

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

June 4, 2019

7:00 p.m.

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

Chairman: Alan Silverman

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

Commissioners Absent: District 6 (Vacant)

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

Mr. Alan Silverman called the Planning Commission meeting to order at 7:02 p.m.

1. CHAIR'S REMARKS.

Mr. Silverman: Madam Secretary, are we ready to record?

Ms. Michelle Vispi: We are.

Mr. Silverman: I'd like to call to order the City of Newark, Delaware Planning Commission meeting for Tuesday, June 4, 2019. I'd like to announce that Agenda Item 4 with respect to 18 North Street has been withdrawn and Agenda Item 5 with respect to 511 Valley Road has been postponed. There will be no hearing tonight on those two particular items.

2. THE MINUTES OF THE MAY 7, 2019 PLANNING COMMISSION MEETING.

Mr. Silverman: Moving on to approval of the minutes. The minutes have been posted on electronic media. The Commissioners have gotten hardcopies of the minutes. Are there any additions or corrections to the minutes? Okay, if there are no objections, the minutes stand as posted.

THE MINUTES OF THE MAY 7, 2019 PLANNING COMMISSION MEETING ARE APPROVED.

**3. REVIEW AND CONSIDERATION OF AN ANNEXATION AND REZONING FOR THE
PROPERTY AT 1089 ELKTON ROAD (PROJECT #19-02-01) TO CONNECT THE PARCEL TO
THE EXISTING NEWARK CHARTER SCHOOL CAMPUS AND HAVE BOTH PROPERTIES IN
THE SAME JURISDICTION.**

Mr. Silverman: Moving on to Item 3 on the agenda, Madam Director?

Ms. Mary Ellen Gray: Thank you, Mr. Chair. I'll introduce this application.

[Secretary's Note: A link to the Planning and Development Department report on the annexation and rezoning of 1089/1091 Elkton Road can be found at the end of this document.]

Ms. Gray: This project, #19-02-01, 1089 Elkton Road, is for an annexation for Newark Charter School. This project is for an annexation and rezoning of 7.40 acres of property located at 1089 and 1091 Elkton Road. This property is currently used, oh, it used to be a freezer warehouse but was purchased by the Newark Charter School in 2008 and is currently vacant. Also proposed in this application is a rezoning of two parcels which are already owned by Newark Charter and currently zoned MOR, which is manufacturing office research. The school intends to use the property as an educational facility but for now the only proposed change to the parcel is a possible addition of driveways for improved bus access to the school. There are no changes currently proposed other than possibly constructing the driveway, as I just mentioned, as preliminarily shown on the plan, for bus access. Approval of this plan does not provide approval of the potential new driveway. Construction of the driveway will require a building permit application and review by applicable individual City departments.

The parcel is currently zoned, since it's in New Castle County, I-UDC and contains an out-of-use freezer warehouse. The applicant has requested that if annexed, the parcel should be zoned RH, which is single-family detached, along with the Newark Charter-owned MOR properties, which will match the existing zoning of the adjacent Newark Charter School property.

Mr. Silverman: Okay, does . . .

Ms. Gray: I'm still going here. I was taking a breath. Okay, here we go. This property is included in the Growth and Annexation chapter of the Comprehensive Development Plan V, and therefore the department does not need to participate in the state's Preliminary Land Use Service process for this application. It is included in Planning Area 2, with a recommended use of commercial, industrial, urban mixed use, institutional, or parks open space. As part of the Newark Charter School, it matches the recommended institutional use.

Because the proposed annexation and the rezoning of the parcels do not conflict with the purposes and land-use recommendations of the Comprehensive Development Plan V, and because the residential low-density of the site will not have a negative impact upon adjoining properties and the nearby community, and with the condition that the applicants agree to a recordable annexation agreement to be appended to the property deed that will stipulate that if the City electric service is provided, it will be at the property owner's expense, and provision of services will be at the sole discretion of the City, the Planning and Development Department suggests that the Planning Commission recommend that the City Council approve the annexation of the 7.40 acre property located at 1089/1091 Elkton Road with Rh zoning, and approve the rezoning of the two parcels as indicated on the map and dated May 16, 2019 in Exhibit B. Mr. Chair?

Mr. Silverman: Thank you.

Ms. Gray: If there aren't any questions from the Planning Commission, I'd be happy to introduce Mr. Meece, who will also talk about the application.

Mr. Will Hurd: I just have one brief question.

Ms. Gray: Okay.

Mr. Hurd: On the zoning map, the property adjacent to the property in question does not seem to have been given any zoning or zoning color. It's not marked as RH, so I just wanted to be sure that that parcel is still . . .

Ms. Gray: I'm sorry, I was flipping pages while you were saying that, and I missed the last part.

Mr. Hurd: Parcel #046 isn't shown as being zoned 18RH as the adjacent Newark Charter parcel is, nor is it colored green, so I just wanted to be sure that it really is zoned RH.

Ms. Gray: So, property 046, hold on, Tom is coming up . . .

Mr. Tom Fruehstorfer: If I may.

Ms. Gray: Sure, if you have an answer quicker than I.

Mr. Fruehstorfer: The blue line circles, it's not the shading, it's the blue line that circles it out.

Ms. Gray: Ah yes, it's not shaded.

Mr. Hurd: Okay.

Mr. Fruehstorfer: It's not the color, it's the, the zoning is surrounded by the blue line.

Mr. Hurd: Okay.

Ms. Gray: Thanks, Tom.

Ms. Stacy McNatt: And I have a question.

Ms. Gray: Yes, ma'am.

Ms. McNatt: Which I think we're still on this map because this is the Exhibit B map, correct?

Ms. Gray: Yes, ma'am.

Ms. McNatt: That was referenced in the, it says rezoning of parcels in the last, the digits of the parcels referenced are 032 and 033 from MOR. Can you tell me where those are, because I don't see those tax parcel numbers referenced on this? Well, there's no numbers there. How are you supposed to know that?

Ms. Gray: Well, 032, because it's still in New Castle County, so we don't have the tax parcel . . .

Mr. Fruehstorfer: The New Castle GIS only gives us what the . . .

Ms. McNatt: I guess it would be nice if maybe somebody would have noted that you're talking about this longer rectangle. Is that what you're saying is 33? And then the other little baby rectangle is, which one is that one?

Mr. Fruehstorfer: The other map shows it.

Ms. McNatt: Can you show me? Do you now which one I can look at? Oh, the proposed . . .

Mr. Fruehstorfer: These two parcels are currently in the City and zoned MOR.

Ms. Gray: If you look at the . . .

Ms. McNatt: Oh, MOR. And they're in the City? Oh, they're currently in the City. Okay. And then after the presentation, do we get the opportunity for more questions, or no?

Ms. Gray: Mr. Chair?

Mr. Silverman: Yes.

Ms. McNatt: Okay, then I'll wait until the presentation.

Mr. Silverman: Would the applicant like to make any additional comments? The applicant has 15 minutes.

Mr. Greg Meece: I'll take 15 seconds. The secretary's explanation made sense. That's essentially what we're asking to do is, as we've done in the past, to bring our properties that we own into the City so that all of our properties are in the City of Newark. We don't want to have some in one municipality and one in the county, and also to have them all zoned appropriately for educational purposes. It's really that simple. If you have any other questions, we can try to answer them but that's essentially what it is.

Mr. Silverman: Commissioners? Mr. Stozek?

Mr. Bob Stozek: No.

Mr. Silverman: Mr. Hurd?

Mr. Hurd: I'm done.

Mr. Silverman: Ms. McNatt?

Ms. McNatt: Other than the reasoning for changing the zoning, the first zoning in the county to RH, other than that reasoning being because that's what the current Newark Charter School is, is there a reason why we don't keep with an MOR or MI districts? Are schools permitted in MOR and MI districts?

Ms. Gray: I think you just answered your own question. Schools are currently not allowed in those districts and we are currently looking at, actually, I was just talking to Chairman Silverman about that. We are currently looking at our industrial zoning districts and reevaluating them to see what additional uses should go in there because our industrial zoning districts are dated, but we don't have that revision yet.

Ms. McNatt: So, institutional uses are not permitted right now in industrial districts? Is that what you're saying?

Ms. Gray: Yes. Correct.

Ms. McNatt: Or the MOR which is the office something.

Ms. Gray: Yes, ma'am.

Mr. Silverman: It does seem strange to have a large lot single-family zoning.

Ms. Gray: Yes, it does.

Ms. McNatt: Yes, it's not typical.

Ms. Gray: But schools are allowed in RH.

Ms. McNatt: Alright, thank you for clarifying.

Ms. Gray: You're welcome.

Mr. Tom Wampler: Nothing from me.

Mr. Silverman: Nothing? Mr. Cronin?

Mr. Bob Cronin: I'm good.

Mr. Silverman: Okay. Would anyone from the public like to comment? Ms. White?

Ms. Jean White: Jean White, District 1. I just have a clarification and an inquiry. And that is, on the packet of the first couple of pages where it talks about approving this with the condition that the applicants agree to a recordable annexation agreement to be appended that will stipulate that City electric service is provided, if it is, that it is at the property owner's expense. And I presume that means the electric wires, the electric poles, anything that's connected with giving electric to what might happen. Because everybody, once you have electric, you pay once a month for your electric. I presume that's what that means. But I also wondered about water and sewer and why that wasn't included, stipulating that City electric service, water, and sewer is provided? So why are those other two utilities not in the same sentence there, if you see what I mean. What if those would be provided too, presuming the initial sewer lines, water pipes or anything would have to be paid by, in this case, the Newark Charter School, and then once they have them, it happens there. So, why are those other two utilities not there?

My second inquiry, it says the school intends to use the property as an educational facility but for now it is just being annexed. So, I was wondering what that proposed eventual educational facility might be. Those are my two comments and maybe there can be some response to those.

Mr. Silverman: I think the applicant has made it very clear as to what their proposed use it. We have what we're going to consider before us tonight, which is annexation and a transportation loop.

Ms. White: Okay. But in terms of my question about water and sewer, why isn't that included in that sentence?

Ms. Gray: I got it. So, regarding the electric, the electric is specifically in there because there is a, and this goes back to a court case from many years ago, Mrs. White, that if a parcel is already, is occupied and receiving electricity from another entity outside of the City, then they have to continue with that service or basically buy out that service to come into the City for electric service. So, that's why that is in there.

Mrs. White: [inaudible]

Ms. Gray: Yes, ma'am.

Mr. Silverman: Is there anyone else who would like to speak? Since there are no more public comments, do the Commissioners have any comments? Are we ready to put this proposal to a vote?

We have two actions tonight, as required by Code. One is an annexation and the second is rezoning of the parcel. The first item, the Chair entertains a motion for the staff report Paragraph A, approve the annexation of the 7.40+/- acre property at 1089/1091 Elkton Road with RH zoning as shown on the attached plan titled Annexation Plat for 1089 Elkton Road, Newark, Delaware, 19711, Newark Charter School, January 2019 in Exhibit A. Is there a motion?

Mr. Hurd: I so move.

Mr. Silverman: Is there a second?

Ms. McNatt: Second.

Mr. Stozek: Second.

Mr. Silverman: Is there any discussion? Okay, hearing no discussion, we will move directly to the vote. All those in favor, signify by saying Aye. All those opposed, Nay. The motion for annexation carries.

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

THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 7.40+/- ACRE PROPERTY AT 1089/1091 ELKTON ROAD, WITH RH ZONING, AS SHOWN ON THE ATTACHED PLAN TITLED ANNEXATION PLAT FOR 1089 ELKTON ROAD, NEWARK, DELAWARE, 19711, NEWARK CHARTER SCHOOL, JANUARY 2019 IN EXHIBIT A.

VOTE: 6-0

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

NAY: NONE

ABSENT: DISTRICT 6 (VACANT)

MOTION PASSED

Paragraph B of the recommendation report, the Chair entertains a motion to approve the rezoning of the parcels 18-038.00-032 and 18-038.00-033 from MOR (manufacturing office research) to RH (one-family detached residential), as shown on the attached 1089/1091 Elkton Road Rezoning Map dated May 16, 2019 in Exhibit B. Is there a motion?

Mr. Hurd: I so move.

Mr. Silverman: Is there a second?

Ms. McNatt: Second.

Mr. Cronin: Second.

Mr. Silverman: Is there any discussion on the motion? Okay, hearing none, I'll call the question. All those in favor, signify by saying Aye. All those in opposition, Nay. The Ayes have it. The motion carries.

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

THAT CITY COUNCIL APPROVE THE REZONING OF PARCEL 18-038.00-032 AND 18-038.00-033 FROM MOR (MANUFACTURING OFFICE RESEARCH) TO RH (ONE-FAMILY DETACHED RESIDENTIAL), AS SHOWN ON THE ATTACHED 1089/1091 ELKTON ROAD REZONING MAP DATED MAY 16, 2019 IN EXHIBIT B.

VOTE: 6-0

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

NAY: NONE

ABSENT: DISTRICT 6 (VACANT)

MOTION PASSED

Mr. Meece: Thank you, Mr. Chairman. Thank you, Planning Commission.

Mr. Silverman: Thank you.

Ms. Gray: Thank you.

4. **REVIEW AND CONSIDERATION OF A MINOR SUBDIVISION AT 18 NORTH STREET (PROJECT #18-06-03) TO DEMOLISH THE EXISTING 1-STORY APARTMENT BUILDING AT THE SITE AND CONSTRUCT FOUR 3-STORY TOWNHOUSE-STYLE APARTMENTS SIMILAR TO THE EXISTING UNITS AT THE REAR OF THE PROPERTY. [WITHDRAWN ON MAY 28, 2019 UNTIL A FUTURE PLANNING COMMISSION MEETING.]**

[Secretary's Note: Agenda Item 4, review and consideration of a minor subdivision at 18 North Street, was withdrawn until a future Planning Commission meeting.]

5. **REVIEW AND CONSIDERATION OF A MINOR SUBDIVISION WITH SITE PLAN APPROVAL AT 511 VALLEY ROAD (PROJECT #18-09-01) TO DEMOLISH THE EXISTING SINGLE-FAMILY STRUCTURE AT THE SITE, DIVIDE THE EXISTING PARCEL INTO TWO PARCELS, AND CONSTRUCT A SEMI-DETACHED STRUCTURE CONSISTING OF TWO SINGLE-FAMILY HOMES THAT WILL REPLICATE THE ARCHITECTURE IN THE BRIARCREEK SUBDIVISION. [POSTPONED UNTIL THE JULY 2, 2019 PLANNING COMMISSION MEETING.]**

[Secretary's Note: Agenda Item 5, review and consideration of a minor subdivision with site plan approval for 511 Valley Road, was postponed until the July 2, 2019 Planning Commission meeting.]

6. **REVIEW AND CONSIDERATION OF AN ORDINANCE PROPOSING AMENDMENTS TO CHAPTER 32 ZONING FOR THE REGULATION OF SIDEWALK CAFES, PATIOS, DECKS, BALCONIES, AND PARKLETS IN THE DOWNTOWN DISTRICT.**

Mr. Silverman: Okay, moving on to Item 6 on our agenda, review and consideration of an ordinance proposing amendments to Chapter 32 Zoning for the regulation of sidewalk cafes, patios, decks, balconies, and parklets in the downtown district.

Ms. Gray: Thank you, Mr. Chair. I'd like to introduce the Chair of the Newark Design Committee, Mr. Charma, who will present this patio ordinance again. Part two.

[Secretary's Note: A link to the Newark Design Committee's memorandums and proposed ordinance regarding the regulation of sidewalk cafes, patios, decks, balconies, and parklets in the downtown district can be found at the end of this document.]

Mr. Joe Charma: Thank you. Good evening, Chairman Silverman and Planning Commissioners. It's a pleasure to be before you to speak about this proposed ordinance. You have seen this before, several months ago and, in your deliberations, you approved this ordinance and sent it to Council and, to our dismay, Council did not approve the ordinance. We feel the ordinance is beneficial to downtown since there are, right now, no regulations or design criteria or any kind of guidance for any of the patios and al fresco dining areas and parklets which are currently being constructed. The Design Committee feels that this would really be beneficial. It takes patio configurations and regulations out of the alcohol section of the Code, which is a good thing. It doesn't really belong there. At the time, it was there for a purpose in that time period but it's time to move on. The proliferation of patios and open-air dining facilities has made our downtown quite nice and would rival any city.

What we had, and I know it's in your packet, I prepared a brief letter to you explaining why we are back, and essentially, to indicate a letter that I also wrote to Council that, assuming this ordinance moves forward to Council, that letter would be given to Council and it goes through the specific comments that . . . Mr. Chair?

Mr. Silverman: Mr. Charma, you're referring to your May 16 letter?

Mr. Charma: Yes, I am.

Mr. Silverman: Thank you.

Mr. Charma: That letter goes through a couple of the Council members' comments and addresses those, in addition to some comments that were made by the public, that were really in error. The comments that were made were not correct with reference to ADA accessibility requirements. In that letter I'd just like to point out there is a typographical error and it would be on page 2 under Councilwoman Wallace's Amendment 3. Under Provision 5, the ordinance cited there should be 32.56.8(1)(a)(7), not (6), and that regarded the requirement to add barriers around any of the outdoor dining facilities or patios.

Other than that, in the ordinance itself, there were a couple of very minor changes that resulted and that's, I'm looking at the draft ordinance, and you have that in your packet, I can go through them. It's unfortunate that my copy has the corrections in red and I know yours doesn't, which is not good, and I apologize for that.

Mr. Silverman: Do you have the line references on yours?

Mr. Charma: I don't have the line references, but I can go down the sections.

Mr. Tim Poole: [inaudible]

Mr. Charma: Great. Thanks, Tim. On page 3, line 101, it should say café enclosure. Enclosure was added. Down to line 109, after director, it should say and/or Planning and Development Director. Okay, moving on to page 5, line 159, it's paragraph 9, in its entirety, has been added. And that's regarding a provision to prevent an overflow of patrons onto the sidewalk areas. And then down to line 162, that's paragraph 10, it requires security personnel or supervision to monitor, essentially monitor crowds and maintain a clear path. We've noted that sometimes if there's something special going on in an establishment, lines, if they're offering, I don't know, free burgers or somethings for the first 50 people, lines develop and may crowd out onto the sidewalk. So, this provision would ensure that there is some control of those instances. And those comments were some of the comments that the Council members made in their review of the ordinance.

So, basically, I'm here to ask that the Commission resend this ordinance back to Council because we, the Design Committee, believe this is a good ordinance and it will benefit the City, will benefit our downtown area and help continue the beautiful parklets and patio areas. One of the provisions that we worked on was any expansion of existing areas. We'd like to see some kind of public art or something cultural added to those areas, not just a plain expansion of a patio. It needs to have some other kind of benefit for the downtown area to help make downtown a nicer place and pedestrian-friendly place. And that's basically what I'm asking the Commission to consider.

Mr. Silverman: Commissioners, questions?

Mr. Stozek: Yeah, on page 5, the two things you talked about, number 9 and 10, so what happens if the establishment does not control the patrons or provide security or supervision to keep things clear?

Mr. Charma: Well, I would assume, now I'm going to assume, and I may ask Tim Poole from Code Enforcement to speak to that, but probably there would be some citation and/or police call, just as they would for any kind of overcrowded situation. Because there are ordinances and there are regulations that control the sizes of occupancy and things like that, so there could be a violation of an occupancy ordinance. So, I would assume . . . Tim, do you want to speak to that?

Mr. Poole: At the time of the incident . . .

Mr. Silverman: Tim, could you identify yourself?

Mr. Poole: I'm Tim Poole, Code Enforcement Officer for the City in the Planning and Development Department.

Mr. Silverman: Thank you.

Mr. Poole: In the instant of the moment, it would be a police call to come out to address a public disturbance. And then after the police had done that, they would inform Code Enforcement who would send a violation to the zoning provision to ensure that they address that properly in the future.

Mr. Stozek: So, you're relying on somebody that's on the street who is irritated that they can't get by, that they're going to make a police call to then issue a citation. That's basically what you're saying.

Mr. Poole: Yes. So, there would be a complaint filed for blocking the pedestrian way, just as it happens now.

Mr. Stozek: I had, I guess, on the last page, you have a sketch. I guess there was one thing, and I know you're not, I guess you're just saying these things can exist within the patio structure on your diagram, and you're showing a bike rack. The way it's positioned, I would imagine that bicycles could possibly extend out into the pedestrian sidewalk area, with a bike rack positioned that way.

Mr. Poole: The newer style of bike racks, the bikes are attached to the rack parallel to the rack. That's why it's shown the way that it is. So, that wouldn't be the case.

Mr. Stozek: Okay.

Mr. Silverman: Mr. Hurd?

Mr. Hurd: Good work, again. My general comment was on your letter, actually, because there were some things that weren't entirely clear. I think it would make sense to revise it some to have the Council person's comments first, with your responses to them. Because it took me a while to read this to realize that I was reading that you're referring to her Provision 2 and her Amendment 3 for Councilwoman Wallace and how you addressed it, but it doesn't have the text of her comment. So, I can't see what she was trying to amend or deal with so that . . . just because everyone's memory is going to be bad and not everyone is going to have read all the minutes. I think it would be stronger to say, you know, the Council people had these comments and these are our responses to those comments.

Mr. Charma: Okay.

Mr. Hurd: Because I kept looking for where's Provision 2 in the Code and it's not. That was just my general thing for the letter to just make them stronger.

Mr. Charma: If I might, I mean I just downloaded the minutes from the meeting. Perhaps attaching the minutes . . .

Mr. Hurd: Sure.

Mr. Charma: Might be an easier way for Council . . .

Mr. Hurd: Yeah.

Mr. Charma: Because unless they go and look up the minutes also, they're going to say what did I say? They might not remember exactly what they said. Thank you.

Mr. Silverman: And it will also be part of the public packet.

Mr. Hurd: Okay. That's all.

Mr. Charma: That's what I'll do then when the packet comes out. We'll attach the minutes from the Council meeting with the letter so it's clear.

Mr. Silverman: Ms. McNatt?

Ms. McNatt: Hi, Joe. Yes, I just . . .

Mr. Charma: Hi, Ms. McNatt, how are you?

Ms. McNatt: Just for clarification, it appears, it's redundant but it's not bad redundancy, that Item A11, which says patios, decks, and parklets shall be maintained in good repair and sanitary condition. The property owner or business shall sweep and wash all areas daily. All garbage and debris should be disposed of in approved containers. Except in this section it doesn't specifically reference a balcony but then you jump to Item 6, specifically, and it says all sidewalk cafes, patios, decks, balconies, and parklets shall be maintained daily in a clean and attractive appearance and shall be in good repair at all times. Sidewalk cafes, patios, decks, balconies, and parklets associated with private property or businesses shall be cleaned and swept daily by the property owner or associated business. It seems like it's duplicate or somewhat repeated. It's redundant but it's not a bad redundancy. I just wanted to point that out, that one section has a specific mention of balconies, and it may be more about including garbage, when maybe somehow they could have been combined. Just a thought. I'm not suggesting you have to change it, but I do want to add, if possible, in #9, your new paragraph, that is . . .

Mr. Silverman: What line are you on?

Ms. McNatt: Line 160-ish, where it talks about all tables, chairs and other furnishings . . . that's the first time we mentioned furnishings or . . . shall be located within the required enclosure. I think it's important that we should mention and kept in good repair, as well. I think, you know, we don't want these furnishings to be in poor repair, rusted . . . not that they would keep them that way, but I think that it's important that any furnishings or some type of appurtenances that are in these parklets are kept in good repair. So, that's my one recommendation to change or add, I guess.

Mr. Charma: Excuse me, just clarification. Line 161?

Ms. McNatt: Yeah, I think it's where other furnishings shall be located within the required enclosure and kept in good repair. I don't know if that's an easy thing to add.

Mr. Charma: That's easy. Thank you.

Ms. McNatt: And my only other last question, just for clarification, Line 81, is it truly Article XX? I thought those articles were numbers, no?

Mr. Charma: No, it is Article 20, yes.

Ms. McNatt: They're numerical? Okay. I couldn't remember if the sections, or I mean the chapters, or the articles were numeric. I just wanted to make sure that was correct and not a typo. And just going back to #11, should we add balconies into Line 90 about patios, decks, and parklets shall be maintained in good repair and sanitary conditions, property owners or businesses shall sweep and wash all areas daily, and all garbage and debris shall be disposed of

in approved containers? I don't know if we should. I'm not sure if we should add balconies to that section or not.

Mr. Charma: I don't think it would hurt.

Ms. McNatt: I don't either.

Mr. Charma: At the, I guess at the danger of being redundant, I think redundancy when we're talking about keeping stuff clean is a good thing. We're just trying to get the point across.

Ms. McNatt: Right. So, I would add, if you don't disagree or don't think it's a problem, I would add balconies as well into that section. And those were my only comments. So, thank you for summarizing all these changes and making it clear and understandable. I appreciate it.

Mr. Charma: You're welcome and thank you for your comments.

Mr. Silverman: Commissioner Wampler?

Mr. Wampler: Thank you. I have just a couple of quick comments. This was new to me and as a person who is on Main Street a lot, I think this is a great idea. I think everybody likes sidewalk cafes but you do see, particularly if they're busy or if there are a lot of crowds, things begin to spread out and crowd and block. I've sometime been walking around thinking what is the clearance supposed to be because this is really narrow. If you've got a lot of pedestrians and a lot of people eating over here, it's nice to know that somebody is thinking about what's the appropriate thing.

My second question is, do you, I don't know why Council would not have approved this, but do you feel that the changes that you've made are enough to push them over the edge and have them approve it?

Mr. Charma: I believe so. What I think actually occurred, I was not able to attend that meeting and I think there were maybe two members of the public who spoke in opposition of the ordinance, so there was no support. And I really think in my letter, I think Council missed the, for some reason, either they didn't read the key issues of the ordinance or, I mean, it's quite clear why it would be beneficial. It talks about clear zones and keeping, giving the City the authority above and beyond the ADA. As you mentioned, there's some areas we're saying that the clear path should be, right now the ordinance says it's five feet, the Code says five feet, and we're saying it should be six. And then in some cases, maybe that should be ten. Maybe there should be no obstruction at all. And this ordinance would give the City the authority to do that. It gives the Planning and Development Director and the Public Works and Water Resources Director the option of looking at certain areas and saying, hey, this is not a good thing here, we need to come up with a better plan. So that's why I couldn't understand why it just got . . . I don't know if it was late when they got to it or whether they were tired, but you know, I'm optimistic, and I think it will pass. It should. I'm hoping.

Mr. Stozek: I think one of the issues is there are a lot of numbers in here and it's hard to visualize a lot of these things without seeing specific examples of them. And a case in point would be Line 70. You're talking about having walls or barriers around these patios and you say barriers shall be a minimum of two feet in height. If you have a crowded area, I could see a two-foot barrier, whatever that is, being a tripping area with people falling over it or something, because they can't see it. And that's just what I'm kind of visualizing. And then you said barriers greater than three-feet in width shall be a minimum of six inches in height.

Mr. Charma: Well, what those kinds of barriers are in the definition, those are areas that were intended to be planted. So, you might have a two-foot high planter box, but it's got a three-foot plant in it or something like that. So, we're trying to . . .

Mr. Stozek: Well, I think it would help if you would explain that because, like I say, you read these things and you can visualize ten different possibilities of what it could really be. You know, if it's a planter, say it's a planter.

Mr. Charma: Right. I understand.

Mr. Stozek: It's going to help people understand what's going on.

Mr. Charma: Okay, I will take a look at . . .

Mr. Stozek: And when I saw two-foot height, I can just see in a crowded area, people falling over that, if it's a little wall or a little fence or whatever that is.

Mr. Charma: It becomes a tripping hazard. I agree with that.

Mr. Stozek: Exactly.

Mr. Silverman: Mr. Stozek, do you have a line reference?

Ms. McNatt: He said 70.

Mr. Stozek: Seventy.

Mr. Hurd: One suggestion would be if you're presenting this at Council, is to have pictures. Either stuff that's currently on Main Street or stuff that you've seen elsewhere so that you can talk about this is a barrier enclosing and this is a planter. Because I think that will help people to go, oh, wait, I've seen that before. It's the low bench that people sit on at the entrance. So . . .

Mr. Charma: I would even, if the Commission would approve, I would even say we could put those into a packet to send to Council when the ordinance goes forward. Obviously, you're not seeing that now, so I don't know how you feel about that.

Mr. Silverman: Just a comment on it. Given the desire of Council to compress time and maximize information, perhaps digital photographs as part of your packet might meet that need rather than asking for time for a PowerPoint presentation.

Mr. Charma: A presentation, right.

Mr. Silverman: Mr. Cronin?

Mr. Cronin: Mr. Chairman. I'm curious as to the parklets. Who owns that ground technically?

Mr. Charma: The City does.

Mr. Cronin: Okay, then we're trying to make a business responsible for cleaning and washing it daily and keeping it in good repair when it's not their property?

Mr. Charma: Well, currently the property owners are responsible to clean the sidewalk in front of their, they don't technically own that sidewalk, but they are responsible to keep it clean and orderly.

Ms. McNatt: And snow shovel. I'm sorry, shovel snow.

Mr. Charma: Correct. So, this is just one of the things. And some of the businesses, if you have, for example, a restaurant and a parklet ends up being constructed in front of your restaurant, you can bet that patrons are going to sit there and eat their ice cream or, you now, drink their iced tea or whatever in that parklet. And if they're dropping paper, cups or whatever, you know, it would be that business' responsibility to keep that clean. And the City, I

know the City has daily maintenance of Main Street. There's somebody that goes down and sweeps the streets so that might fall under that, under that purview.

Mr. Cronin: Well suppose the parklet has, let's say, metal benches to sit on or a table. When it comes time to repair or repaint these things, is that the City function or is that going to be a business function?

Mr. Charma: That's a City function. The furniture would be, the furniture or furnishings or landscaping would be the City's responsibility.

Mr. Cronin: Right.

Ms. McNatt: Unless, correct me if I'm wrong, unless you're on section, well I guess it's 11 or 6 or etc., if it's associated with the business, then the business owner would then, if we add that regarding the patio furnishings would be, wouldn't that be the business owner's responsibility?

Mr. Charma: Can you tell me exactly where . . .

Ms. McNatt: So, back to section . . .

Mr. Silverman: Line reference, please.

Ms. McNatt: Line 90, as well as starting at Line 151, and then also going into 159, all three of those different sections, wouldn't you, just like you said, associated with private property or a business shall be cleaned and swept daily and cleaned by the property owner or associated business. And then 9, there shall be no overflow of patrons onto the sidewalk, all tables, chairs and other furnishings shall be located within the required enclosure and kept in good repair. And maybe you should add if it's associated with a private property or business so that the City doesn't have extra resources to take care of furnishings that are associated with businesses.

Mr. Charma: Well, I think what we're trying to distinguish here is, and I can't give you an example off the top of my head, but the way the property lines run down Main Street, sometimes they jog in and out. So, you may end up with a situation where a parklet ends up being on private property. If it did, I think we tried to avoid that when we were looking at their placement. But we're trying to say that if it was on private property, then that would be obviously the business' responsibility to repair that furniture or whatever, furnishings.

Ms. McNatt: Here's a question. I'm sorry, just to follow up with Mr. Cronin's idea. Is it possible that one of these business-used parklets could ultimately be in public right-of-way but then be for the business? Could that happen?

Mr. Silverman: Is there a sponsorship anticipated?

Mr. Charma: At this point in time, no I don't think there is a sponsorship, but I think that's something that we, the Design Committee, has talked about with the Parks and Recreation Department. We talked about furnishings and things. There's going to be basic furnishings that are part of the project that come out that are in that contract. But, other than that, there may be an opportunity for a property owner that says I would like a table with an umbrella. Okay, fine.

Mr. Silverman: With my name on the umbrella.

Mr. Charma: Right.

Mr. Paul Bilodeau: Mr. Charma, I was at that Council meeting and I think it did come up kind of late in the evening when they discussed it. But I think Council did get hung up on the parklets. Like if the parklets were in front of somebody's business that really didn't want it there and the

guy two stores down is kind of sponsoring it. I remember some kind of talk about that and how are the parklets going to be located? I think that's kind of . . .

Ms. Gray: Well, to be fair, this patio ordinance wouldn't impact that one way or the other. I mean, the parklets are going in. And the furniture is going in.

Mr. Charma: Right.

Ms. Gray: So, that's kind of a, let's park that discussion. The management of that is being actively discussed, to be fair, and it would appear that in this, if there were an entity that is putting in their own furniture, for example, we have entities there, Ali Baba and Caffé Gelato, that have their own furnishings on the street and I'm assuming, I haven't looked at the maps, but I'm assuming that they are in the right-of-way. They are maintaining those furnishings in the right-of-way. So, if we have additional entities that are looking to put in additional furnishings, according to this ordinance, should it get passed, on their sidewalk that are in the right-of-way, they would have to maintain it whether it's in the parklet or not. Would that be a fair characterization of that? I'm kind of looking at you and . . .

Mr. Bilodeau: I would say that that's something that Council wanted addressed.

Ms. Gray: Yes, absolutely.

Mr. Bilodeau: And they were a little confused about that.

Ms. Gray: Right.

Mr. Poole: Additionally, in Line 156, it specifically prohibits signage in parklets or sidewalk cafes that are located within the right-of-way. So, that addresses that concern.

Mr. Silverman: So, my sandwich board can't sit in the parklet. It can sit back associated with my outdoor area.

Mr. Poole: Correct.

Ms. McNatt: Can I ask . . . I'm sorry, Mr. Cronin, I was just going to ask another quick question to your parklet. Are parklets more City parklets for City purposes, meaning in the public right-of-way, and then the sidewalk cafes and the patios and the decks and balconies are more private business oriented? Is that the way I'm understanding this?

Mr. Charma: Correct. An example, I'll pick on Caffé Gelato because I think a parklet is going to be, I think it's in front of . . .

Ms. McNatt: Will be in front of . . .

Mr. Charma: Yeah, I believe there is one there or close to it. Mr. German already has a patio, quite a nice patio, and if there's a parklet there, you can make book that some of his patrons will sit in that parklet. He may even want to sponsor, again, sponsor furniture there.

Mr. Poole: Additionally, all those terms are defined in the definitions.

Ms. McNatt: I was just clarifying, yeah.

Mr. Charma: So, given that, if he does, then he's going to be responsible for maintaining that furniture. And I'm not certain as to whether there will be some agreement. Maybe there will be some agreement between that property owner if they sponsor furniture, between the property owner and the City that says, you know, if I buy this and put it in, I'll maintain it in good working order and if it needs to be replaced, I will.

Mr. Hurd: So, perhaps there on Line 161 when we're talking about maintaining the furnishings in good order, we just have to make sure that we say all furnishings owned by a business, you know, must be maintained in good order. Because that would allow us to say if it's on a patio, if you put a table on a parklet, wherever you put your stuff, you have to keep it in good shape, which keeps the business owner from being responsible for maintaining a City-owned bench.

Mr. Charma: Correct.

Mr. Hurd: Okay. Another thing on that line we just may need to clarify when we say . . .

Ms. McNatt: Say by a property owner or business.

Mr. Hurd: Owned by. Yeah. Ownership of the furnishings.

Mr. Charma: After Line 161, in Line 161. Is that where you'd like to insert that after furnishings?

Mr. Hurd: Well, yeah, we inserted the text about maintaining in good order. We should just be clear that it's the furnishings owned by a business.

Mr. Silverman: Mr. Cronin, does that answer your issue?

Mr. Cronin: I think that discussion is probably sufficient on that subject at this point. Thank you.

Mr. Silverman: Okay, thank you. And when the notes are complete, I have a comment.

Mr. Charma: I just want to make sure that I got this right. Commissioner Hurd, I added in Line 161 after furnishings, owned by a business. Is that sufficient?

Mr. Hurd: I believe so.

Ms. McNatt: Furnishings, owned by a property owner or business, because you have that same language in Line 90. It says that the property owner or business shall. If this is the same concept, I would just say property owner or business.

Mr. Charma: Got it. Thank you.

Mr. Silverman: Okay, are your notes complete? With respect to Line 162, security personnel or other supervision shall be provided to maintain order and a clear path where a line of customers form to enter a café. That's kind of broad. My party of 14 gets there and it's going to take a few minutes to get in the door. Is that considered a line?

Mr. Charma: Well I think, it's a line but I think . . .

Mr. Silverman: I understand what you're saying.

Mr. Charma: I'm going to use an example from what I've seen. Klondike Kate's gets really busy. It gets really busy, they line up on the sidewalk, all the way down and the sidewalk is maybe five feet wide there. You've got the little jog where the patio jogged around the tree, I don't know if the tree is there or if it's gone, I can't remember, but it gets real busy there. I think that's the kind of line they're talking about. That line is going to be there for a half-hour or 45 minutes because they won't let anymore people into the building because they're already at capacity.

Mr. Silverman: I understand.

Mr. Charma: That's the kind of situation we're trying to police.

Mr. Silverman: I was just trying to look at this through the eyes of someone who may be disgruntled, and a police officer gets there and says there are eight people waiting, and you called me for this? As opposed to a very busy establishment who is abiding by the fire and occupancy codes and only letting people in when there's room available.

Mr. Charma: I think what would happen, you know, what we're trying to ensure happens is that there is some supervision. If there is a line and your party is waiting, someone is going to come out and say, hey, can you step back against the patio rail here, wait here, don't block the sidewalk. That kind of thing.

Mr. Silverman: I'm not going to make an issue of it. I think it will work out as time goes by.

Mr. Charma: Okay, thank you.

Mr. Silverman: Does the public have any comments? Ms. White.

Ms. White: Jean White, District 1. I've seen this in various forms so here I am again. I wanted to talk first about Line 143 and 144 on Page 4. Let me just see. It says the installation and use of speakers and other amplified sound equipment shall be regulated in accordance with Chapter 20A. I think this should say instead, the installation and use of speakers and other amplified sound are prohibited, as stated in Chapter 20A. And I have a copy of Chapter 20A here and it says exterior loudspeakers, they're under a list of specific prohibition. I think this should be very direct, not obscure. Because even if you go and look in Chapter 20, you have to go through the whole thing to find out that outside speakers are prohibited. I think one should not obscure what it is, but just state it out. You can say it's found in Chapter 20A, too, if you want to, but I don't think that somebody who gets a copy of this has to be forced to look around to find that they're prohibited. That's my first comment. That was Line 143 and 144.

And then, let me just see here, on Line 80 and 81, which is on Page 3 also, cooking facilities located in sidewalk cafes shall require a special use permit. Okay, if you look in Chapter 32-78, first of all, if you look in 32-56.4, you will see that cooking facilities are prohibited. Okay and this says except as specifically authorized. But when you look at that, it doesn't really address what you're talking about in these areas. So, outside cooking facilities on patios are prohibited. So, that is my second comment there. But I particularly feel very strongly about the one about outside speakers.

And the third thing is, and it's a small thing, I have to find out where it is. Let me just see. It is, okay, the code as it is now says that, I think it says sidewalk cafes, patios, decks and balconies shall be limited to a maximum of 1,000 square feet. Okay, well just as an aside, this is line 33, 34, and 35 on the next page. I was surprised that the balconies might be included in the 1,000 square feet, which seems to me they're up on maybe a second floor or something. But maybe I don't understand. I have to look at the definition. Okay, but on Line 36, I guess, the exception is where a minimum of 10% of the area is used for recreational purposes or display or art. The display of art I can understand but recreational purposes, I would like that to be defined because recreational purposes covers a huge area. And so, we're talking about allowing more than 1,000 square feet for the sidewalk cafes, patios, decks, and balconies, but what is meant by the recreational purposes, which is very general and too general so one doesn't know what it means? At least I don't know what it covers. Thank you.

Mr. Silverman: Gentlemen?

Mr. Poole: Tim Poole, Code Enforcement Officer. As far as the Code references go, the reason that they are not there specifically referencing the other chapters is to prevent a breakdown of circular references where one section of the code is amended and there are other sections of the code that reference that, that now conflict with any changes that happen in the future. So, that's why it specifically sends you to the other section of the code.

And as far as the definition of recreational purposes being vague, it is intentionally vague to allow the applicant to provide some sort of benefit other than additional serving area for their patio or deck or balcony.

Ms. McNatt: I'm sorry, am I allowed to ask a question now?

Mr. Silverman: Yes.

Ms. McNatt: Quick question, Mr. Poole. Do you mean like maybe they could do a cornhole game or a ring toss game?

Mr. Poole: That would certainly be recreational.

Ms. McNatt: Or some type of recreational event that's happening in their little patio eatery?

Mr. Silverman: Even bingo.

Ms. McNatt: Bingo? Oh, that's a good one. So, that's considered recreational is what I'm thinking?

Mr. Poole: Yes.

Mr. Stozek: Could they do darts?

Mr. Poole: Pardon?

Mr. Stozek: Could they do darts?

Mr. Poole: Again, in the same manner that they could do that in a bar setting, I would expect that anyone who would have that sort of activity would ensure that their liability is protected and install appropriate safety protocols.

Mr. Hurd: Right. In that vein, might I suggest that we clarify that recreational, that it's non-business or non-serving related space? Do you think that would help or do you think that this is a little . . .

Mr. Poole: Again, per the discussion, it's about having a pedestrian-friendly environment and having other uses beside just serving for these larger patios and they are required dedicate some of that space to some other purpose.

Mr. Hurd: Okay, thank you.

Mr. Silverman: Any other questions?

Mr. Wampler: I have one question. I'm curious about in the section that starts Line 151, and it says balconies, decks and everything, associated with private property or business. I'm curious about including balconies that are part of private property. My understanding of private property, for example the Washington House condos all have balconies. We're not trying to regulate what people do on there, so what kind of private property are you talking about in this line that would be subject to these regulations?

Mr. Charma: We're talking about the building that's next to Finn McCool's to the east. They have a balcony that's a business that's a second-floor office space. Those are the kinds of uses we're talking about because that office space could put tables out on their balcony for employees to have lunch and things like that. Or, that business, five years from now, that could end up being a restaurant, a second-floor restaurant. So, we're just trying to anticipate those kinds of changes. We're not intending to regulate Washington House or residential property.

Mr. Wampler: No, but in my mind if it's an office and the office has a balcony, that's really a business and not a private property.

Mr. Charma: Correct.

Mr. Wampler: So, I'm confused as to an example of specifically a private property that would fall under the . . .

Mr. Poole: It's privately owned. It's either private property, meaning it's owned by some person or entity, or it's public property and part of the right-of-way or parkland.

Mr. Wampler: Okay.

Mr. Hurd: I think what we're missing here is that this is geared specifically to business uses as opposed to residential uses, which is not, I think, clear in the code. So, you could say the Washington House is in the downtown district, which this ordinance is covering, and they have balconies, but I think it would be a stretch to say that Code Enforcement is going to make them sweep it every day. So, how do you . . . but someone could hold this up and say it's a balcony in the downtown district and it's not being swept because one neighbor could . . .

Ms. McNatt: This is geared toward gathering and public spaces for uses of patrons. It's not private property, personal residential property. Right?

Mr. Hurd: So, we have to make sure that we're talking about public balconies for the definition.

Mr. Poole: Actually, in Line 29, it specifically excludes patios, decks, and balconies associated with single-family dwellings. So, it's not intended to be used on . . .

Mr. Wampler: That's the answer I missed. Thank you.

Mr. Silverman: Any other discussion? Madam Director, do we . . .

Mr. Cronin: Mr. Chairman?

Mr. Silverman: Yes?

Mr. Cronin: Two things. One kind of minor on Line 42, an accessible route shall be provided in the public way around the sidewalk café, patio, or parklet. I think I would suggest taking the word around, which to me kind of suggests circular, and replacing it with the word past, P-A-S-T, to allow somebody to get past the café or the patio. And beyond that I'd be a lot more comfortable if the whole reference to parklets was taken out of this because I see parklets as primarily public property maintained and controlled, you know, we talk about putting up barriers and so forth. Well, you know, whose putting up the barriers for the parklets? I guess the City is, so to me I think the whole essence of this code really should be directed toward business owners and non-public property owners, which are business owners, essentially, in the district, and keep the parklets, if you're going to have that, put it under a City park ordinance someplace as a parklet, where the City maintains the metal benches and this and that and anything associated with it. I think to commingle them really clouds the enforcement and interpretation between the City and business owners next to or near parklets. So, my suggestion is really to take parklets out of this entirely.

Mr. Silverman: Mr. Charma or Mr. Poole, do you have any thoughts on that?

Mr. Poole: Again, the parklets are specifically defined and someone could have a parklet on private property by just maintaining a lawn area with some public gathering space. So, this is intended to provide guidelines for that, as well as some design guidelines for the parklets in the right-of-way. Certainly, in the maintenance portions where it addresses parklets, typically it

states parklets on private property and the responsibilities of the property owner to maintain them, as opposed to the public parklets. But it's mostly about providing guidelines for accessibility and clearances.

Mr. Cronin: It says a parklet is defined in Line 9 as an area located in or adjacent to the public right-of-way, so if it's adjacent to it, then it's presumably private property.

Mr. Poole: Correct.

Mr. Cronin: But if it's in, presumably, it's public property.

Mr. Charma: Correct.

Mr. Poole: Correct.

Mr. Cronin: And my recommendation is to take the public property sites out of this altogether because why do you need to establish here what the City has responsibility to do as the owner of the property?

Mr. Charma: Well, we're trying to establish design criteria and it should apply to the City as well as private property. That's what we're trying to do. We're trying to create an ordinance that creates some kind of unity and some kind of standards, if you will, to guide what happens downtown. So, that's why we included parklets because, as you mentioned, a parklet could be on private property or public property. It could be in the right-of-way or it could be out of the right-of-way in front of someone's establishment. If they've got a deep enough lot or the building is far enough back, they could create their own parklet.

Mr. Cronin: I mean how can a parklet be associated with a business, for example? I mean I guess if it's directly in front of that business maybe there's an assumed association. But if the business owner wants nothing to do with it, he's got to look after it anyway because it's in front of his business and it's not even his property.

Mr. Charma: No, if it is his property, if he's established a parklet. There could be a business that establishes a seating area out in front of their business for patrons of the business to just sit and relax.

Mr. Cronin: Sure, but that's not going to be a property in a parklet.

Mr. Charma: No, but it would be private property then.

Mr. Silverman: As I understand it, it sounds like you're thinking of parklets being located within parking spaces as they're proposed on the Main Street redevelopment.

Mr. Cronin: Essentially, yes.

Mr. Silverman: What I'm hearing is I can have something designed to a parklet standard that is not a substitute for parking space, not beyond the curb. I can have it on my property.

Mr. Charma: I think you're hung up on the term parklet.

Mr. Cronin: In that case, I wouldn't call it a parklet. I'd just call it a, I don't know, to me a parklet is something that's in public property, by definition. And I guess you're trying to say it could be either in or adjacent to it. If it's adjacent to it, it could be on private property. But I think the standards and the responsibilities are different as to whether it's private property or public property. I think it's kind of gray the way this thing addresses the implementation crossing over public or private. It's kind of muddled throughout the whole thing.

Mr. Silverman: Commissioners, is there . . .

Mr. Stozek: I mean, within your definitions you say a parklet is adjacent to a public right-of-way, constructed for the purpose of public gathering.

Mr. Charma: Parklet is a use.

Mr. Stozek: So, if you were to have a private parklet . . .

Mr. Charma: It's a use. Parklet is a use.

Mr. Cronin: Yeah, but it's either adjacent to or it says in, or adjacent to. And I want to take the ones that are in, you know, pull them out of this recommendation or ordinance or whatever we're proposing and then address the ones adjacent to . . .

Ms. McNatt: I respectfully disagree because I think if it's public property, it's the City's responsibility to maintain and if it's private property, whether this parklet exists privately or publicly, there's a clear definition of the maintenance responsibility. I think public is the City and private would be the entity that owns the property that the parklet is on.

Mr. Silverman: This is a substantive deviation and change from what's proposed.

Ms. McNatt: I'm just saying I don't agree with . . .

Mr. Silverman: Well, where I'm going with this is, do the Commissioners feel that eliminating parklets is substantial enough to put it to a vote?

Ms. McNatt: You want me to vote on his proposal?

Mr. Silverman: Yes.

Mr. Cronin: I think we should make a distinction between City-owned parklets and privately-owned parklets.

Mr. Silverman: This is going to go to Council and I can see the same argument at Council. We need to come up with a position.

Mr. Cronin: We have a definition that says in or adjacent to is a parklet. So, if it's in, it's part of the property. If it's adjacent to, it's not. But when you go through this, all these line items, it uses the word parklet which covers both, in or adjacent to.

Mr. Charma: Correct.

Mr. Cronin: And I don't think they can be covered equally because of their ownership.

Mr. Charma: Well . . .

Mr. Cronin: And I don't think you're covering the same animal . . .

Mr. Charma: You've got to understand that the ordinance is intended to create design standards and those standards apply to the City as well as the private properties. So, they do apply to the City. So, they're very pertinent. That's where this ordinance was born from. I mean, we looked at, when the Design Committee looked at the parklet plan that's currently being constructed, the public parklets, we thought about what's going to be in them? How are they going to look? What do the barriers look like? What kind of furniture is going in there? So, those standards, we said it was logical to create a standard that applied to those as well as any other parklets or patios or open, al fresco dining spaces. So, that's where this, we kind of

tried to create something that was all-encompassing. That encompassed everything. The City is really going to set the standard, if you will.

Mr. Cronin: So, who from the City is going to come out and clean or sweep this parklet daily?

Mr. Charma: Public Works. They do it now.

Mr. Cronin: Every day?

Mr. Charma: They go down the street and they clean the street every day.

Mr. Cronin: Okay.

Mr. Hurd: Yeah, I'll say that initially I was thinking that parklets were a different animal that shouldn't be in here until you brought my attention back to the definition and I realized it's a use not a location. Because I think I was also hung up with the parking spaces turned into a gathering space and that's kind of outside the realm of things. But I think if we can be clear that it's a use not a place, you know . . . I don't know if it needs a better name, because the parklet puts you right in parking and then you're right there.

Mr. Silverman: Yeah, and also the coincidence of names with the activity on Main Street where parklets have become very predominant in discussion – where are they going to be located, are they eliminating parking spaces – I think it's confusing what we're doing here with the use rather than the project.

Mr. Charma: Well, I'll be honest with you, I didn't come up with the term parklet. Some other planner came up with that term and we just, you know, and essentially that's where it came from was, hey, let's take a couple parking spaces and create a nice public seating area. And they called it a parklet.

Mr. Hurd: So, I think it's getting people past that and to the point of so someone could also create a small, miniature park next to their property, on their property, next to the sidewalk, next to the parking lot, or do something, and that would also be a parklet because it's not service, it's not part of the assembly of the building. It's recreational, it's sort of public assembly as opposed to other things. You may to just make sure that that's highlighted in your letter or something, just to get the phrasing reset in peoples' brains before they start reading the code.

Mr. Charma: Thank you.

Mr. Hurd: Because clearly, we're all confused.

Ms. McNatt: I'm not confused. I'm good.

Mr. Hurd: Some of us are confused.

Mr. Silverman: I see it as a use rather than a description of a geographic area.

Mr. Hurd: Right, but as you pointed out, all the conversation up to now has been about the parklets on Main Street that are taking away parking spaces. So, that's the perception that's locked in peoples' brains at the moment.

Ms. McNatt: The perception they're taking away parking, but they're not.

Mr. Charma: With the parklets, there is actually . . .

Mr. Hurd: Oh, I know.

Ms. McNatt: More parking, I know. I was just clarifying to make sure that's on the public record.

Mr. Hurd: People are thinking those things in the street when they hear parklets. We need to broaden that to make this easier.

Mr. Charma: Perception is everything.

Mr. Hurd: Oh yeah.

Mr. Wampler: Right.

Mr. Silverman: Are we ready to make a recommendation?

Mr. Wampler: Yes.

Ms. McNatt: Well, my question is, are we doing what Mr. Cronin wants or we're okay with keeping, because I'm okay with keeping parklet in. I'm not in support of taking the word parklets out. So, my question is are we keeping or . . .

Mr. Stozek: What recommendation are you talking about? Are we ready to make a recommendation? For what? To adopt this?

Mr. Silverman: Yes.

Ms. McNatt: With the changes . . .

Mr. Silverman: With the changes . . .

Ms. McNatt: Which changes, though?

Mr. Stozek: That's my problem.

Mr. Silverman: That's where I'm drilling down to. The Chair will entertain a motion to accept Mr. Cronin's recommendation for action with respect to eliminating parklets from the proposal.

Ms. McNatt: That's what you want to vote on first?

Mr. Silverman: Yes.

Ms. McNatt: Okay. Thank you for clarifying.

Mr. Silverman: Do I hear . . . I hear a buzzer. Do I hear a proposal? Okay, hearing none, the proposal dies. I think it's pretty clear then that our next move is to recommend accepting this ordinance as proposed and amended with the discussion of the group, with the exception of Mr. Cronin's recommendation.

Ms. McNatt: And the proposed edits that Mr. Charma wrote down during our discussion.

Mr. Silverman: That's correct.

Mr. Stozek: That's the issue. I agree in concept of what we're trying to do here. The problem I have is we've talked about so many changes, additions, amendments, and improvements, I don't know what it is we're voting on any more.

Mr. Silverman: Okay, let's go back through them.

Mr. Charma: I can go through them.

Mr. Silverman: I don't think there's so many. I think we've got a handful. Joe, are you at a point where you can go back through?

Mr. Charma: Yeah, I can . . .

Ms. McNatt: And itemize them?

Mr. Charma: I think I can do that.

Mr. Silverman: Please reference the line and the proposed change.

Mr. Charma: Okay. On Page 2, Line 36 we're talking about recreational purposes. Define recreational. So, I think we'll put, in parentheses, some recreational uses that . . .

Mr. Hurd: I would say steal some language from your definitions. So, it would be spaces not for conducting business activities, perhaps. Because you're talking about patios and things are for conducting business activities, you want this to be the opposite of that.

Ms. McNatt: So, then you could put recreational purposes, not for business activities, or display of art, correct?

Mr. Charma: Yes.

Mr. Silverman: Continue, please.

Mr. Charma: With respect to the barriers, the two-foot in height barriers, we will include photographs of barriers, so it clearly defines what those are, so we can see them.

Mr. Bilodeau: I don't know if the photographs are going to show up in an ordinance, so if we're going to . . .

Mr. Hurd: Yeah, I wasn't thinking it would be part of the language of the ordinance. I think it just . . . in your illustrative, in your preparatory remarks or whatever for this, include something that's illustrative.

Mr. Charma: Along with the package. Okay.

Mr. Silverman: You were referring to Line 74, landscape barriers shall be approved by the Parks and Recreation . . .

Mr. Charma: Correct.

Mr. Silverman: Okay.

Mr. Charma: Line 90, after decks we want to add a comma and the word balconies.

Mr. Silverman: All Commissioners please work with us here off your notes.

Mr. Charma: Should I go on?

Mr. Silverman: Yes, please.

Mr. Charma: Okay, Page 5, Line 161, after furnishings, we want to add owned by a property owner or a business.

Mr. Silverman: I think the phrase in good order . . .

Mr. Charma: And I'm going on. I don't know if you're writing. I'm giving you time to write.

Ms. McNatt: Oh, terrific.

Mr. Charma: And at the end after enclosure, we want to add and kept in good repair.

Mr. Silverman: Now with respect to Ms. White's comments, I think we're clear that we're dealing with circular references in the Code and if one piece of the Code is updated, to make sure that it carries through. Are we clear on that?

Ms. McNatt: Yes.

Mr. Silverman: Okay. So those seem to be the handful of text changes that we're dealing with.

Mr. Charma: Mr. Chairman, I had one other and, I'm sorry, I don't know if the Commission . . . Line 42, Commissioner Cronin asked for rather than saying public way around, he asked that around be substituted with past. Is that . . .

Mr. Silverman: Mr. Cronin, does that work for you?

Mr. Cronin: Yes, it does. I think that's better than around. Around suggests circular in some fashion, where past is just getting by it.

Mr. Silverman: Any other text changes? Is that fresh enough in everyone's mind that we have a pretty good idea of what we are voting on? Staff will ensure that the final draft contains these changes. I see a head nodding yes.

Ms. McNatt: And Mr. Charma will make sure that happens, as well.

Mr. Charma: I will work with staff to make sure that these things happen.

Ms. Gray: I have them noted, as well.

Mr. Silverman: Then the Chair . . .

Mr. Cronin: Mr. Chair, one more question, if I may. On Line 53, patios, decks, parklets shall be enclosed. One hundred percent enclosed? What's enclosed supposed to mean? You have to have some way to get in and get out, so I'm not quite sure what enclosed is supposed to, how it's supposed to be interpreted.

Mr. Silverman: Mr. Poole, do you have a comment on that?

Mr. Poole: It's basically to provide a barrier between the area of the patio and the public way. There are obviously, there's a requirement for an accessible route directly from the public way into the patio, so that's just anticipated that enclosed, again, it requires providing the barrier, exclusive of any accessway.

Mr. Charma: If I might add, can we add, somehow propose text to add to that?

Mr. Cronin: Sure, please.

Mr. Charma: After guard, to separate the area from the public way. Is that acceptable?

Mr. Cronin: Well, I don't know. You're separating it from what? From the roadway, in particular?

Mr. Silverman: Okay to get to that specific issue, on Line 53, after the word enclosed, exclusive of means of ingress and egress. It means there's a fence around an enclosure except for the method of getting in and getting out.

Mr. Charma: Okay, Mr. Chair, that's excellent.

Mr. Silverman: And I think that takes care of the issue of is this an enclosed box.

Ms. Gray: Say that again.

Mr. Hurd: And I will note that public way is defined on the first page, Line 14.

Mr. Silverman: We're moving off the ingress and egress for enclosures?

Mr. Hurd: No, I want to keep that but if we say separated from the public way, there was a question about what is the public way. The public way is defined.

Ms. Gray: Mr. Chairman, what was that term? Method of . . .

Mr. Silverman: Let me find my notes.

Mr. Stozek: So, are we saying there has to be a barrier? Say there's a parklet, there has to be a barrier between the street and the seating area?

Mr. Charma: Correct.

Mr. Poole: It's actually between the clear path of travel on the sidewalk and the patio or parklet or what-have-you. One of the main purposes of this ordinance is to provide that clear path of travel at a required width.

Mr. Stozek: Right. That's why I specifically asked about is there going to be a barrier around the, we're using the word around, but between the parklet and the street?

Mr. Charma: Yes. If you're referring . . .

Mr. Stozek: Are you concerned at all about creating a trap for people who are going to be enclosed in an area? Suppose there's an accident?

Mr. Charma: I would refer you to the required clear path of travel exhibit. You can see the barriers, where they are and how they relate to the street and the clear travel path, and they show openings also.

Mr. Stozek: Then that gets to my question. If people are corralled in this area and there's an accident, a car comes into the area off the street, are people going to be trapped because they've got walls around them except for an opening gateway?

Mr. Charma: Well, with respect to a parklet, the parklet that's adjacent, it's in the public way on the street, first of all the barriers are around there. They're around three sides and the fourth side is totally open toward the sidewalk, so it's not like you're trapped in there. Secondly, the barriers themselves are going to be designed for, by DeIDOT, for the appropriate loading for traffic. The location, where they are, adjacent to the street, they're designed for 25 mile an hour speed limit, they're set back 18 inches from the face of the curb, and so on, in accordance with DeIDOT's specifications.

Mr. Silverman: Which means it's outside the purview of what we're discussing here. We're at the mercy of whatever DeIDOT designs.

Mr. Charma: Correct.

Mr. Silverman: We don't control their designs.

Mr. Charma: But they're employing sound standards to the location of the . . .

Mr. Silverman: Understood. They'll meet life safety standards that's normally required.

Mr. Charma: Correct.

Mr. Stozek: Again, you're not concerned that the barrier between the parklet and the sidewalk is going to, in the event of an accident, somebody hits this barrier and it's going to keep people in that enclosure?

Mr. Silverman: Are you suggesting that the parklet itself is a corral?

Mr. Stozek: Yes.

Mr. Silverman: It's my understanding that the parklet is free and open through the sidewalk area.

Mr. Charma: Totally, yes.

Mr. Stozek: Well, that was my question. Basically, are people going to be trapped in an area?

Mr. Silverman: No.

Mr. Stozek: So, they're not. Okay.

Mr. Silverman: And I've lost track of where we are.

Ms. Gray: So, is there a recommended change to Line 53?

Mr. Charma: Yeah, I've added on Line 54 after guard, exclusive of ingress and egress.

Ms. Gray: Thank you.

Ms. McNatt: So, all we have to do is second the motion because we've identified all the edits? Is that where we are now?

Mr. Silverman: Yes.

Ms. McNatt: Alright, well I'm ready to second the motion, unless . . .

Mr. Hurd: Do we have a motion?

Ms. McNatt: We had a motion. We identified all the changes . . .

Mr. Hurd: I'll move, in case we haven't done that. I so move on the motion.

Mr. Silverman: Okay, and second?

Ms. McNatt: Second.

Mr. Silverman: Okay, are there any additional discussions? Okay, hearing none, we'll move right to the question. All those in favor of recommending the draft associated with the May 16, 2019 cover letter with the amendments as discussed and recorded by Mr. Charma that will be conveyed to the staff for inclusion in a revision, please signify by saying Aye. All those in opposition, Nay. Motion carries.

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

THAT CITY COUNCIL AMEND ZONING CODE CHAPTER 32 SECTION 32-4 DEFINITIONS AND ADD NEW SECTION 32-56.8 SIDEWALK CAFES, PATIOS, DECKS, BALCONIES AND PARKLETS IN THE DOWNTOWN DISTRICT, AS DETAILED IN THE PROPOSED ORDINANCE ATTACHED TO THE NEWARK DESIGN COMMITTEE MEMORANDUM DATED MAY 16, 2019 AND REVISED BY THE PLANNING COMMISSION AT THEIR MEETING ON JUNE 4, 2019.

VOTE: 5-1

AYE: CRONIN, HURD, MCNATT, SILVERMAN, WAMPLER

NAY: STOZEK

ABSENT: DISTRICT 6 (VACANT)

MOTION PASSED

Mr. Charma: Mr. Chair and Commissioners, thank you.

7. NEW BUSINESS.

Mr. Silverman: Okay, moving on to the next item on our agenda, #8 Informational Items. Madam Director.

Ms. Gray: Mr. Chair, I have a couple of informational items before we adjourn.

Ms. McNatt: I'm sorry, we didn't do #7 New Business.

Mr. Silverman: Oh, I'm sorry.

Ms. McNatt: Do you want new business?

Mr. Silverman: Let's go back to Item 7. Is there any new business?

Ms. McNatt: I guess not. Sorry.

Mr. Silverman: Okay. That would require public notice to be added to a future agenda.

8. INFORMATIONAL ITEMS.

- a. PLANNING AND DEVELOPMENT DEPARTMENT CURRENT PROJECTS**
- b. PLANNING AND DEVELOPMENT DEPARTMENT LAND USE PROJECT TRACKING MATRIX**
- c. PLANNING COMMISSION 2019 WORK PLAN QUARTERLY REPORT**
- d. MONEY WALKS – A TALE OF TWO COUNTIES (CAESAR RODNEY INSTITUTE)**
- e. HOW FEDERAL TAX REFORM HAS IMPACTED REAL ESTATE (GOVERNING.COM)**

Mr. Silverman: Moving on to Item 8 Informational Items. Madam Director?

Ms. Gray: Thank you, Mr. Chair. At the last meeting, at the May meeting, I had mentioned that we were going to be talking with the Office of State Planning regarding the Comprehensive Plan amendment and the Focus Areas. They had commented on their review of the Comprehensive Plan amendment, the proposed Comprehensive Plan amendment to the Focus Areas that we needed to have our amendments reviewed by PLUS. So, we had some email discussions and some discussions via phone and then we had a very helpful conference call today. Mr. Bilodeau was on the call as well as Max Walton, and Mike Fortner, as well as Director Connie Holland and the ombudsman for the New Castle County, Trish [inaudible]. So, we had a very helpful discussion and we got some clarity on what the state would like to see and so we'll be working on some revisions to the MOU and to our process. Essentially, the state is looking to have any map amendments be sent to the state and not necessarily reviewed by the state, and what I mean by that, not necessarily reviewed by PLUS. We're talking about having an exception.

Because currently we don't send our amendments, if something is within our plan, Comprehensive Plan, we don't send those amendments to the state. But what they would like to see is copies of those amendments, just so they can keep track and also it's in the state law, as well. But currently, we are exempted from that process in the MOU. So, we are going to be working on a revision to the MOU that would exempt us from having to go through the PLUS process for projects that are less than an acre, which would be most of our projects. So, we'll be working on the wording here in the next couple of months because that's going to be a process. A little bit of back and forth and working with Council and the state on that. That was that discussion.

The Martin Honda project was reviewed by Council May 28 and that was approved.

Our new Code Enforcement Manager, Stephanie Petersen was hired as a new Code Enforcement Manager, and her first day was Tuesday. We're very excited that she's on-board and has hit the ground running and is working. It's great.

Senate Bill 7, this is kind of random but not, Senate Bill 7, which I'm sure you are all tracking with bated breath and very excited about, which is an act to amend Title 29 of the Delaware Code relating to the Delaware Population Consortium, was signed by the Governor on Tuesday, May 14. And what that is, the co-sponsors were some of our local guys, Senator Sokola and Representative Baumbach. A little bit of background on this bill. Since 1975, the Delaware Population Consortium has prepared a unified set of statewide population projections each year and these projections are used for a variety of purposes including capital planning, policy analysis, comprehensive planning, and transportation planning. All three counties are required by state law to utilize these projections to prepare their required comprehensive plans however the Delaware Population Consortium did not exist by state law. This act formally creates the Delaware Population Consortium and identifies its membership and work products and requires that all counties, municipalities, school districts, and state agencies use the consortium projections for planning and policy purposes. The bill goes into effect in November of this year. I am currently the Chair of the Delaware Population Consortium and will be working with members of the DPC to update its bylaws and policies and procedures to comport with this new bill. The bill was also witnessed by the Delaware League of Local Governments and included our Mayor, Mayor Clifton, as well, so it was kind of fun. For demographic geeks such as myself, it was a fun day. In addition, we had a monthly DPC meeting and we're working on the projections for this year. And Newark is included in those projections and we use those in our planning, as well.

The Transportation Improvement District Workgroup had their first meeting on May 8 and the meeting was well attended and was attended by Chairman Silverman. Thank you. Thank you for going. It was an exciting meeting. I thought it was. The meeting was well attended and focused on an introduction of TIDs, an overview of the process, and the committee framework and next steps. The website is currently undergoing construction and the next meeting is scheduled for June 12, where there will be a presentation on Opportunity Zones and Complete Community Enterprise Districts and will focus on a discussion regarding the TID boundaries and the planning year, which is where we are going to look at how far out we're going to do our land-use projections.

The Green Building Work Group met on May 21 and had a very productive and energetic meeting. Will, do you want to comment on that? I thought we hit a lot of, covered a lot of ground in that meeting.

Mr. Hurd: We did. It's moving along, slower than I'd hoped, but faster than I . . .

Ms. Gray: Yeah.

Mr. Hurd: But we're getting there. We've got a couple more to go but we've got a group that stays focused so . . .

Ms. Gray: Yeah, it's a good meeting. The next meetings of the Rental Workgroup are June 11 for the two subcommittees, University of Delaware Student Growth and Rental Permits Subcommittee. On June 13, the Non-Student . . . at the last subcommittee meetings for the Non-Student Housing and the Affordable Housing group, they decided to merge. We had a merging meeting. So, now they are calling themselves the Non-Student Affordable Housing Subcommittee. It's kind of a mouthful but that's okay. So, that group is meeting on June 13. On June 26, the committee as a whole will be meeting. In addition, we are working to schedule a public workshop in either June or July to update the public on the status and the work of this group and to gather additional public feedback. Kind of a, what's the term, I'm looking for a football term. A sports analogy.

Mr. Silverman: Is it going to be a huddle?

Ms. Gray: Not a huddle. The middle of the game. Gosh, I played sports for years.

Mr. Hurd: Halftime.

Ms. Gray: Halftime, there you go. Halftime, time out, hey, how are we doing? We're looking to schedule that at night to see whether that would gather, enable some additional folks to come to that meeting.

The first of two of our summer interns has started, which is very exciting. The second one will be starting June 11. We're running out of space where to put these guys, but we found some space in the basement, so we're preparing that space.

The Parking Request for Proposals is out for bid and we're hoping to get some good bids for that. The bid opening will be at the end of this month and now that frees up my time and we'll be starting to work on the professional services Request for Proposals.

Last month I mentioned the Jack Markell Trail event that was organized by the Delaware Chapter of the American Planning Association, of which I'm the current president. I do want you to put on your calendars an event that we're working on for November 7 here at the Embassy Suites. We're going to have a one-day conference and attendance will be covered by the Planning Department's budget. It will be a one-day conference, so the price will be pretty reasonable. We always work to have the price be reasonable and it's shaping up to be a pretty darn good conference. We're going to get Max Walton to talk about legislative issues that are going on in Delaware. We're going to get some census folks to talk about the census and what's going on with the 2020 Census and some changes going on at the Census Bureau. We're going to be putting together a panel on equity and some work that's going on at the American Planning Association, some local work and some state and regional work. We're very excited about that. We're also going to get the new CEO from the American Planning Association to come and speak on what work is going on there. So, I think it's shaping up to be a very cool conference.

Mr. Stozek: What was the date again?

Ms. Gray: January, no, I'm sorry, November 7.

Mr. Stozek: Seventh or second?

Ms. Gray: Seventh. So, I think that would be a good opportunity for folks to kind of see what is going on and what our local chapter does. So, that is all I have, Mr. Chair. I could speak some more but let's wrap it up.

Mr. Silverman: Thank you.

9. GENERAL PUBLIC COMMENT.

Mr. Silverman: Item 9, general public comments. Okay, there are no general public comments. The Chair entertains a motion to adjourn.

Mr. Hurd: I so move.

Mr. Silverman: Second?

Mr. Stozek: Second.

Mr. Silverman: Okay, it's been moved and seconded. All those in favor, signify by saying Aye. We stand adjourned.

There being no further business, the June 4, 2019 Planning Commission meeting adjourned at 8:44 p.m.

Respectfully submitted,
Tom Wampler
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary

Attachments

Exhibit A: [Planning and Development Department report \(1089/1091 Elkton Road\)](#)

Exhibit B: [Newark Design Committee memorandums and proposed ordinance \(Regulation of Sidewalk Cafes, Patios, Decks, Balconies, and Parklets in the Downtown District\)](#)