get 30 houses. That's what I could do if I were in the City of Newark. So, if I go to site plan approval, I have to meet all the criteria of 32-97, but I can get a density bonus for up to four units per acre, so essentially doubling, but I have to set aside certain open space and I'm allowed to have my residential dwelling types change. So, it is, and we're going to test my memory because I don't have my notes, but I think it is in 32-98.2(h), if I remember correctly, and I can get a change of dwelling types and I'm not limited to just the single-family housing. I would imagine, and that is of itself, kind of a by-right use. You're allowed to do it under the Code.

So, the big confusion, I think, that has been in site plan review, and I have defended the City in a case brought about by the site plan review process, the big confusion is some think that that's zoning. No, it's not zoning. Site plan review is not zoning. The property is already zoned. This is a permitted use under the zoning if you meet the definitions and criteria that are set forth

therein. So, you can either meet the requirements, do what the Planning Commission and City Council tells you to do, meet the requirements of Code, or you can do what you're allowed to do by-right, which is in whatever zoning district it is. And, you can also, and this is as components of a residential plan, you can add commercial uses that are set forth herein that you wouldn't be able to do by-right in any residential classification.

So, why is this unique? It creates a tremendous amount of discretion from the Council, or by the Council and by the Planning Department, but that doesn't mean that within the description the code standards don't need to be followed. They absolutely do. So, we always start in site plan review, and you have to excuse me because I don't bring plans before you, as you all know. You've never seen me stand up here and say build something, so if I get a little bit of the process wrong, please bear with me. I know Mr. Cronin will. He's always telling me straight. But, ultimately, these are the criteria that are set forth through 32-97(a), right? And those criteria apply on all site plan review applications. You have to satisfy these things. By the way, they've been in there since November 27, 1972. There have been some changes along the way, but you have to satisfy the criteria. And working through the Code textually, the way I read the Code, and Paul, please tell me if I'm wrong, but the way I read the Code is that under 32-98.2, right, for density bonus, you only need to satisfy the criteria in 32-97(a), which is the main section. And for those of you on the Planning Commission, you also know that there's 32-98.3, which has different standards. That's where you get into architecture and parking, and all that stuff. Well, the weird part is there's a little bit of overlap between 32-97(a) and the standards in 32-98.3. So, ultimately, there's overlap, and I think it's fine and as I've read, the very few that I've read, where 32.97, excuse me, 32.98.3 standards apply for things like architecture, I think it's fine to borrow those standards because that seems to be what has happened in the past. Those standards are borrowed. But as a textual matter, those standards only apply unless there's a use that's changed that's outlined in the City Code. And the use is in Section 32-98.1, right, and that use, if you're going to ever use 32-98.1, if you wind around the Code, it's got to be at least five acres as a site. So, what is a 32-98.1 use? You guys are more familiar with it than I am. It's architecture, site design, signage, transportation, roadways, open common spaces, and tree and landscaping, to name a few. Those are the standards you have to get. But let me go back. That's only as a requirement in the Code if you want a change in use in 32-98.1.

Mr. Silverman: The density bonus?

Mr. Walton: The density bonus. No, the uses, the commercial . . .

Mr. Hurd: The commercial use.

Mr. Walton: Yes, commercial uses. And the commercial uses section, that's also where you have a change in the housing type. That would be Section (h), 32 . . . so it's got to be at least five acres.

So, how was this done in 1972 and then again in the 80s and again in 1995? Well, one thing that's remained very constant, and if anybody wants to look at them, I have them over here are the old laws, the one thing that's really very, very constant is the Planning Commission has a great deal of discretion and they're supposed to encourage flexibility and creativity in site design. A little bit in the eye of the beholder, I won't argue, but I think the point is that it's supposed to be a little bit in the eye of the beholder.

You guys know about the detailed review process so before it ever gets to you, before a plan ever gets to you, it's got to go through Mary Ellen, the Planning Department, it also goes to City Manager . . . which I find interesting, I'll have to talk to Tom about whatever comments he's made on plans . . . but the City Fire Marshal, etc. Before it ever comes to you, all those comments, and I assume Mary Ellen will say that she gathers those comments and they're all part of your submission.

So, you are, and I'm just quoting the Code, you are, as the Planning Commission, you are allowed to make recommendations, lot sizes, yard dimensions, distance between buildings, density, the placement of signs, etc. It's a pretty broad discretion that you have or a lot of different things that you can look at when evaluating a plan. So, you're also allowed to add conditions to any approval and that is set forth in the Code, so very clearly, you've been vested with that authority by the City Council. And, you may recommend approval, approval with conditions, or disapproval of an application. And so, with that, you don't have to say up or down on every single application. You may approve it with conditions.

Are you good with everything I've said, Paul, because I don't want to get in trouble later?

Mr. Paul Bilodeau: Mr. Walton, you're doing just fine.

Mr. Walton: Thank you. Alright, I have to check in. Mr. Hoffman, I'm sure, will be critical of me, but that's okay. And so, bottom line is, if you don't think the criteria in 97(a) are met, right, or if you don't believe the criteria for use changes in 32-98.1, as set forth in 32-98.1 and 32-98.3 have been met, you can recommend that these elements be altered before it goes forward. So, you have a lot of discretion.

You know the great thing about being on the Planning Commission? It's that you're a recommending body. You're not a final approval body. You laugh at me, but I'm going to tell you, that's a big deal because you know why? Because if somebody is going to sue you for constitutional damages, they can't sue the Planning Commission. They have to sue the final decision-maker, which is the City Council. So, if they're going to sue you for a violation of their constitutional rights, they can't. You just recommended. You didn't make any decision. You didn't make the final decision. So, it's great to be on the Planning Commission. The problem with being on the Planning Commission is, also, that you don't get to make the final decision. Right? You can be overridden.

So, I thought that I was sent here just to talk about the site plan approval process, but I thought I would also make a couple of recommendations based upon all the minutes that I have read, which is not a ton of them, but after you look through a file and I'm asked to comment, I look at land-use applications on occasion, I'm going to give you my recommendations, and Mary Ellen and Paul can correct me if I'm wrong or say I'm wrong. But, ultimately, I think that the Planning Commission should assist the Council and should also state in the record the reasons for their particular vote. And there's an old case, it's called Tate v. Miles and it says, and it's a rezoning context, it says in that case the town council cannot just vote on a particular rezoning application. They needed to set forth whether or not the statutory standards have been met. And I think that when we're going through site plan approval, we also need to state whether or not the statutory standards have been met. Whether or not that's 32-97(a) or 32-98.3, we have to go through those statutory standards. So, how are we going to do that? So, you say whether or not the criteria will be set forth. And I have talked with Mary Ellen about this before we really got going and I think that's going to require a little bit of change to the way that the report is written and set forth in order to try to implement that going forward for new plans, to set forth the, you know, whether or not, set forth the statutory element and whether or not they feel that they've been met. And when I say they, I mean the Planning Department. So, I think it then becomes very easy for you all to articulate whether or not you agree or disagree. And you can say, just state the reasons for the record, if you think it's met all the standards, you can say, for the reasons set forth in the Planning Director's report, I approve. And if you don't think that the standards have been met, I agree with everything in the Planning Director's report except for, and I think I have an example here, I did not agree with the findings on site design, signage and tree planting, to give an example. And then you say why those standards haven't been met. And with that, it's an articulation of whether or not those statutory criteria have been satisfied. And we're going to try to make that easier for you going forward. I'm going to try to give it something you can balance against. I think Mr. Hoffman will back me up when I have to defend zonings, one of the hardest things that I have to do, and I've defended a lot of them, is say whether or not what the Council said was sufficient under the law to qualify

under this Tate v. Miles standard and there was a case just last year where the people said all kinds of stuff but they didn't actually articulate whether the statute was met. And since they didn't do that, the rezoning was overturned. So, it's something to keep in mind. Why? Well, if you get somebody, ultimately, if you get somebody, you end up having to hire me to defend, right, and I don't want to be talking about this. I want to make sure that there's a statutory reason that I can stand up and say the action was correct but not arbitrary or capricious because the statutory factors have been satisfied.

My second overall recommendation, and I don't think this needs to be done right away. I think it needs to be done at some point in time in the future, just as the evolution of the City Code, and I go through codes from different places all the time. I always have to pick up the code and I always pick up all these anomalies from different things. They're in the State Code and they're in your Code. Site plan approval, it's really a subdivision and it's in the Zoning Code. So, the permitted uses, like the density bonuses and those kinds of things, should remain in the Zoning Code. I think the procedure probably belongs best not within the Zoning Code. Does it hurt anything being there? No, but as a practical matter, it's really a subdivision. Because what are you doing? You're saying that under the Code standards that are already set forth in the Code and what the Council has already allowed you to do in this particular district, and it could be in any district, you're allowed to do it, so then there's a process that you have to go through to get approval. So, I would argue that's something that you should do or think about. Again, not this year but in the future. There's a case that I defended, and it was Woodman v. City of Newark, and it was a very odd case because a similar challenge was made that essentially said that site plan approval is zoning, and it's not. It's subdivision approval.

Mr. Silverman: Max?

Mr. Walton: I'm sorry, I'm almost done. I had no voice two days ago, so bear with me, I'm doing the best I can. And believe me, as much as I talk, it's really hard not to have a voice. I'm talking all the time. But there was a challenge made and in the oddest set of circumstances, the plaintiff in that case passed away and they didn't move forward with the case, so I never got an answer to the question of whether or not it was subdivision or zoning. I was very convinced we were going to win on that point. I believe that site plan approval is what it is, and it is a subdivision function. It's not a zoning function because the uses are already allowed by Code.

So, here's my conclusion. I get calls probably three, four or five times a year where they say, hey, we need more flexibility in our zoning code. Well you guys already have it. Utilize it. Utilize it the best. That's what made Newark. That's what made the distinctive designs. It is a model. I think it should be used for other jurisdictions, although I think they ought to put it in their subdivision code, as I mentioned. And, ultimately, it's been around for 46 years and I think it's allowed the City to do some really creative things and I think it's done well for the City. It was way ahead of its time. Way ahead of its time. And so, therefore, it's my view it is a good thing and it does provide flexibility and it allows you, the Planning Commission, much discretion in making sure projects are first-rate in the town that I've grown up in and I love, and I love being here, and I appreciate the opportunity to speak. And I don't know if anyone has any questions for me.

Mr. Wampler: I don't have any questions, but I do have a comment and that is I want to thank you for your presentation. And Mary Ellen, I want to thank you for the document that you sent us. I found it, it's a complicated process, and I found laying out the sequence of the method to be very helpful in understanding it. So, thanks again for that.

Ms. Gray: You're welcome.

Mr. Bilodeau: So, Max, just so that with the site review process, where there's setback differences, those are not variances, technically, are they?

Mr. Walton: That's correct. We have to do this on a case-by-case basis, right . . .

Mr. Bilodeau: Correct.

Mr. Walton: But just looking at the design features, no, I don't think they would be a variance. So, here's the thing, I get to be a professor tonight, so you can't sue me for malpractice, Paul, if I got that question wrong. Right?

Mr. Bilodeau: I'm setting you up, yeah.

Mr. Walton: Just setting it up. No, I think that's fine. I think that's contemplated in the Code, yes. It's part of the design features. It's not a variance. It would be a variance if you went under a by-right plan and you didn't want to do the setbacks, then you would be required to get a variance. Any further questions?

Mr. Silverman: Max, you're saying that this process actually gives the Planning Commission some room to negotiate with respect to site design that does not exist in a by-right plan?

Mr. Walton: It does but be careful with negotiation, okay?

Mr. Silverman: That's why I hesitated on the word.

Mr. Walton: You can make comments, so the case is *Koontz v. St. Johns River Authority* U.S. Supreme Court case. I wouldn't call it negotiation because with that case, if you negotiate and what you ask for turns out to be an unconstitutional condition, you can be subject to takings damages. The site plan approval, let's stick with what you're allowed to do. I'm trying to get back to that slide. Let's see, you're allowed to discuss lot size, yard size, it mentions all of these things, which by Code you're allowed to do. You can come in here and you can say I don't like this, I don't like that, things ought to change. But I don't know that it's a negotiation, so to speak, it's more of a you're the approval body and they need to satisfy what you say needs to happen. I just don't like the word negotiation.

Mr. Silverman: Any other questions? Mr. Cronin?

Mr. Cronin: Yes, can we get copies of the presentation you used tonight?

Mr. Walton: Sure. Since I didn't get here until about ten after six, I didn't have the opportunity to get it out, so . . .

Mr. Cronin: I'm very patient. Thank you.

Mr. Walton: Alright. I appreciate, and to all the folks who have plans, I'm sorry I took so long, but I appreciate the opportunity. And Mary Ellen, I'll come back if there's ever a need for me to come back. So, thank you all very much.

Ms. Gray: Thank you.

Mr. Silverman: Thank you, Mr. Walton. We'll move on to the next item.

Ms. Jean White: Is it open to the public?

Mr. Silverman: No, this is not open to the public. This is a presentation to the Commission.

4. REVIEW AND CONSIDERATION OF WORKPLAN FOR THE PARKING SUBCOMMITTEE STRATEGY.

Mr. Silverman: We'll move on to our next agenda item, review and consideration of the workplan for the Parking Subcommittee Strategy. And, Madam Director, do you have some comments?

Ms. Gray: Yes, Mr. Chair, thank you. By way of background, the Planning Commission recommended approval of the Parking Subcommittee Strategy at their June 5, 2018 Planning Commission meeting. The City Council approved the strategy at their June 25, 2018 Council meeting and requested that staff do a technical review of the Parking Subcommittee findings and present an implementation plan that includes prioritization, cost analysis and timelines. Staff has put together a technical review of the Parking Subcommittee report which includes a background of the history of parking in Newark, the Planning Commission's Parking Subcommittee process, a discussion of the vision and strategic issues identified by the Parking Subcommittee, and an implementation component which is comprised of a discussion of each strategy, the rationale or benefits, estimated costs, gap analysis, and timeline, all of which is summarized in the matrix entitled at the back of the report, Parking Policy Matrix Timeline and Costs. Staff is looking for feedback and a recommendation to Council on the implementation component. And Mr. Fortner is here ready to give you the outline of the workplan. Thank you.

[Secretary's Note: During his presentation, Mr. Fortner referred to a PowerPoint presentation being displayed for the benefit of the Planning Commission and public. A link to the presentation as well as the Planning and Development Department staff technical review of the Planning Commission's Parking Subcommittee Report can be found at the end of this document.]

Mr. Mike Fortner: Thank you, Chairman and Planning Commission members. I'll try to go through this very quickly. You have the report in front of you. The format of it is that I give a background, I give a vision of strategic issues which I'm not going to go through in this presentation because you already heard that presentation, but just to say that's the core or crux of the reason for this. We tried to use the best practices and principles that are in the field when we evaluated the strategic issues and I hope that's illustrated in the report. Then we get into the policy layers and the implementation timeline and costs.

Regarding the vision, the vision of the Parking Subcommittee was to create an integrated, holistic approach to parking and so they had three things of doing effective management of the current parking supply, creating a people-oriented community design with walkable communities, bicycle-friendly, mixed-use densities where appropriate, and then also having a cultural shift in the way we think about parking and the assumptions we make when we plan for parking. And then this conforms with the principles and the vision of our Newark Comprehensive Development Plan V for a healthy, active, sustainable, and inclusive community. And those are the things pulled from the vision portion of the plan that coincide with kind of this new parking holistic approach.

That's the policy matrix, which there were three layers. There's basically an efficiency layer, there's kind of what we called the evaluation and demand layer, or the community design layer, and then, finally, increasing access to parking. Those are the three layers and the different recommendations for each one.

So, the first layer, the policy layer #1, is managing the existing parking supply. So, we had 1-A which is increasing the wayfinding. That's an example of the sign that's been implemented on all three lots. It was an approach that was advocated for. The next stage of that is to have a collection sign so when you first come onto Main Street in certain areas, you can see all the parking lot areas in one sign and you could make a decision as you are driving in, say near the Newark Shopping Center, you could make a decision as to what lots where parking is available. And we have it on the website, too, which is now real-time GIS, and I know you've seen some presentations on that already. And then the next step is having a parking smart app. And so, the analysis goes into two where some cities have invented their own app and other cities are using already existing apps that are already crowd-sourced or already developed. I've downloaded several of them that were recommended and this BestParking app was just, as a side, was really good. In Philadelphia you put a location and it shows you all the locations to park and the price. You can make a decision and it will sometimes give you a discount, but then you can buy the parking right there or you just know there's parking. It's doesn't necessarily

have counts of what parking is available, but I used that to get to the Franklin Institute in Philadelphia and to park there was \$27, but I found a place for \$16 that I could park just a few blocks away. And it did the same when I saw a show at the Wells Fargo Center. There were other private lots that I saved about \$10 or \$15 using this app, so it was a very effective app. Also, Waze is a very effective app. It doesn't give you the supply but it does direct you to the parking. If you put in Caffè Gelato, it will tell you where to park and it will basically direct you to Lot #3. So, these kinds of things are already existing and so the next level of that is data-sharing and coordinating with these apps so they know more about us. For example, BestParking doesn't necessarily know about Newark. It can tell you where parking is, but it doesn't direct you there or anything like that.

Next, we go to the dynamic fee structure which we talk about and it presents some examples of how different communities are using those. We talk about a tier approach. It's also recommended that we implement some other things before we go to this dynamic fee structure. Also, the marketing strategy is where you are educating people on where and how this stuff is used and providing examples of what communities are doing, from making videos, different apps that they use, different wayfinding signage, and it's important that we communicate to the public how this parking system works. So, that's the parking education component of the plan.

The next layer is called evaluating demand. So, one is review the Zoning Code to identify impediments to creative parking solutions for private property. I understand we have a consultant who will help us with that as part of that work. Then the next step is modernizing our City's Zoning Code, and the report talks about different approaches that communities are taking. The map shows communities are doing everything from eliminating parking requirements but are evaluating the demand and looking at parking in a different way, making different assumptions than the traditional suburban models, how parking has been planned for in the past, and then modernizing the Code to allow decoupling of parking requirements for multi-family residential projects, as well. And all of this is part of the consultant work that will help us.

We continue on with increasing parking access and expansion. This is, first of all, utilizing parking that already exists but is not fully utilized, so a lot of private pocket lots that are not used during certain times and could be used during other peak times for other businesses. So, the first thing is negotiating a lease with the University parking lots during off-peak hours. So, that's the lot behind Graham Hall, for example, which is a prime place, and they do have a program where you can buy after-hours parking. So, after around 5:00 p.m., when the University is no longer in session, a lot of these places are available for non-University people and non-students to park there. And then there's negotiating lease agreements. Now this is an example behind, oh gosh, what is the restaurant . . .

Mr. Hurd: Taverna.

Mr. Fortner: Taverna, thank you. So, this is their own parking system and they put that in.

Mr. Silverman: This is a private lot?

Mr. Fortner: A private lot and I think in the report it's something we're going to have to look at and encourage but also maybe look at ways to regulate that, as well. For example, they don't apply the same rules as the City for ticketing. They have a different service and they have to make sure that people are aware of what the policies are of that lot. And then next is increasing and promoting transit use, including operating an internal downtown circular bus route. There is a study going on called Newark TriP, and that is part of their scope as well. We're looking to work with them and develop their results.

So, this expansion also has a marketing strategy of changing the public perception of parking and promoting parking options. There needs to be an education process and we had a little bit

of a lesson with Max [Walton] talking about the Zoning Code and talking about by-right and having more flexibility. On the image on the far left there, you have something that is basically a suburban style. This is what our Zoning Code mandates that people create. This is the by-right. And then when you go to the right, this is where flexibility comes in and how towns can develop using different approaches. And so, parking is a part of that. If people have to follow the Zoning Code by-right, what you are required for parking, you're going to get the stuff on the left. But on the right, you have flexibility and you can create a better community design. And then, finally, the centrally located downtown parking garage. We talk about the different complications of that but also how things are changing with automated cars and other kinds of demand shifts where parking garages could be changed in the future. And this is a presentation I went to recently at the Delaware APA Conference where they were talking about how these garages are changing in their structure, and it's something we have to look at about making garages more adaptable or also even garages adapting to other types of uses, not just parking. If the parking demand changes and we didn't need all that excess parking, it could be converted to a different use. So, garages are being built nowadays to support a shift in use, if that comes about.

And then we have the costs and timeline and we basically do three phases. So, you have the next year, the year after, and then more of the long-term. The projects are sort of based on there and below you have a little bit about that budget analysis and the costs of that. And that concludes my presentation.

Mr. Silverman: Thank you very much. The Commissioners have had the opportunity to read a complete draft of the report that was produced by the Department. This has been on the City website, yes? Okay, there's an affirmative nod, so the public has had exposure to the availability of this document. Do the Commissioners have any questions at this point based on the presentation and the document? Okay, I hear none. I have a point of information I need to discuss with Counsel.

[Secretary's Note: Chairman Silverman briefly confers with City Solicitor Paul Bilodeau.]

Mr. Silverman: Since this is a staff presentation to the Commission at the request of the Commission and at the request of City Council, the Chair is considering this as information and it will not be open to the public review and comment. This is information going from the Commission to City Council. At this point in time, the Chair would like to entertain a motion to approve the staff technical review of the Planning Commission's Parking Subcommittee Report, Policy Matrix Timeline and Costs associated with the parking document.

Mr. McIntosh: I'll move that.

Mr. Hurd: I so move.

Mr. Silverman: I heard the buzzer over here first.

Mr. Hurd: I'll second.

Mr. Silverman: Okay.

Mr. Hurd: I'll defer to the gentleman from Boston.

Mr. Silverman: Is there any discussion on the motion? Okay, hearing no discussion, we'll move directly to the motion. All those in favor, signify by saying Aye. All those in opposition, signify by saying Nay. The motion carries. Thank you.

MOTION BY MCINTOSH, SECONDED BY HURD THAT THE PLANNING COMMISSION APPROVE THE STAFF TECHNICAL REVIEW OF THE PLANNING COMMISSION'S PARKING SUBCOMMITTEE

REPORT AND POLICY MATRIX TIMELINE AND COSTS, AS DETAILED IN THE PLANNING AND DEVELOPMENT DEPARTMENT DOCUMENT DATED NOVEMBER 2, 2018.

VOTE: 7-0

AYE: CRONIN, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK, WAMPLER
NAY: NONE

MOTION PASSED

Mr. McIntosh: Mr. Chairman?

Mr. Silverman: Yes?

Mr. McIntosh: Could I make a comment?

Mr. Silverman: Please. Our Commissioner Frank McIntosh chaired the Parking Subcommittee. It was going to be a three-week effort that extended across some nine months and to throw a commercial in here, there were some 330 pages of written testimony, more than 1,400 person-hours of involvement, including about 700 person-hours by the public and by Council people and the Mayor, and almost 14 hours of actual, on-the-record public testimony. So, Frank did a lot in three weeks.

Mr. McIntosh: Yeah. First of all, Mike, thank you, and Mary Ellen. I think you guys took the work that the committee put together and came up with a pretty darn good plan of implementation. So, I want to applaud you both for that and your cohort that worked with you to make that happen. I think the work of the committee was done by interested citizens across all functions and within our community, and it was honest and hard work to try to find solutions to issues that might exist, and I think we did that. And I think that if this plan is followed and worked upon in the same spirit that the committee put into it, there will no longer ever be anybody saying that there's a parking problem in Newark. And I can only attest to Wednesday night my wife and I took another couple out to dinner. We went to the, well I won't say the name of the restaurant, but we had a nice dinner at the restaurant and I did find the last parking space in Lot #3. And so, there was still parking available when we got there. So, there is parking in Newark, that's all I'm trying to say by that. So, thank you folks for taking the work of the committee and giving it the life that it needs to succeed. I appreciate it.

Mr. Silverman: Thank you, Frank.

5. REVIEW AND CONSIDERATION OF PR#18-05-03 REZONING AND MAJOR SUBDIVISION WITH SITE PLAN APPROVAL FOR THE DEMOLITION OF THE EXISTING OFFICE BUILDING ON THE SITE AND CONSTRUCTION OF A MIXED-USE FOUR-STORY BUILDING WITH PARKING ON THE FIRST FLOOR AND 18 TWO-BEDROOM APARTMENTS ON THE FLOORS ABOVE LOCATED AT 62 NORTH CHAPEL STREET, PARCEL ID 1801400215.

Mr. Silverman: Okay moving on with our agenda, we'll move on to Item 5. Mary Ellen?

Ms. Gray: This is a rezoning and major subdivision by site plan approval for the property located at 62 North Chapel Street. The file name is 18-05-03, for the record. This project is an application for rezoning and major subdivision with site plan approval for 0.471+/- acres of property. The applicant is requesting a rezoning of the property from BL, which is business limited, to BB, central business, and approval of plans to construct a four-story apartment structure with parking on the ground floor and 18 two-bedroom apartment units. Staff recommends approval of the rezoning request and the major subdivision with site plan approval.

Also, there are two other items of notes. One, we have a typo on the bottom of page 6 on the second line in the last paragraph where we say Haines Street. It really should be 62 North Chapel Street. And, in addition, this application was reviewed by the Downtown Newark Partnership Design Committee and we sent out that report today via email, and you have hardcopies on your table. And they recommended approval of this project according to their design guidelines. Mr. Chair?

Mr. Silverman: Is the applicant ready to make their presentation?

Mr. Hal Prettyman: Yes, I am.

Mr. Silverman: Fifteen minutes, and just as a reminder, we do have a very comprehensive background report done by the Department, including all of your submittals.

[Secretary's Note: During his presentation, the applicant referred to a PowerPoint presentation being displayed for the benefit of the Planning Commission and public. A link to the presentation can be found at the end of this document. In addition, links to the Planning and Development Department report regarding the rezoning and major subdivision with site plan approval of 62 North Chapel Street and the Downtown Newark Partnership Design Committee's project review report can be found at the end of this document.]

Mr. Prettyman: Yes, actually, that report was excellent and I'm going to try to make this brief. I will be repeating a few of the things but I think they're worth noting. So, good evening, I'm Hal Prettyman representing Chapel North LLC. I'm here tonight with my wife Ruthanne, my son Ben, my daughter Julianne, and from Hillcrest, I'm here with Colin Kraucunas.

So, I just want to briefly go over the site. This is the building. It was built in 1972, it has 12,000 square feet of commercial space with approximately 30 parking spaces.

This is the rear of the building looking from the Newark Shopping Center. As you can tell, it has no windows. It also has no sprinkler system, and it has no efficiency heating or cooling systems or plumbing in the building.

This is an aerial shot of the site. It has no stormwater management, either quantity or quality. There are no bike racks and it has limited ADA access. And that was the way we purchased it.

This is the four-story apartment building that we're proposing. It's similar to 52 North Chapel, which was approved by City Council in June 2015, except our building is providing 100% parking on the first floor, which allows, by Code, one-story higher. It also allows us to provide no parking than what is required by Code. The building itself will be built out of cold steel framing, Ecospan cement floors, spray foam insulation, and this is for efficiency, so it will be a state-of-the-art building.

This is the rear elevation of the building. The exterior consists of [inaudible] and real brick. It features energy efficient heating and cooling systems throughout, including appliances and water-saving fixtures. The building will be fully sprinklered and, as was mentioned, we did go in front of the Downtown Partnership and received a positive recommendation.

Here we have the site plan. It will meet the stormwater standards for both quantity and quality. It will have bike racks both on the exterior and in the garage area underneath. It will be 100% ADA compliant with an elevator that goes from the top floor to the bottom. So, we are requesting site plan approval for relief from one area requirement. Specifically, the plan relief requested is that the front setback would be 20 feet and we have 8.5 feet. All other Code requirements can be met. Our setback is still farther than both of neighbors. It's still set back farther than the property to our left and the property to our right.

So, we believe that our site demonstrates distinctive and excellence of the site arrangement and design for the following reasons. BB zoning does not stipulate an open space requirement. We are proposing 17.8% open space at this site. We are treating the parking uniquely by putting it under the building and we have a small lot, as you see, to the rear. We think that our architecture is outstanding with Rick Longo's design. He has integrated an element of traditional colonial and federal architecture with a hint of modernism. He's used dormers, offsets and ornamental design to accent the building. And he kept this in mind with doing the same colors as the building next door and using the same brick exterior. Our association with the natural environment includes the landscaping, which we have trees, canopy trees, which will be going along North Chapel Street. There will also be, as you turn into the Newark Shopping Center, they will be going down that side. We are proposing more landscaping than what's required in both of those areas. We're also going to have landscaping at the rear that covers the area where the dumpsters will be, so they will be hidden. And all of this landscaping will be drought-tolerant and low water usage. Considering the relationship to the neighborhood and the community, this property is adjacent to a recently approved project. We are literally walking out our back door and will walk to the Pomeroy Trail. Across from us, we benefit from the cemetery with its openness, and we also benefit from the fact that the Newark Shopping Center is behind us with this large parking lot that, again, is completely open.

So, the Comprehensive Plan V, we do meet that. We don't need any changes or any Comp Plan change. It calls for a mixed use for the parcel. The zoning part, an apartment building is permitted in BB with the parking on the ground floor. Density calls for 50 units at this location per acre. We have 0.47 of an acre, which means we could possibly put 24 units, and we are only proposing 18 units. The fiscal impact on the City, this building is currently generating about \$2,000 from taxes and fees that are coming into the City. It's proposed that the first year it will be \$4,800 while it's being built, and every year after that it will generate \$8,100 of income for the City.

So, in closing, we think that this is a great project for Newark. We think that Newark will get a new building with excellent architecture to one of the gateways. Although a lot of people don't look at North Chapel as a gateway to Newark, it is. We think it has high-quality construction and efficient use of energy. The building will be fully sprinklered. The property will now meet stormwater, both quantity and quality, standards. We will exceed the open space and landscaping requirements. We will meet the Comprehensive Plan V. We will exceed the bike rack requirements. And the fiscal impact will be four times the revenue generated to the City that is currently being generated. And, last, the building will be fully ADA-compliant. So, we think this is a great project and for those reasons we think that the site plan approval, with the exception of the one setback, would be suitable. Thank you.

Mr. Silverman: Thank you very much. Okay, I'd like to open up the floor for comments from the Commissioners. Mr. Stozek?

Mr. Stozek: I guess I just have a couple of comments. The rendering that we have here, does that accurately portray the setback in front of the building? Because I'm not sure how with 8 foot of setback you have room to put the trees in there. I mean this is a fine point, but what kind of trees are these?

Mr. Prettyman: I think it will actually . . .

Mr. Stozek: Because it looks like the trunks are probably a foot or so from the wall.

Ms. Gray: Mr. Prettyman, could you use the microphone? Sorry, you have to be on the record. Thank you. It's a hand-held, so you can go back over there.

Mr. Prettyman: Yes, I do believe it actually is to scale, if that answers your question. There is enough room in that front, because the building basically is going to be where it is currently.

Mr. Stozek: And you said the adjacent building has approximately the same setback?

Mr. Prettyman: No, the building next to us, which is called Chapel House, which Mr. Lang built in 2015, is six feet. We have a two-foot farther setback than his building is.

Mr. Stozek: Okay, well like I said, the setback and the trees are a minor thing. I just don't see how that's going to work. The only other comment I have is just that I'm hit by the mass of this building. You know, I understand that you have the exception to go another 11 feet taller because you're putting parking in there, it's just, visually, it's a huge looking structure. And I don't think that fits in with what else is on the street and probably what else could be developed on the street. And that's just a general comment.

Mr. Prettyman: Can I make a comment?

Mr. Silverman: Please.

Mr. Prettyman: If you, okay, so if you look, here you'll be turning onto North Chapel Street and you will start to come up North Chapel Street. You basically are not going to see this building until you are right on top of it. You're going to have the train track there and you have, I don't know, 60 or 70 feet of high wires and things of that nature. I mean when you tend to have something that is taller than the building that you have, it tends to make the building not jump out at you.

Mr. Silverman: Mr. Prettyman, your view is from Cleveland Avenue looking through the railroad bridge, correct?

Mr. Prettyman: That is correct. And I drove the opposite direction trying to take a photograph, in fact I stood out in the middle of the street, and the fact of the matter is, it sits back far enough of Mr. Lang's building, that you don't see this building until, again, you're practically in front of it.

Mr. Silverman: Will?

Mr. Hurd: Thank you. I'll start by saying, yeah, I would agree that it's a well-designed building, very well put together. I will say I have a number of, I think, serious issues with the whole project. I think I'll start with the zoning. I think BB zoning is intended to be an urban zoning that provides first level retail or commercial uses for the residents, with then residential above. And this building gives nothing. I would, in fact, say that this building gives nothing to the City for what it's asking for in terms of its density and its height and its setback. And, in fact, we're losing that transitional office space which is, you know, a great location. It's off Main Street, there's lower rent, it's good for people starting up businesses, and I saw that your first draft had office space which then disappeared. And I will note you'll want to check your project narrative because you still mention office space and you also mention Haines Street in there, too, so there's a couple of errors.

And I think just a general comment on the package is your site plans would really have benefited from context around the site, the building next door, the building across the street. It was really hard to evaluate this building in the vacuum that it came in. And I think that this project especially points out the issues that we're having with applying the site plan approval process, which is really geared for green field development, to these redevelopment projects that we have. You know, open space requirements and connection to natural stuff don't apply here, and they really shouldn't, but I think we need to start looking at what is this project giving back to the City in exchange for what it's asking for. And I think we really should be looking at is it giving us better stormwater management? Is it giving us improved access? Is it giving us uses that we don't currently have? I commend the two-bedroom units, but I feel that the loss of the office space doesn't really balance that. And so, I think that's the project that I want to see. It's

a project that says let's see what we can do that's going to improve the City and provide things in this prime location, you know, right there on Chapel. Let's do something positive.

Mr. Prettyman: I'd just like to say, if I may, we're 50% rented. We are advertising everywhere we possibly can for somebody to come in and rent space and the building as it sits now, the first floor is totally empty and part of the second floor is empty. And we have signs on the building and we are advertised on the internet and, you know, it seems to be an area that is a mixed use, it really is. And the reason for the BB zoning was that the parcel next door that's adjacent, it's zoned BB. And I understand that Tom Hall has his office there or whatever, but eventually, at some point in time, something is going to have to happen with North Chapel Street. And everyone that we've talked to in the developer community and a lot of people even with the City think that that would be a prime area to start to come down with some type of, you know, retail or something along that line. So, we originally proposed, you're right, the small office on the first floor. People thought we were going to have an office there, but we actually weren't. We had a current tenant that has a small space and we were going to try to keep them on the property, but they wanted to move to a different building that we have that's over on Main Street.

Mr. Silverman: Commissioner McNatt?

Ms. McNatt: Yes, I agree with everything Commissioner Hurd said. I believe the same thing. This building, from the BB perspective, you want the rezoning and you want something, but you're not providing, in my opinion, excellence above and beyond. Specifically, with stormwater, you're meeting the minimum requirements for what is Code for stormwater management and, yes, that's wonderful, but you have a large portion of the site that's just draining to an existing system that could be benefited from additional stormwater management, potentially. And therefore, I believe that the BB zoning does lend itself to your original design of a retail space as well as or office necessary. And I don't know why, maybe the plan did go forth and try to additionally reach out to neighboring parking like the Newark Shopping Center and try to come into some type of agreement where you don't need added parking spaces, because I'm under the impression from our recent Parking Subcommittee, we're trying to promote a walkable, bike-able community, and then to be above and beyond the parking, which is potentially beneficial to the renters that you're proposing, but it's interesting that that conversation may or may not have happened. I'm not sure because it's not provided here. I just think that's another, something that could go above and beyond the site arrangement is working with neighboring parking lots and other uses to provide the additional parking spaces, versus provided the additional parking and doing something different on the site. So, I also agree with Commissioner Hurd and I don't think that this is the best use for the site in its current condition.

Mr. Silverman: Commissioner Wampler?

Mr. Wampler: I agree with everything that's been said already but I want to be specific about a couple of things. My reading of the documents that we have indicate that the height under Code is 35 feet and that additional stories could be added provided they meet requirements in the Code. And for BB central business district, it says that you can have up to 50 units per acre apartments above non-residential use. And I don't see how parking for the residents is a commercial, non-residential use, so I don't think it meets Code there. And the other is regarding providing parking on the first floor. It says within the minimum required setback, additional floors may be permitted for each floor where 60% of the floor is used for off-street parking. But, if I'm reading this correctly, that's within the minimum setback and, as I read it, the minimum setback under Code is 20 feet, and you're at less than 10 feet. So, I don't see how either way you really qualify for exceeding the 35 feet. Now, I could be wrong about that but my reading of the information that's provided to us indicates to me that you're not meeting the setback requirement and you're not meeting the commercial requirement, so I don't understand how we could approve going higher than 35 feet.

And then with regard to, there's a comment here for open space that says the parcel in reference does present a great opportunity for interconnectivity as the Pomeroy Trail is located in close proximity. I believe that's true, but the Pomeroy Trail is already there, and I don't see how you can claim that as an attribute of the property and the site that you're developing, saying it's next to the Pomeroy Trail. It's already next to that building, so that I don't understand either.

And my last comment is we're intended to advocate for unique architectural. There's no question in my mind, this is a better-looking building than the building that's there. I think that's not a great looking building. I think this is more attractive. But, having said that, this looks like everything else that's being built in Newark. I don't see what's unique about it and several times, you said it tonight and in our packet of information that we have, the uniqueness of the architecture is that it's an integration of traditional colonial federal architecture with a hint of post-modernism. And I'm not an architect, but could you put up a picture of what we have here and show me which parts are post-modernist? Because I'm having trouble locating that.

Mr. Prettyman: Unfortunately, Rick Long can't be here tonight or I'd have him explain that, but I believe that what we're talking about is the treatment of the atrium that is in the front of the building. So, some of the window detail. That actually is an atrium in the front where there would be the elevator and the stairs. So, it creates a very nice look from the outside and also from the inside it will have a very nice effect. I think that's what they're referring to.

Mr. Wampler: So, the rectangular windows above the door?

Mr. Prettyman: All of the windows that you see. It's an atrium there. Let me see if I can use this thing. There we go. This area right up in here. So, the treatment of this. You know, I think it has to do also with some of the overhangs that Mr. Longo has used and some of the other detail. You know this is a nice-looking building. Its façade is all the way around the entire exterior of the building. There's no, somebody just put a brick front on it or they did something, you know, this building looks good from any aspect or any angle that you would be looking at it. And, actually, you'll see it more from the rear, from the Newark Shopping Center parking lot, you're going to see more of the building than you will when you're going down North Chapel Street. If you've driven down North Chapel Street, the street is very narrow as far as the building set-ins, and you only see this building when you get halfway past Mr. Lang's building. And as far as the treatment of the parking on the first floor, I would have to turn to the Planning Department, but they were saying that our parking does qualify as what your question was concerning it. Is that not correct?

Mr. Silverman: Madam Director, could you comment on that?

Ms. Gray: Sure. Under BB section, I have to scroll up to the top, 32-18, bear with me, 32-18(d)(4) allows the additional floor that may be erected over three stories but no more than four additional floors provided, and there are some provisions that are allowed for that, and parking on the first floor is one of those provisions, just as long as each additional floor does not exceed an average of 11 feet. And parking is considered under our Code to be a non-residential use.

Mr. Wampler: Okay. Thank you.

Ms. Gray: You're welcome.

Mr. Silverman: Anything else?

Mr. Wampler: Well, what I was really referring to was . . .

Ms. Gray: Sure, yes, sir?

Mr. Wampler: In our packets, I think it's the same thing you're looking at. It's on page 27 . . .

Ms. Gray: Okay.

Mr. Wampler: Area regulations (4)(a) . . .

Ms. Gray: Page 27.

Mr. Wampler: And the part that concerns me is where it says within the minimum setback. I take that to mean that as long as they are complying with the setback of 20 feet.

Ms. Gray: Oh, yes. I'm sorry, I didn't answer that question. Yes, Commissioner. The applicant is asking, so, yes, when you go above three stories, the setback is 20 feet and they're asking under site plan approval for that setback to be 8.5 feet as opposed to 20 feet.

Mr. Wampler: Okay.

Mr. Silverman: Commissioner McIntosh?

Mr. McIntosh: Well I can't really see too much of the building to the right of your building. It looks like a big brother to me. That isn't necessarily a negative, by the way. It does kind of blend in with that building. But the architectural features of your building are, as best I can tell, far superior to that. And so, I like what the building looks like. I like the way you have that atrium. I'm sure it's pretty impressive when you're inside. One of the things that we've talked about in the Commission over the last several years is why can't you build buildings that have less people in them. And you've done that. You have 18 apartments or whatever it is, living spaces, when you could have had 24, or where what often happens is somebody is asking, really, for 36. So, I commend you for all of those things. I see it as something that could set a new standard and that's what I try to look for. These new buildings that are coming in and what they're replacing, I mean what you were replacing, I mean, I could build a building that looked better than that . . . I don't know if you'd want to be in it . . . but it's an eyesore, and this is not. It's a well-designed, good-looking building. And I understand, I feel your agony, if you will. You've got a building, you're trying to get people in it, and they won't come. So, why not build something that people will come to. I don't know if that was your thinking, but it sounded like it was, and I get that. Is it possible for any of these apartments on the lower floor to change over to rentals, business rentals, at some point in the future?

Mr. Prettyman: Well, at some point in the future, it seems like some of the developers' ideas in the town to put this parking underneath is that eventually that parking can be converted to a retail type of space and then you don't need parking if you're able to come up with an arrangement that the other Commissioner had mentioned, which was somebody nearby who would either rent you parking or make some type of provision for that.

Mr. McIntosh: Well, the discussions that we had in the Parking Subcommittee lead us to believe, for the most part, that you don't really need to provide parking for your buildings. That students, and I'm sure that's what you're going to have here for the most part, maybe graduate students, have less need for cars than there might be for office space if that existed. So, clearly you could convert the parking to that if that came to pass. And I'm sure, being a good businessperson, you would probably rather that be the case than have parking spaces there. But, at any rate I like what you're doing, I like the way you've done it, I don't like the setback, but when I look, I'm trying to get a visual of Chapel Street in my head, and mostly I'm trying to figure out if I can get past, if I'm on Chapel Street, if I can get past the shopping center so I can maybe have a chance of getting through the light during my lifetime, so I don't look around too much. I'm pretty focused on getting there, if I can. But you have less of a, you're asking for something that's already been granted in the past and, you know, I just can't get that visual. I think that a lot of those places are close to the street. Thinking of the Chapel Street Theater, I'm always trying to figure out, I've never gone in there, but I'm always trying to see what

they're showing. And it doesn't seem to me that those spaces are anything but right on the street itself. And I understand it's because of the size of the building and it's a different matter. At any rate, I like what you're doing. I think you've made a business decision about the office space that can be rectified if that changes in the future. Whether you do it or not is up to you, but I like what you've done, and I think it sets a new standard. That's it.

Mr. Silverman: Commissioner Cronin?

Mr. Cronin: Thank you, Mr. Chairman. I tend to agree with Commissioner McIntosh. I mean the building that's there now looks more like a prison than anything else and is not economically viable in the current market. From my point of view, it's essentially a corner property given the access to the shopping center that's been there since the shopping center was built. It has good visibility, as he mentioned, to the east of the shopping center. We've got the parking to the south. These units are going to have good daylight coming in, natural light all the way around. Coming into Newark from Cleveland Avenue, it's essentially a gateway building when you get underneath the railroad bridge there, and it's a very nice-looking structure. It makes a nice statement for the City. It's got some green grass, it's not right up to the sidewalk. You know I do put a certain amount of faith in the Planning Department's process to work with developers and to orchestrate them through the process, [inaudible] things as necessary, getting their project staff through the City departments and coming up with their recommendation as they always do, and usually it's in good order before they even want to make a recommendation and put it on the agenda. I think it would be short-sighted to recommend against it. I can see where things maybe could be tweaked a little bit here or there, but, overall, I think it's a very nice-looking and very viable project. And with regard to the parking on the first level, the parking presentation earlier talked about by 2035 even some parking garages will be repurposed for other market needs at the time, and this has that capacity to change at that point in time or prior to that point in time if circumstances arise.

Also, I've known the developer for a couple decades now in his profession and I think he's, even before I began with the Planning Commission, I've been aware of certain projects he's done and undertaken and he really cares about the City and the image his projects have for the City and what he can do an contribute to the City. And he's done this in the past and I think this is another example of that effort presenting itself here tonight. So, I do favor it. Thank you.

Mr. Silverman: Madam Director, do you have any additional comments?

Ms. Gray: Thank you, Mr. Chair. I wanted to follow up on my comments with regard to Commissioner Wampler's question regarding the addition of the extra story. In addition to the Code provision that I cited previously, you had referenced page 27 of the staff report that has the code BB listed out. On page 28, which is Section, let me get the right citation, please bear with me, 32-18(d)(4)(c) on page 27, the additional stories are also allowed, up to three additional floors, if the building consists of more than one-half of their apartment dwellings to have a maximum of two bedrooms in occupancy by one family or up to four unrelated tenants each. And this application is proposing to have 18 two-bedroom units. So, that also qualifies for the additional floor.

Mr. Wampler: Thank you.

Ms. Gray: You're welcome. Thank you, Mr. Chair.

Mr. Bilodeau: But the question, I think, is the first sentence there, within the minimum required setback. So, that can change from the 20 feet that is required in Code because we're under the site review process?

Ms. Gray: Yes.

Mr. Stozek: Mr. Chairman?

Mr. Silverman: Yes?

Mr. Stozek: Going back to page 27, I'm still not clear on this. My main concern is setting precedence. Someone else on the Commission has already talked about the building next door being precedent. On page 27, and I guess I need clarification, it says, it talks about this within the minimum required setback, an additional floor may be permitted for each floor where 60% of the floor is used for off-street parking purposes and/or building mechanical equipment. Then it goes on to say, off-street parking for buildings exceeding three stories in height shall be construed to mean either sub-grade parking facilities designed as an integral part of the structure or leased/owned parking spaces in a separate building. So, I struggle to see how this meets that criteria, because this parking is not subgrade.

Ms. Gray: Correct. This plan falls under the provision because it can qualify for either A, B, or C, and C is the citation that I just quoted that allows additional floors if the dwelling units have a maximum of two bedrooms and occupancy of one family or up to four unrelated tenants.

Mr. Stozek: Well, if that's what we're going by, I suggest, there's a note on the drawings that references A and that notes should be changed to say this is the criteria we're going under, not criteria A.

Ms. Gray: Okay.

Mr. Stozek: Just a minor point.

Ms. Gray: Thank you.

Mr. Stozek: Again, my biggest concern is setting precedent because we seem to do that all the time and I just see a proliferation of more four-story buildings. We've already had two of them in the last 2-3 meetings.

Mr. Silverman: Keep in mind that this is a building that has three occupied floors and one elevation devoted to parking.

Mr. Stozek: I know, but that elevation devoted to parking is still a story. We're talking about the height of the building, which we're exceeding . . .

Mr. Silverman: There's a difference between total building height and stories.

Mr. Stozek: It's exceeding the 35 feet that's normally the limit. That's my only point. Again, I worry about precedence because we always keep referring back to previous precedents that we've approved.

Mr. Silverman: Any other comments by Commissioners before I open up the floor.

Mr. McIntosh: I'd just say one thing about precedent as I was arguing for it at another meeting today. In this case, I think part of what we do here is set precedent. That is what, essentially, the Planning Commission, from my point of view, does. It looks at what are the zones, what are this and that, you know, what have we said we wanted, and within that, how can we improve the City and make it a better place to live and a place where people want to come to. So, I think that in part of our why we exist is to set precedent. It is to say, you know, we don't want those run-down buildings anymore. We want something new, different, and to change that. So, in that respect, setting precedent, I think it needs to be done cautiously and not just throw it out to the wind, but the precedent is part of what we do. And if we don't establish new precedent, then what we're going to end up with is, you know, the 1950s, and we don't want that.

Mr. Stozek: And I don't disagree with you, except precedence by exception . . . instead of making precedence by exception, we should change the zoning codes. These codes that we have are probably 1970s era. We should look at the codes and what do we want now for the City, rather than give an exception here and an exception there.

Mr. McIntosh: It's a point well-taken. I agree with that, but we have what we have and that's what we have. Leave it at that.

Mr. Silverman: Is there anyone from the public who would like to speak? Ms. White, if you will come up to the microphone.

Ms. White: Jean White, District 1. I have a couple things to say about the building.

Ms. McNatt: I don't think the microphone is on. Ms. White, I don't think that microphone is on.

Mr. McIntosh: I don't think the microphone is on.

Ms. White: Is this working?

Ms. McNatt: No.

Mr. McIntosh: No, it's not on.

Ms. White: Okay. Here we go.

Mr. Silverman: Okay, three minutes, Ms. White.

Ms. White: District 1, Jean White. First of all, the existing building, this brick block is, what can I say? It deserves to be replaced. I won't say anything more negative than that, but I think we can think of those things. I think the good things about this is that it's two-bedroom apartments, something that different people in the City have wanted to have more of. Also, I see that it's good that there are no projecting balconies from the apartments. No balconies at all, in fact. That's good but no projecting ones is a good point, although it wasn't mentioned, I don't think, by the developer. I do think the architecture is aesthetically pleasing. I'm not an architect and so I'm just sort of looking at it and comparing it to 52 North Chapel, and some of the things that were noted in the description is that it has extended eaves, creating large overhangs and other things that were, canopies over the entrances and the parking garage entrance there, and keystones above the window façades which is something that I think adds to the whole thing and other people could add things like that. I must say that even though one gets an extra floor because of the parking under the first floor, to me, the building is too massive and too large. And even if you put storefronts on the part that's next to North Chapel, not on the back part, you would still, I think you only have to have maybe 60%, you don't have to have the whole thing be parking. If you did have part of it, you still could get an extra story. And so that is allowed if you're doing that, but to me it's a bit too bulky and massive coming down there. Of course, the developer could choose to take part of the parking . . .

Mr. Silverman: One minute, Ms. White.

Ms. White: Yes, thank you. Okay, let me say this, generally speaking, when you have in the BB areas and submit them to the Design Committee often, I don't know if this is a requirement, but to have an elevation that shows adjacent buildings, what they are. And I would like the developer, before going to City Council to have an elevation that shows this building in connection and in relation to 52 North Chapel so we could actually see the height. I know you have it at a distance, one of the pictures that is in the packet, but I think it would be nice to see it. Can I have one more sentence?

Mr. Silverman: Go ahead, thirty seconds.

Ms. White: I don't know what my sentence is. Okay.

Mr. Silverman: Go ahead, finish your sentence.

Ms. White: Okay. I think you could put storefronts along the front and take some of the parking and maybe some apartments would only have one parking place because I know that in the Parking Subcommittee, one talked about having zero or maybe with the extra ones, they have to pay for the second one, if it's available. And I like the fact that it goes 360 degrees around. That was a good point that you made when we're seeing it from the Newark Shopping Center. Thank you.

Mr. Silverman: Is there anyone else who would like to speak. Please identify yourself.

Mr. Joe Charma: Joe Charma, District 1. Good evening, Commissioners. I just want to say, just remind you that Mr. Walton so eloquently described the site plan approval process. Let's not lose sight of that. I think we have an opportunity to do something to improve this area greatly. I also chair the Design Committee and this applicant did come before us and, while the building is a large building, a massive building, I think the articulation in the façades and the window treatments, they're all good and they do echo elements of the adjacent building. And I think that's what we want to do. We don't want to create mono-culture architecture, but I think they've done a good job on a small site. You know, the site plan approval process is offering the flexibility and creativity to the developers to solve problems, and I think that lies here with the Commissioners. And, again, I think perhaps maybe conditioning, some conditions, might work in this instance, rather than to turn this application down. I think, you know, if you turn it down, they're probably going to come back with something that may or may not suit your pleasure. And, again, site plan unique design is subjective. Architecture is subjective. I think just keep that in mind as you review this. And I thank you for this time.

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

Mr. Mico Slijepcevic: Hi, my name is Mitch Slijepcevic. I live at 7 Chippenham Drive. I own properties on North Chapel Street and I'd really like to commend Mr. Prettyman for bringing a project forward that aims to change North Chapel Street for the better. You know, we're taking a building, he's taking a building that, like he said, doesn't have sprinklers, doesn't have stormwater management, doesn't have a lot of things that we want in a modern building in Newark today, and he's trying to change that. And we talked about, you know, you're talking about setting precedent. I think this is exactly the precedent that you want to set in one of the main gateways into the City of Newark. A nice-looking building that's attractive and people are going to drive down the street, see it, and say, wow, this is really impressive. And, hopefully what it will do is spur further change on North Chapel, where you have houses that are 130 years old that are falling apart and really are not attractive to people coming and touring the City, whether they're students, whether they're people who are going to be working down at the new Chrysler building down there on the STAR Campus site, and they come and they see one of the main streets in Newark with a bunch of old houses that look like they're ready to fall apart. I think Mr. Prettyman and his family are trying to do something good for this street and for the City, and I think they should be commended for that and the project should be supported to spur that change that we need on North Chapel.

Mr. Silverman: Thank you. Is there anyone else who would like to speak? Are we ready to call the question? Okay we have two items to consider and if the Director would read the proposals to the Commission.

Ms. Gray: Do you want me to read the staff recommendations?

Mr. Silverman: The recommendations, yes.

Ms. Gray: Oh, sure, I can read that into the record. The first recommendation is that the Planning Department suggest that the Planning Commission take the following action. The first is to recommend that City Council approve the rezoning of 0.471 acres at 62 North Chapel Street from the current zoning of BL, business limited, to BB, central business district zoning, as shown on the Planning and Development Department Exhibit E dated November 27, 2018. And recommend that City Council approve the 62 North Chapel Street major subdivision and site plan approval plan as shown on the major subdivision site plan approval plan dated May 9, 2018, and revised November 6, 2018 and November 20, 2018, with the Subdivision Advisory Committee conditions.

Mr. Silverman: Is there a motion?

Mr. Hurd: We're taking these separately, correct?

Ms. Gray: Yes.

Mr. Silverman: Yes.

Mr. Hurd: I so move on Item A, the rezoning.

Mr. Silverman: Is there a second?

Mr. Stozek: Second.

Mr. Silverman: Okay we have a motion and second. The floor is open for discussion. Is there any discussion beyond the general discussion that the Commissioners had? I'm not trying to say you cannot repeat but it may have stimulated other idea.

Mr. Hurd: No.

Mr. Cronin: Mr. Chairman?

Mr. Silverman: Please?

Mr. Cronin: I'd like to encourage my colleagues to vote in favor of this. I don't see any what I call takeaways or lessons learned if this is rejected, anything specific that the developer or even the Planning Department can go back and say, well let's do this differently A, B, and C, and then we're going to get something that's going to be more satisfactory for the Planning Commission to recommend to City Council. I see the tub of water here far more half-full than half-empty, and in spite of some reservations on one aspect or another, I would encourage the Commission to go forward and vote for it.

Mr. Silverman: I share Mr. Cronin's position and, more specifically, again, this points out as Mr. Stozek has pointed out, some of the things need to be corrected in 50-year-old Code. With respect to the mass of the building, I think the location of the building mitigates the impact. As we heard from the applicant, from the street view of the building, I look at cemeteries as being relatively permanent and they are open space. The land use in the parking lot of the shopping center is fixed and was recently renovated. The Pomeroy Trail exists adjacent to this site and provides open space. This is not a circumstance where a large building is being placed several feet from existing large buildings front and back. With respect to the setback issue, this site is being considered under the site plan approval process and one of the things that is permitted is a different setback with respect to the by-right provisions of the Code. The fact that the building has complete architectural façade, 360 degrees on all sides, speaks for the intent of the developer. Although I am sympathetic to the idea of having commercial or business uses on the first floor, as was pointed out by the Director, parking under a building is considered a non-residential use and in this case, I lean toward that non-residential use. The applicant has pointed out and there has been discussion at the table that there is the potential for in the

future turning what is now parking space into commercial or other non-residential uses. This site and the height of the structure on the site points out the necessity for Council and the public to take into account the work that was done by the Parking Subcommittee with respect to off-site parking. If there was ever a location in Newark that had opportunity if the structures were in place to provide parking away from the building, this site would be it. One Easton, I believe, is the name of the project, the parking in that project is decoupled from the residential use so that theoretically there is parking there. If the system was in place, the shopping center, with respect to after-hours parking, is literally feet from this property and there is potential for parking there. So, I'm not going to hold up this project because of a parking arrangement.

I like the idea of reuse of the site. I like the idea of providing a new use, a new kind of use, replacing 120-130-year-old mill housing along one of the main north/south accesses in and out of the City. One of the opportunities we have lost, and this is not directly germane to this site, but if we go back to slide #3, which I'm not asking for, you'll see that we have the opportunity with two brand new site development plans to reconfigure the entrance/exit from the shopping center and, with some land-use swaps, line it up with Center Street. Right now, if you recall, coming out of the shopping center left turns are prohibited. That lane on Center Street, we had an opportunity to totally reconfigure traffic movement in this section of Newark. Hopefully the TID study will take into account things like that for the future. So, I intend to vote for this project. And that's my comment. Any other comments?

Mr. Cronin: Mr. Chairman, I think you meant to say New Street instead of Center Street.

Mr. Silverman: New Street, I'm sorry. New Street linking over to Center Street. Thank you very much for correcting that. If there is no further discussion, let's move directly to the motion with respect to paragraph A as found on page 13 of the Planning report. All those in favor, signify by saying Aye. All those opposed, Nay. The Ayes have it.

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

THAT CITY COUNCIL APPROVE THE REZONING OF 0.471 ACRES AT 62 NORTH CHAPEL STREET FROM THE CURRENT BL (BUSINESS LIMITED) ZONING TO BB (CENTRAL BUSINESS DISTRICT) ZONING AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT E DATED NOVEMBER 27, 2018.

VOTE: 5-2

AYE: CRONIN, MCINTOSH, MCNATT, SILVERMAN, STOZEK
NAY: HURD, WAMPLER

MOTION PASSED

Mr. Silverman: The Chair entertains a motion with respect to paragraph B.

Mr. Hurd: I so move.

Mr. Silverman: Okay, is there a second?

Mr. McIntosh: Second.

Mr. Cronin: Second.

Mr. Silverman: It's been moved and seconded. With respect to paragraph B that deals with the major subdivision and site plan approval plan, is there any discussion? Okay, hearing none, we will move directly to the motion. All those in favor of paragraph B, signify by saying Aye. All those opposed, Nay. The Chair will ask for a show of hands. All those in favor of paragraph B,

signify by raising your hand. One, two, three, four in favor. All those in opposition, signify by raising your hand. One, two, three opposed.

Mr. Hurd: That's seven.

Mr. Silverman: Pardon?

Mr. Hurd: That's seven.

Mr. Silverman: Motion carries.

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

THAT CITY COUNCIL APPROVE THE 62 NORTH CHAPEL STREET MAJOR SUBDIVISION AND SITE PLAN APPROVAL PLAN AS SHOWN ON THE MAJOR SUBDIVISION, SITE PLAN APPROVAL PLAN DATED MAY 9, 2018 AND REVISED NOVEMBER 6, 2018 AND NOVEMBER 20, 2018, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS AS OUTLINED IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT DATED NOVEMBER 27, 2018.

VOTE: 4-3

AYE: CRONIN, MCINTOSH, SILVERMAN, STOZEK

NAY: HURD, MCNATT, WAMPLER

MOTION PASSED

Mr. Silverman: Thank you very much.

Mr. Prettyman: Thanks to all of you for your time.

6. REVIEW AND CONSIDERATION OF AMENDMENTS TO CHAPTERS 27 AND 32 REGARDING THE DOWNTOWN NEWARK PARTNERSHIP DESIGN COMMITTEE.

Mr. Silverman: Moving on to Item 6 on our agenda, and Frank, we're moving right along on time.

Mr. McIntosh: I'm watching.

Mr. Silverman: Okay, the next item on our agenda is the review and consideration of amendments to Chapters 27 and 32 regarding the Downtown Newark Partnership Design Committee. Madam Secretary, I see you're here to make the presentation.

[Secretary's Note: A link to the City Secretary's memorandum relating to amendments to Chapters 27 and 32 regarding the Downtown Newark Partnership Design Committee can be found at the end of this document.]

Ms. Renee Bensley: Yes, sir. For those of you who I have not met personally, my name is Renee Bensley and I'm the City Secretary for the City of Newark. At the September 24, 2018 Council meeting, direction was given to staff by Council to begin the process of extrication and dissolution of the Downtown Newark Partnership from City Code. You have a memo in front of you outlining the relevant Code sections that Planning Commission needs to provide a recommendation on. Specifically, the change is related to the Design Committee in Chapters 27 and 32. There are two references in those chapters to the Design Committee. One is in Chapter 27, Appendix XIII, Subsection (d)(3) and the other is in Chapter 32, Section 32-56.7(1)(d)(4). Specifically, we are only asking that the Planning Commission approve the striking of the phrase "of the Downtown Newark partnership" in both of those sections, as the

Design Committee is still going to be kept within the City and it will no longer be part of the Downtown Newark Partnership, as that organization is being dissolved in favor of the new Newark Partnership that's currently under discussion and formation as a private 501(c)(3). If anyone has any questions, please let me know.

Ms. McNatt: I have lots of questions.

Mr. Bensley: Okay.

Ms. McNatt: So, what you said was the dissolution, meaning the Downtown Newark Partnership is going to dissolve?

Ms. Bensley: Yes.

Ms. McNatt: And there's a new partnership being created which will be an independent non-funded, the City is not going to fund it, they're going to create their own funding source, they're going to do their own thing, correct?

Ms. Bensley: The City, as part of the budget process for next year, has approved funding towards that partnership, but they would not be the sole funder. Council has not set the terms yet for the release of that funding. That's going to be part of a discussion at a future Council meeting once the new partnership comes back with an ask and potential benchmarks for the release of funding.

Ms. McNatt: Can you describe currently how much is funded to the Newark Partnership as . . .

Mr. Silverman: Commissioner McNatt, how does this deal with changing the provision in Code? How does funding, we don't control funding.

Ms. McNatt: No, but I'd like to know if they're creating and dissolution and they want to keep this based upon the future potential of this new partnership, because they're asking us for something, I'd like to have the information on it.

Mr. Silverman: I don't think that's the issue here. I think the issue is simply extracting the reference to Downtown Newark Partnership and the Design Committee will become another City committee. Is that correct, as I read this?

Ms. Bensley: Correct. These are only two parts of the entire ordinance that Council will be considering. The primary changes will be to Chapter 2 of the City Code, which is where the Downtown Newark Partnership is housed. And the Downtown Newark Partnership would be stricken from City Code and the Design Committee would be added as a City Council planning committee to that portion of the Code.

Mr. Silverman: So, they would not continue to be an appendage of whatever this new organization is?

Ms. Bensley: Correct.

Mr. Silverman: Does that . . .

Ms. McNatt: No, because I don't understand then why is the Design Committee recommendation different than what the proposed amendments are.

Mr. Silverman: I'm sorry, I didn't follow you.

Ms. McNatt: Okay, so in this document that we were provided, there's a Design Committee recommendation that is, in my understanding, different than the proposed amendments. Is that correct?

Ms. Bensley: So, the Design Committee recommendation, their recommendation is for it to become a committee that is, a City committee that is on its own, independent and not a subcommittee of the Downtown Newark Partnership, that would be staffed by the Planning and Development Department. Those changes would come as part of the larger changes Council will be considering as part of Chapter 2. They won't be part of the provisions for Chapter 27 or Chapter 32.

Ms. McNatt: Okay, I think I understand but I think it's just made more confusing by having it all in one document than being very clear about what the ultimate goal here is. That's all.

Ms. Bensley: Okay. I apologize for giving you too much background.

Ms. McNatt: I'm not saying that's bad, it just clearly makes me have more questions, that's all.

Ms. Bensley: Okay.

Mr. Hurd: I think, to my eyes, step one is just removing references to Downtown Newark Partnership from the areas of Code that we have an impact over. Later is the Code that creates the new committee and the new whatever Newark Partnership is made.

Mr. Silverman: That's out of our purview.

Mr. Hurd: The areas of Code that aren't in our purview. Am I understanding that sort of correctly?

Ms. Bensley: Yes.

Mr. Hurd: This is really more editorial than . . .

Ms. Bensley: Correct, the new Newark Partnership is not going to be a City committee. It's not going to be part of City Code.

Ms. McNatt: That's what I was trying to understand.

Ms. Bensley: Right. It's going to be its own independent 501(c)(3). So, this is just starting the changes to make the Design Committee a separate Council-appointed committee that would remain within the City, that would no longer be connected to the Downtown Newark Partnership.

Ms. McNatt: And that's in Chapter 2.

Ms. Bensley: Correct.

Ms. McNatt: Thank you for clarifying.

Ms. Bensley: Glad to help.

Mr. Silverman: Any other questions?

Mr. Cronin: Yes, Mr. Chairman.

Mr. Silverman: Mr. Cronin?

Mr. Cronin: Renee, paragraph 4, the design committee, should that be capitalized? The “d” and the “c” in that paragraph? Both in the first and the last sentence.

Ms. Bensley: That’s the way it’s currently written in Code. We can change that if you’d like.

Mr. Cronin: It seems to me if it’s going to be a recognized committee, it’s capitalized in the paragraph 3, okay? So, I think for consistency, it also should be capitalized in item 4.

Ms. Bensley: If that’s the Commission’s recommendation, then that’s perfectly fine.

Mr. Cronin: It’s just a suggestion.

Mr. Hurd: I would concur with that.

Mr. Cronin: Is it possible when this is contemplated, this would put an extra step in an applicant getting things approved that’s not there now?

Ms. Bensley: No, this is envisioned as the committee holding the same role as it does now. This is just changing the structure. So, instead of being a subcommittee of the Downtown Newark Partnership, which is not currently in Code other than these references in Chapters 27 and 32, they would be a formal City-appointed committee, and they would have the same recommendation power that they have right now. I know there has been discussion on the Design Committee about potentially expanding their role. That’s not part of this. That would be a separate discussion that would be a separate ordinance that would come forward. This is simply to formalize the Design Committee as a City-appointed committee and keeping the same structure and role that they have currently in the development process.

Ms. McNatt: Can I have a . . . I have two more questions.

Mr. Cronin: Let me finish for a second. Also, do you have this in front of you?

Ms. Bensley: I do.

Mr. Cronin: The last sentence it says, the design committee when it submits its final conditional use application to Council. Is that routine or are they submitting things first through the Planning Commission to Council?

Ms. Bensley: That’s specifically in reference to that particular section of the Code, which is in reference to cell towers.

Mr. Cronin: Cell towers. Okay. It would be not going through Planning Commission necessarily then?

Ms. Bensley: It would still be going through Planning Commission if it meets the conditions to go through it already. This section of Code already exists. This is already in there and it is specifically in reference to telecommunication towers. So, unfortunately, I don’t have the entire Code in front of me to be able to say exactly what the process is as far as it going from there to Planning Commission, but this would not change the role of the Design Committee, nor would it change the role of the Planning Commission. It would simply take out the “of the Downtown Newark Partnership” phrase.

Mr. Cronin: Alright. And might I also suggest the last word in Item 4, that Council be capitalized also.

Ms. Bensley: Okay.

Ms. McNatt: Okay, thank you. I just want to understand, in Chapter 27, #3 it says, may consider comments. And then I know you said that Chapter 32 is current language. I just don't understand, and maybe someone can clarify, why the Design Committee will review applications in 32, but may consider. It's interesting that it's a requirement in 32 and it's an option in 27. Is there a reason?

Ms. Bensley: As I said, this is existing Code.

Ms. McNatt: I know, and maybe I would recommend that #4 be changed to may review applications, just like 27 is may consider comments. That's how I would suggest to change it.

Ms. Bensley: I would defer to the Planning Director as far as the policy behind that.

Ms. Gray: Sure, #4, Chapter, the second paragraph, which is #4, as City Secretary Bensley indicated, this is specifically regarding the cell tower provision in our Code, so that is how it is currently written. So, it would just be for when cell towers are reviewed. So, if you want to change the will to may, that's fine.

Mr. Hurd: I'll add another layer to this, in telecommunications, the Design Committee is set up to review applications of towers. What we're not seeing in #27 is the stuff around the Design Committee's brief for what applications it reviews. So, this is really just about the Planning Commission is going to get a report, as we did today, from the Design Committee and we can give it as much weight as we choose. I think that's why this is a may. But in 32, it's a direction to the Design Committee about will consider those applications.

Ms. McNatt: It's just unique that that's a requirement for a cell tower situation versus not in the . . .

Mr. Hurd: Well, it's a requirement for different groups.

Ms. Bensley: I would offer that the cell tower discussion was a long and convoluted one . . .

Mr. Hurd: It was.

Ms. Bensley: For both the Planning Commission and City Council, so I don't know that I would go into other changes in that at this point.

Mr. Hurd: You don't want to open that can of worms tonight?

Ms. Bensley: I'm not exactly . . . that's not what I came to talk about tonight.

Mr. McIntosh: Mr. Chairman, can I call the question? I mean I think this process [inaudible].

Mr. Silverman: Okay, do we want to do it informally or do we want to call Robert's Rules, because then we have to take a vote and it takes two-thirds of us to stop discussion.

Mr. McIntosh: I don't care how you do it.

Mr. Silverman: Are we ready to form a motion?

Mr. Hurd: Public comment?

Mr. Silverman: I know Frank is getting impatient.

Mr. McIntosh: That's not it. I think we've been asked to do a simple thing and we're making it very complex.

Mr. Silverman: I share some of Commissioner McNatt's confusion on some of the additional language here . . .

Mr. McIntosh: I get that.

Mr. Silverman: And I don't understand why we simply don't extinguish all language referencing Downtown Newark Partnership. Just cross it out. We're not interested in who is related to what in other parts of the Code. If the words Downtown Newark Partnership are in the Code, we extinguish that wording. And then the residual would be the Design Committee, whatever form that takes, however Council wants to do it. I think this is that straightforward.

Mr. McIntosh: I love that. I don't care, I mean, it's just, it's a simple thing that's being asked. So, let's keep it simple.

Mr. Silverman: Commissioners, unless you have any other comments, we'll open the floor up for comments.

Ms. White: Jean White, District 1. First of all, I agree with Mr. Cronin who feels that design committee in #4 should be capitalized because it's a set committee. But in terms of Commissioner McNatt, if I remember it right, we have a may consider because it's the Planning Commission may consider the comments of the Design Committee. They might follow them or they might not. In 4, we want the Design Committee always to review applications for placement of new towers. That should not be a may. That should be the way it is now. And, of course, once it's reviewed, either the applicant or City Council may consider the comments, but we want them always to review it. Thank you.

Mr. Silverman: Thank you. Okay, do we have another spokesman?

Mr. Charma: I think I can help Commissioner McNatt with the may and the will. What happened was . . . oh, Joe Charma, Chair of the Design Committee, sorry. The may came about because coming before the Design Committee is not a requirement of the City. A developer may or may not come before the Design Committee. But with respect to the cell towers, there was such discussion and angst about cell towers and the placement of them, I think at the time Council felt that the Design Committee is another body that ought to look at where these things are going, how big they are, how tall they are, and how they impact the community. There was a lot of time spent on revising the tower ordinance, so I think that's the difference between the may and the will. Now, I'm fine with will if it becomes a requirement of developers that they have to come before the Design Committee for a presentation and our recommendations to the Planning and Development Department. The Design Committee is fine with that, but I think that's a decision that the Planning Commission needs to think about and, ultimately, Council needs to think about that. Thank you.

Mr. Silverman: Thank you. Are there any other comments? The Chair will exercise its prerogative to extend our meeting for another ten minutes to quarter after. One of the ironies here is, with respect to cell towers, when we went through our cell tower discussion, cell towers as we used to visualize them are a dinosaur. Generally speaking, from the industry we will not see the towers that we were used to seeing in the past. Everything is these mini-towers now. So, I don't think there's going to be much work to do. Okay, that said, can we form a motion?

Mr. Hurd: Sure, I move that we adopt the proposed changes to Subsection (d)(3) and Subsection (d)(4) of Chapters 27 and 32, respectively, with the addition of capitalizing Design Committee and Council in paragraph 4.

Mr. Silverman: Is there a second?

Mr. McIntosh: Second.

Mr. Silverman: Okay, it's been moved and seconded. Is there any discussion on the motion? All those in favor of the motion, signify by saying Aye. All those in opposition, signify by saying Nay. The motion carries.

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

THAT CITY COUNCIL AMEND CHAPTER 27 SUBDIVISIONS AND CHAPTER 32 ZONING TO REMOVE REFERENCES TO THE DOWNTOWN NEWARK PARTNERSHIP AS DETAILED IN THE CITY SECRETARY MEMORANDUM DATED OCTOBER 25, 2018, WITH THE ADDED CONDITION THAT DESIGN COMMITTEE AND COUNCIL BE CAPITALIZED IN CHAPTER 32, SECTION 32-56.7(1)(d)4.

VOTE: 7-0

AYE: CRONIN, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK, WAMPLER

NAY: NONE

MOTION PASSED

Ms. Bensley: Thank you.

7. NEW BUSINESS.

Mr. Silverman: Do we have any additional business for Item 7, Madam Director?

Ms. Gray: No, Mr. Chair.

8. INFORMATIONAL ITEMS.

a. PLANNING AND DEVELOPMENT DEPARTMENT CURRENT PROJECTS

b. PLANNING AND DEVELOPMENT DEPARTMENT LAND USE PROJECT TRACKING MATRIX

c. PLANNING AND DEVELOPMENT DEPARTMENT MATRIX OF MULTI-FAMILY DWELLINGS APPROVED 2007-2017 (+2018) PIPELINE

Mr. Silverman: Is there any, with respect to Item 8 on the agenda, is there anything . . .

Mr. Hurd: Mr. Chair, is it under New Business where I should mention my thoughts on site plan approval, or should that just be part of the packet?

Mr. Silverman: Why don't you . . .

Mr. Hurd: Not that I'm going to discuss it. I'm just going to say I had thoughts on the memo that could be distributed.

Mr. Silverman: Okay, this will at least give us some thought as to where we may want to proceed with the site plan development issue.

Mr. Hurd: So, I guess with your blessing, I will send it, forward it to you to include.

Mr. Silverman: Please.

Mr. Hurd: Okay.

Mr. Silverman: Any other business to be brought before this body? The Chair entertains a motion to adjourn.

Mr. Hurd: I so move.

Mr. Silverman: Second?

Mr. Cronin: Second.

Mr. McIntosh: Third.

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

MOTION BY HURD, SECONDED BY CRONIN THAT THE DECEMBER 4, 2018 PLANNING COMMISSION MEETING BE ADJOURNED.

The Planning Commission meeting adjourned at 9:06 p.m.

Respectfully submitted,
Frank McIntosh
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary

Attachments

- Exhibit A: [Max Walton presentation \(Site Plan Approval Process\)](#)
- Exhibit B: [Planning and Development Dept. memorandum \(Site Plan Approval Process\)](#)
- Exhibit C: [Planning and Development Dept. presentation \(Parking Subcommittee Strategy\)](#)
- Exhibit D: [Planning and Development Dept. report \(Parking Subcommittee Strategy\)](#)
- Exhibit E: [Applicant presentation \(62 North Chapel Street\)](#)
- Exhibit F: [Planning and Development Dept. report \(62 North Chapel Street\)](#)
- Exhibit G: [DNP Design Committee Project Review report \(62 North Chapel Street\)](#)
- Exhibit H: [City Secretary memorandum \(Amendments to Code - DNP Design Committee\)](#)