

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

**MEETING CONDUCTED REMOTELY
VIA GO-TO-MEETING**

May 5, 2020

7:00 p.m.

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

Chairman: Will Hurd

Commissioners Present: Pete Drake
Karl Kadar
Stacy McNatt
Alan Silverman
Bob Stozek
Tom Wampler

Commissioners Absent: None

Staff Present: Mary Ellen Gray, Planning and Development Director
Mike Fortner, Planner
Tom Fruehstorfer, Planner
Paul Bilodeau, City Solicitor
Joe Spadafino, Parks and Recreation Director

Mr. Will Hurd called the Planning Commission meeting to order at 7:00 p.m.

1. CHAIR’S REMARKS.

Mr. Hurd: Good evening everybody and welcome to the May 5, 2020 Planning Commission meeting. This is Will Hurd, Chair of the Planning Commission. This is our second meeting using the GoToMeeting platform and we are getting much more comfortable with the process for sure. Our goal, as always, is to have everyone who wants to be able to participate in the meeting to be able to do so. Our department secretary, Michelle Vispi, is the organizer for this meeting and will be managing the chat and general meeting logistics.

At the beginning of each agenda item, I will call on the related staff member to present first. Once the presentation is complete, I will call on each Commissioner in rotating alphabetical order, so we don’t get stuck with the same people having to start and end the comments, to offer their comments. If a Commissioner has additional comments that they would like to add afterwards, they can unmute themselves. I will be keeping an eye on the attendee list so I can see when someone is unmuted and then I can call on that person to make it clear to everyone who is speaking next. Michelle will be keeping all other attendees on mute to help keep background noise down and echo. And please do try to avoid talking over other people so that everyone listening in can hear clearly and so that the meeting record is clear.

If members of the public would like to comment on an agenda item and they are connected to this meeting through their computer, they should send a message through the chat function with their name, district or address, and the agenda item on which they would like to comment. The chat function is accessed by clicking on the speech bubble icon on the top bar. You can select to send your chat to just the organizer using the pop-up list at the bottom of the chat screen. If you

are connected to the meeting audio by your phone, your name will only show up as Caller 01, 02, etc., so you will need to tell us who you are when requesting to comment. To support any attendees who are connected to the meeting only through their phone and not through the web, we will unmute any phones that are connected to this meeting one at a time to ask if they have any comment on the agenda item. When we unmute you, you will hear unmuted in your ear and that is your cue to know that your line is open. If you have no comments, please just say no comment so we can move on to the next caller. Anyone giving oral comments will have the usual five minutes.

All speakers, especially Commissioners, must identify themselves prior to speaking in compliance with the Executive Order on teleconference meetings by Governor Carney. What I am seeing though, if I've called on you and I've said Commissioner Silverman, then it's clear on the record who is the person speaking next and so I don't feel you need to then identify yourself. But if you're offering additional comments and you unmute yourself and you feel, or if you're doing public comment, please do identify yourself for the record.

All votes will be taken by roll call.

If there are any issues during this meeting, we may adjust these guidelines as necessary.

To begin, I will ask each Commissioner and staff member to identify where they are physically located for this meeting and I will begin. This is Will Hurd and I'm coming to this meeting from my home in District 2. So, Commissioner Drake? Is Commissioner Drake attended?

Mr. Pete Drake: Sorry, I am in my home.

Mr. Hurd: Okay. Commissioner Kadar?

Mr. Karl Kadar: This is Karl Kadar and I'm attending from my home.

Mr. Hurd: Okay. Commissioner McNatt?

Ms. Stacy McNatt: Stacy McNatt from my home in District 3.

Mr. Hurd: Thank you. Commissioner Silverman?

Mr. Alan Silverman: From my home in District 5.

Mr. Hurd: Alright. Commissioner Stozek? Bob, do you want to go? Bob, we were just identifying where we're located for the purposes of the meeting. Alright, I don't know if Bob can hear us. I'll skip now to Commissioner Wampler.

Mr. Tom Wampler: Tom Wampler, and I'm at my home on Park Place.

Mr. Hurd: And then staff, we have Mr. Spadafino.

Mr. Joe Spadafino: Yes, I'm at the Municipal Building, 220 South Main Street.

Mr. Hurd: Okay. Actually, a quick question for our counsel, Paul Bilodeau. Do we need to have everyone identify where they're from or just the Commissioners?

Mr. Paul Bilodeau: I believe we just need the Commissioners at this point. We just want anyone else who speaks to identify themselves when they speak. We don't need to know physically where they are.

Mr. Hurd: Okay, so I can skip that? Council had done that, so I thought that was part of the meeting requirements.

2. THE MINUTES OF THE APRIL 7, 2020 PLANNING COMMISSION MEETING.

Mr. Hurd: Alright, therefore moving on. The minutes of the April 7, 2020 Planning Commission meeting. I had one comment that I forwarded to our secretary, Ms. Vispi. I'm going to take everybody in order. If you have any comments, please give them. Otherwise, please indicate your approval or disapproval of the minutes and we'll consider that the roll call vote. Commissioner Kadar?

Mr. Kadar: Approve.

Mr. Hurd: Thank you. Commissioner McNatt?

Ms. McNatt: Approve.

Mr. Hurd: Thank you. Commissioner Silverman?

Mr. Silverman: Approve.

Mr. Hurd: Thank you. Commissioner Stozek?

Mr. Bob Stozek: Approve.

Mr. Hurd: Thank you. Commissioner Wampler?

Mr. Wampler: Approve.

Mr. Hurd: Thank you. Commissioner Drake?

Mr. Drake: Approve.

Mr. Hurd: Thank you. And Commissioner Hurd approves with the comments given.

THE MINUTES OF THE APRIL 7, 2020 PLANNING COMMISSION MEETING ARE APPROVED.

3. REVIEW AND CONSIDERATION OF THE ZONING DESIGNATION OF 19 AMSTEL AVENUE FROM RS (ONE-FAMILY DETACHED RESIDENTIAL) TO RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENT).

Mr. Hurd: Alright, that brings us to item 3, review and consideration of the zoning designation of 19 Amstel Avenue from RS, one family detached residential, to RM, multi-family dwellings-garden apartments. I will reiterate, please remember to keep your line muted until called upon to speak. If you'd like to comment on this agenda item, please send the organizer of this meeting a message through the chat function. Please note if you are connected only by phone, we don't see your name so you'll have to identify yourself and we will also poll any connected phone callers for comment. I will turn now to Director Gray.

Ms. Mary Ellen Gray: Thank you, Commissioner Hurd. You just identified so I don't have to say it again. I'm going to turn this over this presentation to Planner Mike Fortner.

Mr. Hurd: Alright.

Ms. Gray: Mike, whenever you're ready.

Mr. Mike Fortner: Actually, that's the report that's up. Can someone put the PowerPoint presentation up?

[Secretary's Note: During Mr. Fortner's presentation, the Planning and Development Department PowerPoint presentation for the rezoning of 19 Amstel Avenue was being displayed for the benefit of the Commission and the public. Links to the Planning and Development Department report and the Planning and Development Department presentation for the rezoning of 19 Amstel Avenue can be found at the end of this document.]

Mr. Fortner: Thank you. Again, hi, my name is Mike Fortner, and this is to present the zoning amendment to change the zoning for 19 Amstel from RS to RM. Go ahead and turn it, Michelle.

Alright, so a little background, 19 Amstel is the location of the Kappa Alpha Order fraternity house since about 1946. In 2019, the Kappa Alpha Order was suspended by University of Delaware of a period of about four years. The property is currently zoned RS. The fraternity operated as a non-conforming use in zoning. So, it existed before the Zoning Code didn't allow it anymore. The non-conforming use was terminated when the Kappa Alpha Order fraternity was suspended and so, under our ordinance, and this will get more into the next presentation, but under our ordinance when a non-conforming use loses its chapter, or its recognition from the University of Delaware, it's automatically suspended. Go ahead and go to the next one, Michelle.

Alright, so the current condition is that it's zoned RS and so I have it on the left on the City zoning map and on the right-hand side is the county's map. There was some confusion about the zoning back in the '70s. There seemed to be an impression that it was owned, that the house was owned by the University and therefore would have had the UN designation. But the house is RS and that's our zoning. Go ahead to the next one. Next slide, Michelle. I know it takes a minute.

Alright, so it's zoned RS but in the Comprehensive Development Plan, going back a couple of Comprehensive Development Plans at least, the property was designated as University, as a future land use designation of University. And so, this shows a close-up of the Comp Plan map for Comp Plan V. Next slide, please.

Alright. So, under the Comp Plan and according to state law, our zoning and our future land use designation have to be matched. And so, we have, you see in the chart, table 3, you have University as a designation. A compatible zoning for a University property is UN or STC. However, the property is zoned RS so a more proper designation would be a Residential Low-Density, which includes the RS for a Low-Density Residential. Go ahead and go to the next slide.

Okay, so a University designation definition here, this is from the Comprehensive Development Plan, it's a parcel having institutional use but distinguished for its use as part of the University of Delaware or public university campus, including classrooms, dormitories, laboratories, University offices, and University recreation and commercial facilities, but excluding off-campus University owned single-family homes having residential uses. And so, University is not appropriate for, the only thing that can go in there is a UN or STC type of zoning. Go ahead and go to the next one.

Alright, so it had a Planning Commission review and then it went to Council. Council, at their meeting, that was last, it was in January, they designated for this, a change in the designation in the Comprehensive Development Plan from University to Residential High-Density instead of low-density. So, high-density is for multi-family residential dwelling units with densities over 11 units and up to 36 units per acre, and housing types include garden apartments, townhouse apartments, and condominiums but do not include dormitories or mixed-urban developments. And so, high-density, as you see in the yellow line there, the appropriate zonings for a Residential High-Density are either RM, RA, RR, AC, or STC. So, in Residential High-Density, or in the RM zoning, Council recommended that Planning Commission review an ordinance to change the zoning of the property from RS to RM. RM would allow single-family homes, they're permitted in RM. Garden apartments are permitted in RM, but the parcel needs to have a one-acre, be one acre or larger for a by-right apartment plan. So, any kind of redevelopment to apartments would have to go through site plan approval and it doesn't have an automatic zoning approval. Another thing that's allowed in RM zoning is a boarding house. And a boarding house, it states in our Zoning Code, excludes all forms of fraternities and sororities. And, there's a pending ordinance

that we'll hear after this that would permit fraternities and sororities in RM zoning. Okay, go ahead and get to the next one.

So, the Planning Department's recommendation is to change the zoning of 19 Amstel from RS zoning to RM zoning. The Planning Department believes this is an appropriate recommendation because the zoning provides a stronger level of feasible uses for the property, including a single-family dwelling. It could become a single-family dwelling. But it could also, under RM zoning, become a boarding house or, if the, pending ordinance change, fraternity or sorority house in the future. The RM zoning protects the existing structure since the lot is approximately one-half acre or a little over, the RM zoning requires a minimum of one acre for construction of garden apartments. So, we don't have to worry about a developer coming in and saying, having a by-right plan to make this garden apartments if we change the zoning to RM. So, a single-family house is conforming in the RM zoning district but would allow the developer to do a boarding house or other types of more intense uses like converting a larger house into separate units is another example of what's available under RM. The RM use is also compatible with the future land use designation of Residential High-Density which Council, at their last meeting, or at their meeting back in January, change the land use designation from University to Residential High-Density in the Comprehensive Plan V. And the reason is, is because this is a privately-owned lot. It's owned by a private homeowners' group and it's not a University-owned property. And Council contended that only UN properties need to be owned by the University and that's what they're for. So, they thought it important that it not have a future designation of University. That it have High-Density Residential, which is appropriate given the surrounding area. And that concludes, go ahead and go to the next slide, Michelle, but I think that concludes it.

Ms. Michelle Vispi: I believe that's the last slide.

Mr. Fortner: That's the last slide so it's just going to stand there. Okay. So, that concludes my presentation and we can answer any questions that Planning Commission has.

Mr. Hurd: Alright. Thank you, Mike. I just had a couple of things I wanted to say about how we're going to, sort of the process for this item. It's going to be a little, slightly different, but not much. I do want to just note as Mike did note, we are discussing tonight only, you know, while we're discussing the special use permit conditions for fraternities and sororities next, this rezoning request must be considered on its own merits. I think the issue of the UN zoning, for us, has been addressed and settled by Council when they amended the Comp Plan. So, we are here to determine the appropriate zoning for the parcel under that Comp Plan designation. So, what I'd like to do is to give Mr. Abbott ten minutes to provide any comments or additional information that is germane just to the rezoning request that is in front of us. Mr. Abbott, you need to unmute yourself.

Mr. Richard Abbott: Can you hear me now, Mr. Chairman?

Mr. Hurd: Yes.

Mr. Abbott: Thank you. And thank you, Mr. Chairman and members of the Commission. Richard Abbott on behalf of Kappa Alpha Educational Foundation, which is the owner of 19 Amstel Avenue. We did appear before the Commission back in January and we echo a lot of the same comments we made then. I will say in light of the possible, maybe even probable, resolution of the issue pursuant to compromise proposals that were set forth by members of Council on February 24 at their meeting, this may be a moot issue and RM may work out just fine. However, for the record, because of the uncertainties at the present, I've got to technically oppose the change in the zoning designation and, as you know, it is my client's contention that the current zoning is legally and validly UN, the consistent zoning category with the University designation that applied to the parcel for decades. So, at this point, as we noted in the January meeting, we believe the changes to the Comp Plan were a backdoor rezoning attempt. We believe this is a down-zoning. As a matter of right, UN permits the fraternity house use. It's actually permitted it since the property's been zoned UN legally since 1974, so for 46 years. So, by changing it into

RM which, at least currently, absent passage of the next item on the agenda, the RM zoning category expressly forbids fraternity uses, which would eliminate the ability to use the property that has been a fraternity house for the Kappa Alpha fraternity for 72 years. The RM, I'm sorry, the special use permit, as I noted if that legislation should pass, technically is not a by-right approval. So, even if that is approved and we get a permit, to some degree, once again, this is a slight downzoning because we have to get a special use permit. So, it's not a matter of right to use it for its historic use. The Kappa Alpha Educational Foundation, my client, has already lost \$100,000 plus and, again, we've noted before and we'll note again, that the property was administratively modified to RS in error so that technically the current zoning is UN. We do again, once . . . I'm not trying to be confrontational or adversarial here, but for purposes of preserving my client's rights, we will have to file a lawsuit in a few weeks to challenge the change in the Comp Plan and later, if this rezoning were to pass, we'd obviously have to tack this on. If everything works out as hoped, then all of that will become moot. But nonetheless, we would just suggest at this point it is premature to down-zone the property RM.

The only other points I wanted to make are echoing what I presented in January which are there's been no state review and approval process. There was a waiver obtained from one of the two state review and approval processes required by Title 29, Chapters 91 and 92 of the Delaware Code but there's never been a waiver obtained for the other approval requirements and there is no statutory provision that allows a waiver, so we would submit that, again, this is a premature act on the part of the City. I understand that the Commission is a recommending advisory board and so we would just suggest that perhaps you should advise the Council to hold off on making that change because what we would prefer in an ideal world is that you pass the special use permit legislation, we can apply for that conditional on the change in the zoning to RM and have that rezoning to RM considered simultaneously with the special use permit approval so that at the same meeting we will know that those conjoined issues would moot the objection to the RM zoning. Those are just our preferences; those are our thoughts. We understand there is a legal provision in Title 22, Section 702(c) of the Delaware Code that says that within 18 months of a change in the Comprehensive Plan that the City must rezone a property to be consistent with that. But again, I'm noting the 18-month grace period that's permitted, so there's no urgency to this. And again, ideally we would have the same meeting of both the Planning Commission and the final approval of the Council take place regarding both the special use permit and the change in zoning to RM so that we have assurances that it's going to happen with certainty and with acceptable conditions. The conditions issue on special use permit we'll get to more specifically when we come up to agenda item 4. So, with that, I thank you for your time.

Mr. Hurd: Alright, thank you so much. I guess we'll start with Commissioner comments and questions either of comments to the items or questions to Mr. Fortner or questions to Mr. Abbott perhaps, and I will start with Commissioner McNatt.

Ms. McNatt: Of course. Okay, hello. I have a couple of questions regarding the state approval process that Mr. Abbott was referencing. The second approval process that he stated hasn't been done. Mike, can you explain your knowledge on that process and/or let Mr. Abbott explain why he believes it should happen or why it hasn't happened?

Mr. Fortner: I think that might be a question that's more appropriate for Paul or Max, if he's available.

Ms. Gray: I'd be happy to take a shot . . .

Mr. Hurd: Okay.

Ms. Gray: At this.

Mr. Hurd: Director Gray.

Ms. Gray: Thank you. I'm sorry, Mary Ellen Gray. Director Mary Ellen Gray. So, there is an MOU, we have a Memorandum of Understanding with the Office of State Planning and in it . . . I just pulled it up, it's been a couple of months since I read through it . . . there is, according to the MOU, we followed the process that was required according to our MOU. That's kind of the long and short of it. Without getting into the details of the MOU, that's the long and the short of that. Staff followed the process as per the state MOU that we have with them regarding the PLUS process.

Ms. McNatt: But in certain circumstances, could this go through that process above the standard MOU agreements, whatever they are, as written.

Ms. Gray: I'm not understanding your question.

Ms. McNatt: Could certain circumstances like this case go through that process even though you have an MOU, which I don't know what it states, but even though you have an MOU in writing, couldn't this project go through that process even though?

Ms. Gray: An applicant is certainly welcome to go, to have any project they wish to be reviewed by the Office of State Planning, from my understanding. I'm not the Office of State Planning. But I can't speak for them whether they would be welcoming of projects that don't fall under the MOU to be reviewed.

Ms. McNatt: Okay. My next question is, Mike, in your presentation under Table 3 which I think is about three slides back where it talks about the University zoning designation, there are two options under that designation, I think you have to go back one . . .

Mr. Fortner: One more slide.

Ms. McNatt: More slide.

Mr. Fortner: Two more slides.

Ms. McNatt: Oh no, this is the one. So, under University you could have UN or STC and then under the high-density zoning, you could also have STC. I think that's correct.

Mr. Fortner: Yeah, if you go to the next slide, you'll see that.

Ms. McNatt: What is STC? It escapes me what STC stands for.

Mr. Fortner: STC is what we use for the STAR Campus, the STAR Campus zoning. It has its own designation under the Comp Plan. It's a little misnomer to put it under there. The idea was that STC, that they might do high-density apartments there and that we would permit that on the STAR Campus. So, that is why we put it under there. Really, I don't think we would zone anything on the STAR Campus, it would have its own designation, but I think that's why we put it in there because high-density residential could happen on STAR Campus.

Ms. McNatt: Okay. And my last question was on slide 8. The picture you showed is not of a current setting of the property. In the background of that picture is some other type of development and, Mike, I'm curious where that picture comes from and what that proposed development is in the background.

Mr. Fortner: I stole that picture from a presentation that the property owners gave at the last Planning Commission meeting and I just borrowed that. I believe that's the, I can't think of the name, but I believe that's the business school or something. But Mr. Abbott knows. But it was a picture from that presentation that you saw in January because I had the PowerPoint presentation and I just wanted a visual aid.

Ms. McNatt: But that's not current. I don't believe that's current.

Mr. Fortner: That building is not there anymore? It's an angle, that's the campus right next to it and I think it's across the street. I think you're viewing across the street. I forget the name of that building, that complex there.

Mr. Mark Adcock: It's the Lerner Building and that is a current picture. I took it a couple of months ago.

Ms. McNatt: Okay. Alright, those were all of my questions at the moment.

Mr. Hurd: Okay, thank you. Commissioner Silverman?

Mr. Silverman: I just want to note for the record that Mr. Abbott has provided emails to the Commissioners with respect to additional arguments and elaborations with regard to his presentation. They should be made part of the public record of this meeting.

[Secretary's Note: A link to Mr. Richard Abbott's letter to the Planning Commission regarding the rezoning of 19 Amstel Avenue can be found at the end of this document.]

Mr. Hurd: Certainly.

Mr. Silverman: I appreciate Mr. Abbott's interest in this property and zealously representing his clients, but I think most of the arguments he gives are totally extraneous to the Planning Commission with respect to what we're doing here tonight. I see a simple bright line that Council has approved a change to the Comprehensive Plan, and we are simply following state law to provide a zoning designation associated with that change in the Comprehensive Plan designation. That's my comment for tonight.

Mr. Hurd: Alright, thank you. Mr. Stozek?

Mr. Stozek: I was just curious at the Council meeting was there any discussion about keeping the zoning as it has been, you know making an exception or special use, but keeping it as it is, as long as the property remains owned by the same person or organization? I mean in other words, once it was up for sale, then it would be rezoned.

Mr. Hurd: Perhaps Commissioner Gray, I'm sorry, Director Gray can answer that.

Ms. Gray: Mary Ellen Gray, Planning and Development Director. I do not recall. I'm going to call a friend here and ask Paul Bilodeau who was also at the meeting, do you recall that, any discussion regarding that?

Mr. Bilodeau: This is Paul Bilodeau. I do not recall any discussion along those lines. I think the discussion at the Council meeting was the fact that the non-conforming use of this property had been lost and a few members of Council were doing what they could to try to save it, save the structure, so they suggested that maybe we come up with an ordinance to allow fraternities and sororities via special use permit. That was the discussion we had at Council.

Mr. Stozek: Okay, no other questions.

Mr. Hurd: Okay, thank you. Commission Wampler?

Mr. Wampler: Yeah, I just have one comment and that is, when we discussed this previously, probably in January or February, I thought the fraternity made a good presentation that RS was not really the best choice and I think rezoning it to RM that gives more options is the fair way to go about it and I support this.

Mr. Hurd: Thank you. Commissioner Drake?

Mr. Drake: I believe that rezoning it to RM is appropriate.

Mr. Hurd: Okay. No questions or comments for the staff or applicant? Okay. And then Commissioner Kadar?

Mr. Kadar: Yeah, I'm intrigued by comments that were made by Mr. Abbott regarding the potential lawsuit around the UN designation that he proposed to file. I distinctly recall that back in January or February, whenever we had this topic before, that you had made similar comments about a lawsuit was going to be imminent, we're filing a lawsuit, and we're moving ahead with it. And yet it's been several months, and nothing has happened. Now given that, I would tend to agree with you that if there is a lawsuit that is going to be filed, I mean truly filed, that challenges that, then maybe we should just table what we're talking about here until that lawsuit has been resolved. But, given the performance from the past meeting until now and no lawsuit and, once again, promises of a lawsuit, I'm inclined to go ahead and agree with the RM zoning change.

Mr. Hurd: Alright, thank you. I, Commissioner Hurd again, I do not have any questions for the staff so we will turn to any public comment. I believe we had, let me double-check, Steve Hastings had asked to speak on item 3.

Mr. Steve Hastings: I think Mr. Abbott covered the comments that I would make on this item.

Mr. Hurd: Okay, thank you.

Mr. Hastings: Thank you.

Mr. Hurd: I have one, Michelle, I see one person flagged as Caller 01. Can we unmute them and see if they have comments on this item? Hello, Caller 01, do you have comments on item 3.

Mr. Max Walton: It is Max Walton. I am Caller 01 and I am just listening.

Mr. Hurd: Congratulations, you won free tickets. Okay, I was confused, Max, because I saw you listed down there otherwise. Okay, so Caller 01 is Max. Alright, that would conclude public comment and we're going to bring it back to the dais. Let me see, do I have anything I want to say prior to . . . I think my only comment on this is that we are following the process. You know, we decided on the first time through this that we didn't have the information required to make the decision. We sent it to Council. Council sent it back to us to do our duty, which is the rezoning under the Comprehensive Plan amendment and then I think the owners have legal recourse if they feel that that's not appropriate or if they have issues with it. But I think we are doing our job here by following the process. Council did it and we do our job. I think tabling it at this point is going to be not productive. I think we have the information we need to make the call. Alright, so . . .

Mr. Stozek: Will?

Mr. Hurd: Yes?

Mr. Stozek: Bob Stozek. At the previous meeting I recused myself from the vote . . .

Mr. Hurd: Yes.

Mr. Stozek: And I think it's probably proper to do that again at this time.

Mr. Hurd: Okay, thank you for that. Alright, before I call for a motion, are there any further comments, questions, statements?

Mr. Adcock: Will, this is Mark Adcock. I submitted a short PowerPoint presentation. I don't know if this is going to come up in the next agenda item or not, but wanted to make sure that . . .

Mr. Hurd: That was the PowerPoint regarding the zoning, the part of the submission prior to Council?

Mr. Adcock: Correct.

Mr. Hurd: Were there any points from that that you wanted to bring to attention.

Mr. Adcock: Well I think if you're going to do the same thing for the next agenda item, I can save my comments for that.

Mr. Hurd: Okay.

Mr. Adcock: They have more to do with the special use permit.

Mr. Hurd: Okay, I will move that over.

Mr. Adcock: Thank you.

Mr. Hurd: Seeing nothing further, Secretary Wampler, could you please formulate the motion, please?

Mr. Wampler: I will. I move that the Planning Commission recommend to City Council that 19 Amstel Avenue be rezoned RM to be consistent with the Plan V future land use designation of residential high-density.

Mr. Hurd: Thank you. Do I have a second?

Mr. Kadar: Second.

Mr. Hurd: Alright, I think that was Commission Kadar.

Mr. Kadar: Yes.

Mr. Hurd: Alright, calling the votes. Commissioner Silverman?

Mr. Silverman: I concur with the department's recommendation report and also with the comments of the Chair and I vote in favor of the RM zoning.

Mr. Hurd: Alright. Skipping Commissioner Stozek. Commissioner Wampler?

Mr. Wampler: I vote in favor.

Mr. Hurd: Thank you. Commissioner Drake?

Mr. Drake: I vote in favor.

Mr. Hurd: Thank you. Commissioner Kadar?

Mr. Kadar: I vote in favor.

Mr. Hurd: Thank you. Commissioner McNatt?

Ms. McNatt: I vote in favor.

Mr. Hurd: Thank you. And I also concur with the comments from Commissioner Silverman and I vote in favor, as well. Motion carries.

MOTION BY WAMPLER, SECONDED BY KADAR THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL APPROVE THE REZONING OF 19 AMSTEL AVENUE FROM RS (ONE FAMILY DETACHED RESIDENTIAL) TO RM (MULTIFAMILY DWELLINGS – GARDEN APARTMENTS) TO BE CONSISTENT WITH THE COMPREHENSIVE DEVELOPMENT PLAN V FUTURE LAND USE DESIGNATION OF RESIDENTIAL HIGH DENSITY.

VOTE: 6-0

AYE: DRAKE, HURD, KADAR, MCNATT, SILVERMAN, WAMPLER

NAY: NONE

ABSTAIN: STOZEK

MOTION PASSED

4. REVIEW AND CONSIDERATION OF AN ORDINANCE TO ADD “FRATERNITY AND SORORITY” CLASSIFICATION AS NEW SPECIAL USE PERMIT UNDER RM AND RA ZONING.

Mr. Hurd: Just a moment here while I swap papers around. That brings us to item 4, review and consideration of an ordinance to add fraternity and sorority classification as a new special use permit under RM and RA zoning. Director Gray, are you taking this one?

Ms. Gray: I am deferring to Planner Fortner, please.

Mr. Hurd: Okay, thank you.

[Secretary’s Note: During Mr. Fortner’s presentation, the Planning and Development Department PowerPoint presentation regarding the ordinance to allow fraternities and sororities as a condition use in the RM and RA zoning districts was being displayed for the benefit of the Commission and the public. Links to the Planning and Development Department report, the Planning and Development Department presentation, and written public comment received May 1, 2020 regarding the fraternities and sororities ordinance can be found at the end of this document.]

Mr. Fortner: Hi everyone, this is a zoning amendment, this is an ordinance that would allow fraternities and sororities in RM and RA zoning with a conditional use. Go ahead, next one, Michelle.

Alright, so the current conditions and background. So, at the University of Delaware there are 51 chapters that are recognized by the University of Delaware as having an active status. Fraternities have been around, according to the University of Delaware’s website, for about 115 years. There are 4,800 undergraduate college students currently that are associated with a fraternity at the University of Delaware. That makes up over one-quarter of the campus is a member of some sort of Greek organization. There are four different types of Greek organizations. There are fraternities and that’s your classic male social fraternity. Then you have the Panhellenic which is your sororities, which are female only. Then you have something called Multi-Cultural Group fraternity. It’s usually based around some kind of cultural identity. And then you have co-ed fraternities and sororities. These are usually based around some sort of identity of a professional organization. They have some sort of professional commonality to them that they formed into a society, like engineers or architects or something like that, that they’ve established a social type of fraternity. So, there are 51 of these fraternities that are in active status at the University of Delaware. There are, I think on page two or three of your report, it shows only nine of those fraternities have residential houses, fraternity houses or sorority

house, and those are listed in your report. And you'll notice that of the nine, seven are on University of Delaware property. Most of them are on the north campus on the street on the University of Delaware. The University owns the land, it's part of the campus, and then they built a house or in a couple of cases purchased a house and then they lease these to a University of Delaware fraternity or sorority. And so those are listed, I don't actually list the house, but seven of those fraternities have houses on the University of Delaware campus. And then there are two fraternities that are privately owned. They are fraternities that are owned by a type of homeownership group and they are usually alumni fraternity that manages the property and the fraternity, the active fraternity, houses their activities there. They have their meetings there and they live there as a residential purpose. And so currently, since the Kappa Alpha order is gone, there are only two active fraternities in that status right now. Go ahead and go to the next one. I've already covered this, go to the next one.

Alright, so in our current Zoning Code, fraternity and/or sorority is defined in the City of Newark Zoning Code in the definition section, 32-4. And so the definition that currently exists is a dwelling used exclusively by a society of either male or female university or college students having a Greek letter name or other designation and sharing common or professional interests, and with the appropriate approval and/or sanction from the University of Delaware to operate as a fraternity or sorority. So, that's our definition in the definition section of our Zoning Code. The City of Newark Code does not permit fraternities and sororities in any zoning district. So, in 2002 we removed it, so there's a section there that says a fraternity or sorority that is suspended by the University of Delaware so that is no longer approved and/or sanctioned to operate as a fraternity or sorority for a period of more than one year shall vacate the building and the use as a fraternity or sorority shall be terminated immediately upon such University suspension. So, that's what our Zoning Code says. So, the University is on private property that's owned by a type of private individual or homeowner association that's part of the national, that manages the fraternity house, they become suspended, they lose their chapter, the ability to operate as a fraternity house because it's not grandfathered. It's eliminated. Go ahead and go to the next one.

Alright, so fraternities and sororities were permitted in RM and RA zoning prior to 2002. And it was in section, it was in RM and RA, Section 32-11 is RM zoning, and it's number 3 under section a. If it's under section a, that means it was a by-right use. That means that if certain conditions were met, they didn't have to get Council approval and there was no special use permit required. So, a fraternity that met the basic qualifications could open up a property in RM or RA. So, this is the way it read prior to 2002. It said boarding house, rooming house, lodging house, private dormitory, or fraternity house, provided that, and then there were some qualifications there. So, in 2002, September 23, 2002, they changed that. And so, the yellow area kind of shows what they changed. They took out fraternity house and they put boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities. And that was the main wording that they changed. So, they struck it. So, it no longer existed in our Zoning Code, fraternity or sorority. The intent was that no new fraternities or sororities would open up on private property. The intent was that the University could house, on their own land they could build a house or a house that's part of their campus, that's owned by the University, they could house these fraternities and it would essentially be the University's responsibility to manage these types of housing. Why should the City have to manage these types of housing on private property with City zoning? Next slide, please

Okay, so the fraternity ordinance as proposed would allow a fraternity or sorority with a Council-approved special use permit. I've highlighted the language there but to get a special use permit, of course it has to go in front of Council. Council would review the case that the applicant would like to develop a fraternity house and it would have to show that by allowing this fraternity house in whatever neighborhood it was, it wouldn't adversely impact the health or safety of persons living or working in that area in the City, but specifically in that area. They would have to show that it wouldn't be detrimental to the public welfare or injurious to property or improvement within the City boundaries and they would have to show that it wasn't in conflict with the Comprehensive Plan. And so, that's what all special use permits, that's the criteria that they all

have to meet. They all have to show that they won't create adversity to health and safety, be detrimental to public welfare, and it's not in conflict with the Comprehensive Plan. And then it further states that in granting the special use permit, Council shall designate such conditions, so Council can add conditions, whatever they feel is appropriate, in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements. So, they could put conditions and we've seen Council do that before on numerous things from drive-throughs, limiting the hours of happy hours, these are the kinds of things they can impose on a special use permit. Next slide, Michelle.

Alright, so this is the ordinance. Again, this would be put in both the RM section of the Zoning Code and the RA section of the Zoning Code. It would be in section b, which means it would require a special use permit. Section a doesn't require a special use permit. All the uses in section b require a special use permit. And that's the section that I just showed you. So, the basic wording, fraternity and sorority houses are defined as a group of people associated or formally organized for a common purpose, interest, or pleasure, such as fraternities, sororities, or other recognized organizations provided that, and then it shows that notwithstanding any other provision in Chapter 32, it basically says you have to get a special use permit under Section 32-78. Next slide. You hear that, Michelle? There's a little delay on these things.

And then so part b of that, oops, went too far. Go back. Okay, so any proceeding to suspend or revoke a special use permit, in addition to reviewing whether a fraternity or sorority has demonstrated compliance with the factors for granting a special use permit specified in the article of the special use permit criteria, Council may consider additional pertinent factors. So, it gives the Council guidance on what they can consider when reviewing this special use permit. They can consider things from Police Department comments, Code Enforcement comments, any available information from the ABC Commission, whether the fraternity or sorority is in good standing with the University of Delaware, and other information as appropriate. Go ahead, Michelle.

Okay, so section c is for that when considering whether to grant a special use permit, Council shall consider a written report prepared by the Planning Director or the City Manager's designee in evaluating the special use permit. So, it will go through a process with all the departments. The Police will review it, the Planning Department will review it, Code Enforcement will review it, and any appropriate department will review this application and it would, the report would be sent to the Council. And if the fraternity or sorority house is adjacent to the property line of a church, library, school (other than the University of Delaware), nursing home, hospital, or dormitory, issuance of a special use permit shall require five Council votes if it's adjacent to any of those five types of uses. And finally, the special use permit can be, is non-transferable. So, if a fraternity is there and they stay for a number of years but then they leave, then it goes with them. It's expired. So, if another fraternity wants to go right into that house, they would have to get a special use permit also. It doesn't necessarily run with the land with that fraternity. If the fraternity leaves that use, then it doesn't automatically renew. We do that a lot with, also with daycare, home daycare providers. Often when we approve a permit for a home daycare, then if that person, when they move and a new person comes in, they can't automatically have a home daycare permit. Next slide, please.

Alright, so this shows a map of the areas around the University and the department's recommendation is that the fraternity houses be limited to consideration around RM and RA zoning. So, this shows the map in blue where the University properties are, the University's main campus, and then RM and RA zoning. It's a little hard from my view of this thing to differentiate between RM and RA. I don't know if you can see that in this image there. Hopefully in your packet you can see this a little bit better. But that shows where it is. So, we believe this recommendation will help protect the lower-density residential neighborhoods because it will keep the University fraternities and sororities more focused around the campus and will keep them out of single-family residential neighborhoods where we're trying to encourage homeownership and family rentals. And a special use permit will give Council more control in evaluating the appropriateness for each applicant. So, each application will be a case-by-case

basis. No fraternity or sorority is automatic. They'll go and they'll evaluate the appropriateness of that application. And if they don't think it's an appropriate location for a fraternity, they can say no under a special use. They can say it would be detrimental or it will impact the surrounding area. So, every application will be weighed on its own merit. And then the map, well it shows where it is. Go ahead to the next one.

Alright, so we had some comments. Code Enforcement, basically if the fraternity ordinance gets passed, it would fall under some of the same regulations that a boarding house would. So, it would have to be inspected every year for installation of a fire alarm system. For a new house, it would have to actually install a fire alarm system and fire sprinklers, installation of door closures. The same kind of institutional types of fire safety controls would be put in place. Code Enforcement would enforce these, and it's listing them there. Under the Police comments, the Police Department had very strong concerns about this ordinance. In a nutshell, they stated that active fraternities that are currently in good standing with the University of Delaware that are established chapters, they don't necessarily have as much problem with those. Their issue, I think, is with these underground fraternities that are not sanctioned by the University. They pop up and if they close them down, they just open up somewhere else. I think the Police concern, from our conversations with them, by allowing more fraternities to come in, say we approve some fraternities under this ordinance and then they become established and then they're sanctioned, but then they do something and they become unsanctioned, then they lose their special use permit, so then they become essentially an illegal fraternity. So, it's sort of opening the door for more illegal fraternities. And so, they have a lot of concerns about this and creating more underground fraternities, which cause most of the problem, not so much the established legal fraternities that are recognized. Go to the next slide. Michelle?

Ms. Vispi: That's the last slide.

Mr. Fortner: Is that the last slide? Oh, I thought I had one with the recommendation. So, the recommendation, if you go to the last, it's in your report, it outlines it. So, you'll be adding this fraternity and the language I showed you on the previous slides to both the RA and RM zoning districts. And so, I'll turn the floor back over to Commissioner Hurd.

Mr. Hurd: Alright, thank you, Mr. Fortner. Just a couple of comments on the process here again, similar to the last one, what we're going to be doing, I've asked Director Gray to basically take notes in the document containing the language, the code language, so that all our comments and such can be captured and we can have a clean copy of the code language that we're looking to include in the amendment to go by, so we're not relying on scribbled notes and recollections. I do want to say so while this amendment is being driven, of course, by the situation around the property at 19 Amstel, I feel that we do need to consider this amendment in the broader context of the City and its future uses and within the intentions of the current code, as well as comments from others and such. There are three parts of the ordinance that I feel we need to address here and this is based on some conversations from Mr. Abbott and from other Commissioners sort of prior to, just concerns and comments, not discussions we've had on the content, but just things that have been noted. I think we need to be sure that we're clear about the definitions of fraternity and sorority, the factors involved in approving the special use permit, and the conditions and extent of revocation of that special use permit because, as you note, it is different in this ordinance than it is in the standard special use permit, say for an alcohol use.

I will once again give Mr. Abbott ten minutes to present any items of information that are germane to this item so take it away, sir.

Mr. Abbott: Thank you, Mr. Chair. Again, Richard Abbott on behalf of Kappa Alpha Educational Foundation, the owner of 19 Amstel Avenue, and I actually had five comments. In my written submission, I had four and I received a proposed ordinance draft from Mr. Bilodeau. I'm not trying to criticize him, but it differed from what was presented in the report and what was presented tonight in one respect, so I actually have five comments. And I'll try to take them in potentially the least controversial order.

[Secretary's Note: A link to Mr. Richard Abbott's letter to the Planning Commission regarding the fraternity and sorority ordinance can be found at the end of this document.]

Mr. Abbott: The first comment was that the super majority vote requirement, we would request that there be some clarification because I don't think school was intended to mean the University of Delaware and I don't think dormitory was intended to mean a fraternity or sorority. So, point being that as this ordinance would be potentially applied to my client, they obviously are surrounded on all sides by University of Delaware property. So, the University of Delaware is a school and automatically they need a super majority vote. And then secondarily, they are adjacent to the Alpha Phi sorority house and so that likewise would trigger the need for a super majority vote. And I believe, and I would defer to the Planning Department on this, but I believe school meant not a post-secondary school, but a secondary or elementary school and I believe dormitory meant a University of Delaware dormitory. I don't think having two Greek houses next to one another and having a Greek house next to University of Delaware land would trigger the concerns that would cause the increase in the super majority vote requirements. So, that's one, I think potentially, non-controversial request for change.

The next one is on the special use versus special user permit is the way that I phrased it. And Mr. Fortner just discussed the provisions and its subsection small e that says that the uses, that the special use permit would not be transferable. What that actually means in substance is that you're not granting a special use permit, you're only granting a user permit that's specific to the user. That runs counter to special use permits typically because they go to the use. And of course, my client, if approval is received just under current circumstances, if they were to get a special use permit, they're not the fraternity. The fraternity is Alpha Kappa Order, the owner is not the same. So, the fraternity can't even apply for and get a special user permit. And, of course, as noted, the chapter is currently suspended, so under the writing as it exists, they couldn't get any permit, which means my client couldn't do anything with the property in terms of its actual design and the litigation would rage on. We're hoping to avoid that and moot it, to end it, and that would create a problem.

Next, I would cover the revocation and in excess of one-year suspension language. We would submit that fraternities and sororities should be treated similarly to all other special use permits that are governed by Section 32-78 of the City Code and there is permission in that provision for up to a one-year suspension of the special use permit. So, we don't see any reason why discriminatory effects should be applied based on associational status. And obviously I don't want to get into that, but it would have constitutional ramifications as well potentially.

Third, the provision, and this is a big one, the other information as appropriate catchall provision as one of the factors for granting a permit. And I've noted in my submission I would opine that's constitutionally void for vagueness because other information as appropriate is an eye of the beholder subjective standard which is so overly broad and potentially includes anything the human mind can conceive of. And in the zoning realm, you have to have generally objective factors to be able to rely on. Having a broad range of unfathomable subjective factors clearly wouldn't pass constitutional muster. So, if you want to have other specific criteria that are to be satisfied to get a permit and to retain it, fine. But that one is overbroad, and we would submit that that would be stricken.

Fifth, and last, is we, and this is another big one to my client, is that there is a connection or a tie between University of Delaware recognition and the ability to have a special use permit, or to continue to have it. And the problem with that, as we've articulated at both this Commission meeting in January and before the Mayor and Council in February, it is, and I've represented clients in front of it for decades, and it is draconian, it is unfair, it is lopsided, it is not a legitimate process. I can assure you and, case in point in particular, Kappa Alpha had a party at a beach and got complaints about the condition they left their rooms in and they received a one-year suspension. We can debate over whether that's overly severe. But then they did the same thing one year later and they got a four-year suspension. Anybody with a reasonable mind, I believe, would understand that going from one to four years in one fell swoop for an occurrence that's

not on the campus, that's not causing any harm to individuals, that's not causing a safety issue . . . is it inappropriate to leave hotel rooms a mess? Yes, agreed. But you can see the degree to which the University takes these things to just way over the top. And to tie the ability to use the property to that chapter based on a proven unreasonable organization, the University of Delaware Student Organization discipline system, is just, it's not going to work for us. And therefore again, the litigation will have to continue on. And again, we're hoping to come up with a solution that works for my client and can hopefully end the litigation because the only winners in the litigation, with all due respect to Mr. Walton and Mr. Bilodeau, are the lawyers. And it doesn't benefit anybody else.

So, we would ask that those five changes be made. Four of them are reflected in a black-lined ordinance that I provided with my submission. We had to highlight in gray the additional language and strike with a line for the proposed deleted language because the way the ordinance was drafted, the initial language, the baseline language, is all underlined. But in any event, the only thing that's not depicted, as I noted earlier, on that was the special use versus special user permit, and that can be effectively accomplished by the deletion of the subsection small e that says you only get a user permit and not a special use permit. Again, just kind of alluding to that, my earlier comment about fairness and evenhandedness in terms of the way the Zoning Code treats various uses, it simply doesn't make any sense to have a rule that says you can only get a user to have a permit. In this instance, my client would have to apply in the summer of this year to have a fraternity or sorority that may rent the house to apply for a user permit, and then we'd have to come back in a couple of years when the chapter is back and has sufficient brotherhood to take occupancy of the house again, and then we'd have to come ask for another special user permit. And again, it's called a special use permit and the idea that it would be a special user permit instead, I see as not necessary or appropriate. Thank you, Mr. Chair.

Mr. Hurd: Alright, thank you, sir. Alright, so we are going to, I guess we're going to roll through Commissioners for questions or comments, questions of the property owner or of the staff, comments, suggestions, you know, the usual stuff, and I'd say let's keep it to . . .

Mr. Adcock: Will, will I have an opportunity to go through my slides?

Mr. Hurd: Yes, you will. I'm getting to that. Hang on.

Mr. Adcock: Okay, sorry.

Mr. Hurd: So that made me think, let's just keep it to questions of staff or the owner or the representative and then we'll take public comment and then we'll bring it back to the dais for discussion amongst the Commissioners. So, with that, I will start with Commissioner Stozek.

Mr. Stozek: Okay, I had a couple of questions for clarification. Mike, in the beginning of your presentation, and maybe you just misspoke, but you talked about the current fraternity, Kappa Alpha, being suspended but then in the same sentence you talked about them losing their chapter, which I think are two completely different things. And my understanding is right now they are suspended. You know, after the four years, in theory they could come back as the chapter again. Is that correct?

Mr. Fortner: That's my understanding, that they could come back in four years.

Mr. Stozek: Okay.

Mr. Fortner: They're eligible to come back.

Mr. Stozek: Yeah, other thing is, in the beginning of your talk, you talked about four different type of social groupings – fraternities, sororities, and I've forgotten the other two. But in this special use permit, the only words that are used are fraternity and sorority. Does this not apply to those other social groupings?

Mr. Hurd: Actually, I'm going to jump in on this. Commissioner Hurd. That's part of the point I think we need to be clear about the definition of who this amendment, this special use permit can apply to. That has been brought up both by Mr. Abbott and by other people. We need to consider the definition of what a fraternity/sorority constitutes in this code section.

Mr. Stozek: Okay, well I'll wait for that discussion.

Mr. Hurd: Okay.

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

Mr. Hurd: Alright, thank you. Commissioner Wampler?

Mr. Wampler: I've read this pretty carefully and I think it's very balanced. I think we should keep in mind that the reason that we're talking about this specific fraternity is that they have two years in a row exhibited behavior that the University felt was unacceptable. So, I think there are a lot of conditions in the ordinance and the changes that are recommended that I think will deal with the points that people have brought up to us, people in the community who are not in favor of having fraternity houses in their area because of the kind of behavior problems. I think this does a good job of balancing everybody's rights so, at this point, I don't have any other questions.

Mr. Hurd: Okay, thank you. Commissioner Drake?

Mr. Drake: I don't have any questions or comments.

Mr. Hurd: Okay, thank you. Commissioner Kadar?

Mr. Kadar: I just have a few comments. I'm a little confused about what I perceive are a couple of conflicts between the presentation that was made by Mr. Fortner and the one that was made by Mr. Abbott. Mr. Abbott made reference to the fact that the University of Delaware could be considered a school in, or a school could be considered University of Delaware in the ordinance. And he also mentioned dormitory. I think it was on slide 9. When I looked back at the slides from Mr. Fortner, slide 8 and slide 9, I thought that it was clearly spelled out that school does not mean University of Delaware, it means an elementary or secondary school. It was clearly spelled out that University of Delaware did not apply. Yet in yours, you referenced that it might and lead to confusion.

Mr. Bilodeau: This is Paul Bilodeau and some of the confusion is from me. When I sent Richard a version of the ordinance, it was an incorrect one. We'd made one more change to it and the change that we'd made was we specified that school did not mean the University of Delaware.

Mr. Kadar: Alright.

Mr. Bilodeau: So that was my gaffe.

Mr. Kadar: Alright, so Mr. Fortner's presentation is the correct one and Mr. Abbott was dealing off of an older version. Is that correct?

Mr. Bilodeau: Yeah, I threw Mr. Abbott a curve ball.

Mr. Kadar: Okay. Everybody knows he can't hit a curve. Alright, the next question was around slide 9 from Mr. Fortner's presentation. Can we go to that? There it is. Dormitory. I find it interesting that under section d, if the fraternity or sorority house is adjacent to the property line of a church – no conflict there, a library – I don't have a problem with that, a school other than the University of Delaware, a nursing home, a hospital, and then a dormitory, which is so out of line with all the other types of distinctions there that I have a bit of a problem with that. So, why dormitory? I mean, we have the University of Delaware or a school next door. I can understand

that. I can understand churches, libraries, nursing homes, hospitals, but dormitories are essentially another collection of students that are next to a fraternity house that is another collection of students, so I have an issue with that.

Mr. Hurd: Mr. Bilodeau, do you want to address that? I think you were the author, correct, of the initial language?

Mr. Bilodeau: Yes, I was, and I plagiarized that whole clause from another clause in our code. I believe it had to do possibly with locating bars or something along those lines. So, dormitory was in there and I certainly have no problem with further defining dormitory to not include a fraternity or sorority house, another one. Or taking it out completely.

Mr. Kadar: Okay. And the last comment I have is I agree with Mr. Abbott and his discussion about that final qualification that says something about other appropriate information. To me, that is a very, very broad catchall and the question will always come up, who determines appropriateness and that just leads you down a rabbit hole I think we don't want to go down. So, we should, I would like to see that stricken from the standard and be as specific as possible in the rest of it. So, those are my final comments and I have nothing else to add. Thank you.

Mr. Hurd: Alright, thank you. Commissioner McNatt?

Ms. McNatt: Okay, I have some clarification questions first. This action item is based upon this draft recommendation and as part of that, some of the department comments includes Code Enforcement comments, which were shown in Mr. Fortner's presentation. There are other fraternities and sororities that are not located on the University of Delaware property that are privately owned that also have the same designation of zoning of RM . . . there's a sorority with that . . . and there's a fraternity that has an RS designation zoning and there are two, I believe, that have recently been suspended which have zoning RD and RS. I understand what this recommendation is trying to address but I think to Mr. Hurd's comment, which is why I'm asking, wouldn't this special use permit apply to other zoning districts that are privately owned as well in the City limits versus just RMs or RAs, which are the other types of sororities and fraternities? I just don't understand why we're limiting it to RM if we have others, as well.

Mr. Fortner: Okay.

Mr. Hurd: Mike, you first.

Mr. Fortner: Sure, I'll try to take it. So, yes, there are two fraternities that are existing ones in RS. The ordinance would permit them in RM and RA with a special use permit. There are a couple of existing fraternities which are what you call legal non-conforming. They don't fall under this. They will continue as legal non-conforming as long as they are a recognized fraternity by the University of Delaware. At least one of them is in a zoning, as it shows in your report, RS, one is in RS zoning. If that fraternity was to get suspended, they would not be eligible to come back into that house under that zoning. This particular one is off of West Main Street. So, what their course would be if they got suspended for a period of time and wanted to come back, they would have to, they may have to request a zoning change and a special use permit to re-establish themselves. Or a new fraternity could purchase the house and ask the same. But they are legal non-conforming so they would not be able to continue under that zoning district.

Ms. McNatt: So that would include the one fraternity on Academy Street that is privately owned and zoned RD? So, because they are . . .

Mr. Fortner: The one on Academy Street, that one is one of the suspended ones. Is that one of the suspended ones?

Ms. McNatt: Yes, per the Code Enforcement Division's report.

Mr. Fortner: Yes, so they would not be eligible for returning to that property. They would have to apply for a rezoning for an RM and again, that would go through Planning Commission and Council. And then they would have to request a special use permit which would go through Council, assuming it's less than an acre.

Ms. McNatt: Okay, thank you. My other questions go along the same lines as some of the other Commissioners in that item 5 under b about, where it says other information as appropriate, I think that is very vague as well. I would like to see more specific language, and quickly off the top of my head, something like, you know, if any property has any outstanding violations or something like that could be another example of pertinent factors versus this other information. And I also support the removal of the word dormitory from item d that was recently discussion as well. My last question is in item d, if we remove dormitory, would it not make sense to have the super majority or whatever is ultimately determined of Council votes for a fraternity or sorority being located next to private property like a person's residential home, wouldn't that be appropriate to add in there as a reason to have Council, or have a vote for this? Because I could see if a sorority or fraternity wants to pop up next to my house if I lived in an area where a sorority or fraternity would want to pop up, I think Council should have to have some type of majority vote on that. I don't know if that was considered in this recommendation or not.

Mr. Hurd: Okay. Alright, so that's a good question that we can be considering. Last up, Commissioner Silverman?

Mr. Silverman: Okay, I'm going to bounce around on topics here. I concur with the comments that were made with respect to appropriateness the removal of the dormitory reference, I do feel, however, that the very close association and the tie to the University should remain, particularly sanctioned/unsanctioned, under whatever kind of penalty the University wishes to place on the property. The argument was made that it would be inappropriate because it singles out a kind of thinking however I parallel this with the Alcoholic Beverage Commission and a particular land use for a property that deals with the dispensing or selling of alcohol. There is a very particular use associated with that kind of business. There is very particular activity and conduct associated with a fraternity or sorority house and I think the association with the University is very important. The Alcoholic Beverage Commission can come in on its own, using its own standards, police reports, whatever, and terminate or limit the alcoholic beverage permitted. There's no reason why the University, with its own standards, since it's a sanctioning organization, cannot come in and limit or eliminate a particular permission. And I do have some comments with respect to the definition. Going back to . . . if you can bring this back up again, Michelle, please . . . I don't remember what slide this is, referring to line 74 in the text.

Mr. Hurd: Commissioner Silverman?

Mr. Silverman: Yes?

Mr. Hurd: I was hoping we could just keep this to questions on the thing and then we could do discussion after public comment. I don't want to go too far ahead before we've had a chance to hear other people weigh in.

Mr. Silverman: Point taken. That completes my comments.

Mr. Hurd: Okay. Quick question before we go to public comment. Commissioner Stozek, do you feel the need to recuse yourself from this particular item?

Mr. Stozek: No, I don't believe so.

Mr. Hurd: Okay. Thank you.

Mr. Stozek: But I did have one other comment or question.

Mr. Hurd: Yes?

Mr. Stozek: Going back to what Commissioner McNatt said about her concern about somebody wanting to put a fraternity house next to her property. I guess I'm a little concerned about a slippery slope there. I mean, would she have the same concern if somebody wanted to put a multi-room apartment building on the property next to her house as she would if it were a fraternity? Is her concern about the fraternity or is it about the type of residence and building that's going in? It just seems to me that we're putting extra conditions because it's a fraternity because of history.

Mr. Hurd: I think I understand you. I'll say why don't we, that item, item d, is certainly going to be one, I think, that we're going to want to discuss and come to some understanding on conditions for super majority. Alright, the only public comment we've got currently is Mr. Hastings. Michelle, are you able to bring up the PowerPoint or the PDF that I made of the PowerPoint?

Mr. Hastings: I can make my comments, but I think Mark Adcock wanted to present his stuff, too.

Mr. Hurd: I'm so sorry, Mr. Adcock, I forgot that you were doing the presenting. Why don't we start with Mr. Adcock then?

Mr. Hastings: Okay.

Mr. Adcock: Do you want to bring up my little slide show there? That would be great.

Mr. Hurd: Is that visible to everyone?

Mr. Adcock: That's not it though.

Mr. Hurd: Okay.

Mr. Adcock: It says 19 Amstel Avenue on the first slide.

Mr. Abbott: That was my presentation.

Mr. Hurd: Oh, do we not have something else?

Ms. Vispi: I'm sorry, I don't know what presentation it is then.

Mr. Hurd: That was the only thing that we, we received this document as part of Mr. Abbott's submission.

Mr. Adcock: Okay, I submitted mine separately. I'll go through it based on my notes here. I took a quote out of the last meeting with Council that 19 Amstel Avenue was the perfect place for a fraternity house in Newark. And it's nice that we've gotten to this stage in our discussions where I think people have an appreciation for that. We're surrounded by UD properties on all sides. We don't have any close residential neighbors at all. And we're kind of uniquely positioned in that respect. We do have an excellent track record with the community. The fire marshal inspections have been just about perfect for the last five years. As far as I know, we've had very few, if any, from law enforcement. No complaints from neighbors or students. And we take a lot of pride in maintaining the grounds and the structure. Last year, we really had the rug pulled out from under us with the suspension. It was the result of breaking the rules from a prior suspension by having an incident-free offsite graduation party that was organized by a handful of seniors which resulted in a four-year suspension, which we felt was way over the top. Just as a point of clarification, our national organization is 100% behind us. We did not have our charter

revoked. We still have our charter. We have just been suspended by the University and we plan to appeal that suspension for a second time in June. That's it there.

[Secretary's Note: At this point in Mr. Adcock's comments, his presentation on the fraternity and sorority ordinance, specific to the Kappa Alpha fraternity, began being displayed on the screen for the benefit of the Planning Commission and the public.]

Mr. Adcock: I'm not sure you all have an appreciation for what it takes to maintain a 100-year-old property. We're limited by the number of occupants we have. Twenty-one is what the rental permit is for and the market [inaudible] as to what we can charge for each bed. So, it takes a lot of volunteer effort to keep the place going. Hundreds of hours a year, I would estimate. And this whole situation has been a real blow to this organization. We're hopeful that we can find a solution that works for everybody. I did want to say one thing about the underground fraternities. I can tell you that it's a lot easier to keep track of a bunch of guys, twenty guys living in one house that gets visited several times a week by the alumni than it is to keep track of four or five houses scattered across the City of Newark. If you drive by Amstel Avenue, you won't see people in the front yard playing beer pong. I drove down Choate Street one day and it looked like it was Mardi Gras. You're not going to see that on Amstel Avenue.

The one thing I want to say about rezoning . . . this is the second to, slide 9, I think, no, slide 4 . . . is we support these ordinances with amendments. The closer the RM zoning with special use permit gets to grandfathered non-conforming zoning, the more nervous we get because we do not want to be at the mercy of the political pendulum that swings in either direction at the University or with the City. And in our minds, we don't understand why we have to be treated any differently than any of the houses on Campus Side or Cleveland Station and those other places that are zoned RM. If we become a nuisance house, which we've never been, then existing City ordinances should take over. We should get warnings. And if we don't correct that, then our rental permit should be taken away. But it should not impact our property rights and have material change in our zoning. So, decoupling our property rights from the University judicial system is very important to us for exactly those reasons. Not to mention that I firmly believe there is a conflict of interest when it comes to the University based on where that property sits in relation to the other buildings around it. That's all I really wanted to say, and I thank everybody for listening carefully and coming up with some very good questions tonight.

Mr. Hurd: Thank you, sir. Mr. Hastings, did you have any comments you wish to give?

Mr. Fortner: Mr. Hastings, you're on mute.

Mr. Hastings: My comments are basically the same as I made last time so I will go through them very quickly. We were suspended and we would have accepted a reasonable sanction, but four years is a death penalty as designed by the University and they were fully aware that that sanction would force us to lose our grandfathered status at the house. And it's very clear from the history that they are interested in purchasing, in owning that property and I believe very strongly that those two things were tied very closely together. We proposed many sanctions, much harsher, really, than a four-year. Expelling all the members, extensive retraining, and they just said no. You're gone for four years and we will step in and take your house when the time comes. So, I would reiterate the points that Mr. Abbott and Mr. Adcock had made, that our property rights, KAEF's property rights, should not be tied to this University system which is not a legal system. There's, you're not entitled to any type of legal representation. It's a very one-sided arbitrary system and they can come up with whatever ruling they choose. And interestingly enough, the more you appeal their decisions, the worse the sanctions get, which is kind of interesting. So, I would encourage the Commissioners to take Mr. Adcock's comments very carefully and particularly decouple us from the University system. We're happy to work under the City of Newark's laws, rules. We've done a very good job of that. To my knowledge, in the last 20 years, we've never had any major problems with the City. And the only problems we've had with the University are, have led them to further their goal, I think, of purchasing the house. So, I will close with that.

Mr. Hurd: Alright, thank you, sir. Do we have anyone else wishing to speak from the public on this item? Alright, seeing no action on the muting, which is a little weird to look at, I'm going to bring this back to the table, so we're closing public comment. So, this is the point at which we discuss the language within the code and try to come to some agreement. This is going to be challenging to do this as a webinar, as a web thing, because we can't sort of go back and forth discussion as easily as we move through. So, we'll do it in order of Commissioners but I think we'll try to, you know, again address the key areas that seem to have come up which are the definition of the fraternity or sorority use, the factors of consideration, the term of revocation, and the super majority, and then also the, how the special use permit is applied. Whether it's to the property, an owner, a designated user, something of that nature. And that's what I will say on that. Okay, we will begin with Commissioner Wampler.

Mr. Wampler: Thank you. With regard to the definition of fraternity or sorority, the only thing that strikes me as a little bit, I guess I should first state I don't see, on a practical level, that many, as it says here, other recognized organizations would be interested in purchasing a property and having a fraternity house. That being said, defining it as a group of people with a common purpose and it says such as fraternities, sororities or other recognized organizations, I think I would just go with, I think everyone knows what a fraternity and sorority is. I think the classifications that we've been given, including service organizations and that sort of thing, and professional organizations, I could see that any of those might want to have a house, but they all call themselves fraternities and sororities. And so, I think I would just make the definition more limited.

I also say I'm in favor of the super majority and I'm okay with removing dormitory, although I will say that when I was at the University in a previous century, I lived in one of the dorms on north campus which was right across the street from some fraternities and those of us in the dormitory weren't real crazy about having the fraternity next door, so I could see the people living in the dormitory not wanting to have a fraternity. But if they want to remove that, that's okay with me. I think that's it for now.

Mr. Hurd: Okay. I'm just going to throw in a quick comment because I think I probably should have done this beforehand. What I should have put in first was a recommendation that on line 11, 112, sorry, that we remove the in-text definition that's there and refer this ordinance back to the existing definition of fraternity and/or sorority in 32-4 (a) (46) and have that definition be the one that we would possibly modify if the Commissioners feel such. I think that's going to make it clearer than having an inline definition that's not exactly the same as a codified definition and having the problem of, you know, we change one and forget to change the other and causing some problems. So, that's just an editorial comment I'm going to put out there as we continue our comments. Commissioner Wampler, did you have anything further that you wanted to discuss?

Mr. Wampler: Do we have a copy of the previous definition that you're referring to?

Mr. Hurd: Page 3 of the report, line 86.

Mr. Wampler: For some reason, my copy of the report doesn't have line numbers.

Mr. Hurd: We sent out one with lines later and had it delivered so it may have gotten lost in the shuffle, but in the middle of page 3.

Mr. Wampler: Okay. Yeah, yeah, I think it's a good idea to revert to that and make any changes in that and then not have a separate other definition. So, I'm agreeing with you.

Mr. Hurd: Mr. Silverman, did you have a point you wanted to make?

Mr. Silverman: So, your recommendation is we would completely eliminate the definition associated with line 112?

Mr. Hurd: I think in the interest of clarity of the code language, I think we should.

Mr. Silverman: Okay.

Mr. Hurd: I think we should reference the definition in the code, keeping in mind, I think, that we could effectively edit that definition here as part of this process to be sure that we're applying special use permits to the correct groups. Now, I'm saying that if there's a general sense that we want the special use permits to apply to a broader range than this definition gives or if we, so I recognize that that may shift as the conversation goes on. But I think in terms of clarity for the code, referring back to a single point would be best. So, Mr. Wampler is finished. Commissioner Drake?

Mr. Drake: I have no comment.

Mr. Hurd: Okay. Commissioner Kadar?

Mr. Kadar: Yeah, concurrent with your opening statement on this section, line 142 about other information as appropriate either needs to be deleted or appropriate needs to be defined more clearly.

Mr. Hurd: Alright, do you have any suggestions for that?

Mr. Kadar: From my perspective, I would take the thing out altogether. Just drop it. It's not necessary.

Mr. Hurd: Okay.

Mr. Kadar: And then the last one was 152, where I thought we had the word dormitory in reference to sorority house adjacent to the property line of a church, library, school other than UD, nursing home, hospital, or dormitory, we were going to eliminate that.

Mr. Hurd: That was a comment that was made, yes.

Mr. Kadar: And that, I think, is the only two that I have. Thank you.

Mr. Hurd: Okay. Commissioner McNatt?

Ms. McNatt: Okay, I have a question. First, I agree with referencing the current definition and making adjustments to that. I agree with removing the word dormitory. I think that on line 142, item 5 could say something to the effect of any outstanding city or state violations, or violations of any city or state codes. Like that's another, that's a specific item that could be one of those including but not limited to factors. Because if they're in violation of any codes, that should be part of the consideration, I believe. I don't know if that's the correct language, but I was just thinking that could be one of those items that could be added.

Mr. Hurd: And just for clarification, and this might also go to Director Gray or Mr. Fortner, there is an item to Code Enforcement Division evaluation concerning compliance with Chapter 32 Zoning and Chapter 7 Building. Do you know if that would encompass the concerns of Commissioner McNatt or do you think that there are other factors or code issues that might have to be considered?

Mr. Bilodeau: This is Paul Bilodeau. To Stacy's first question about compliance with the laws, that would be under i, the first one. It talks about compliance or non-compliance with Newark or State of Delaware ordinances or laws. I think we're okay there

Ms. McNatt: Isn't that just an evaluation of that, not a determination that they are? Isn't that just an evaluation? Or does that matter?

Mr. Bilodeau: Well you're considering factors, you know, this is in any proceeding to basically suspend or revoke so you're going to be basically taking a look at what laws they've broken and is that something worth suspending or revoking the permit for.

Ms. McNatt: But here's, I guess I want to give an example, just per se. Maybe not laws in the fact of police laws but say for example a piece of property is located near the flood plain and this property owner or sorority or fraternity decided to fill in the flood plain, I'm going to use the word illegally. That's not a police matter but it's a, is that only a zoning matter or could that be a different section of code besides Chapters 32 and 7, for example?

Mr. Fortner: Well, I mean, certainly they would not be able to fill in the flood plain or do anything illegal in the flood plain or do any construction illegally in the flood plain. That's 32 that would not allow it. That's part two of that, or double ii, if that gets to your question.

Ms. McNatt: Does Chapter 32 cover illegal land disturbing activities that somebody may have done? I just want to make sure that all appropriate City codes that are not associated with laws, police laws, are covered.

Mr. Fortner: Well maybe we could put something like or any other City code. I mean, so any City code they violated, I supposed even taxes.

Ms. McNatt: Yes.

Mr. Fortner: So maybe something like any City code. I'm throwing it back to Paul

Mr. Bilodeau: I think we're covered with compliance or non-compliance with Newark and State of Delaware ordinances and laws. I mean, it's a very general thing. Ordinances and laws cover all sorts of things.

Ms. McNatt: Okay. And my last question or concern or maybe suggestion is that the overlying owner of the property, I believe, is the KAEF organization. Is that correct?

Mr. Hurd: Of 19 Amstel? Yes.

Ms. McNatt: Yes. So, isn't it, isn't there potential, based upon the definition or the current, let's start on line 99, it talks about the definition of if a sorority or fraternity has been suspended or no longer approved or sanctioned to operate? Couldn't this organization KAEF operate as a landlord, say, at this property and not be required to vacate if we just changed a portion of line 101 saying that they could operate as like a landlord but not operate as a fraternity or sorority? Is that potential if we eliminated the words if no longer approved to and/or sanctioned to operate as a fraternity or sorority for a period of more than one year shall vacate. So, instead of saying shall vacate, just say more than one year and the use of the fraternity shall be terminated. So, they can't act as a fraternity or sorority, but they don't have to necessarily vacate the building and still be able to produce rental income to other students. Is that an option?

Mr. Hurd: I want to point out that the section you're reading has to do only with non-conforming uses, basically existing non-conforming uses.

Ms. McNatt: So, it doesn't apply.

Mr. Hurd: So, it would not apply to a special use permit. That would fall under the revocation process. The way I understand this, and check me on this, Mike and Mary Ellen, because we now have a special use permit as opposed to a legally non-conforming use, say the University suspends the organization. They are not immediately, the special use permit does not immediately cease because the special use permit can only be suspended or revoked by Council. So, Council would have to basically put on the agenda an item to revoke or suspend the special use permit. There would be a hearing on that, as it were. There would be a vote and then there

would be a determination. So, they would, anyone coming to use a special use permit would come out of the non-conforming use section of the code. So, they wouldn't have to vacate immediately, the use wouldn't immediately stop as it does now. Those two privately owned houses, if the University suspended that organization, they would have to leave. They would fall under this section.

Mr. Bilodeau: You're right, and turning to the special use permit here, if the Kappa Alpha, we'll use them as an example, if they got a special use permit and then they were suspended for a year, that would just be a factor that Council could consider as to whether or not to suspend or revoke. It doesn't say they have to suspend or revoke if they do get suspended. Really, the only affiliation that's required is when you get the special use permit you have to have some sort of University or national recognition. So, if you lose it, it's still somewhat discretionary as to whether or not that is going to be a factor that causes the suspension or the loss of the special use permit.

Ms. McNatt: But there, I guess, I don't know if my question or concern is, is that if an organization loses their national, not their national standing because, for example, this organization is still national, but loses their standing with the University of Delaware, could that organization, if they didn't operate as a fraternity or sorority, still, based upon the RM zoning, create rental income?

Mr. Fortner: If I could, the answer is yes. The way they're zoned now is RS, they would have to be, a fraternity is a specialized use and as the section you pointed out, that use of a fraternity is eliminated, they could be a rental house but they would be limited to three unrelated like our rental thing. Now with the RM zoning, if a fraternity was to lose their status and Council was to revoke their special use permit, that property would have other uses. They could turn it into a boarding house, for example, which would allow people to rent there and if they operate under the conditions of a boarding house. The property owner would also have other recourse. They could redevelop the house into separate individual units, which is a section they could do under RM, or they could just make it a single-family house.

Ms. McNatt: Okay. Alright, so those were my only thoughts, ideas, changes at this point.

Mr. Hurd: Okay. Commissioner Silverman?

Mr. Silverman: Okay, I took a look at the definition we're considering as the standing definition and I believe the definition may not be appropriate in this day and age. First of all, it refers to a dwelling which implies or infers that it's a residential structure. We think of the classic fraternity house, just as when we think of a boarding house we used to think of a Victorian structure where a widow took in people in rooms kind of thing. Also, the references to male and female University students I think is also obsolete language. With respect to the operation of the fraternity/sorority house, I would like to ensure that it, when operating they have the wherewithal and ability to become an ongoing self-sustaining, financially sustaining operation. And I'd like to see the definition changed to the point where instead of referring to a dwelling, we refer to a building. With the changes in architecture, the changes in codes, I'd like to see the definition changed so that it refers to portions of the building used for sleeping accommodations with or without accessory rooms and cooking or eating facilities. We tend to think of a fraternity house as having common areas and common kitchens and that may not necessarily be the use that a future fraternity may want to include within their structure. Also, it would give the opportunity for a fraternity to exist within the proper zoning within a mixed-use building where there's a floor that's rented or used by a fraternal organization. I think we need to get away from the idea of only Greek fraternities. As identified in the presentation, there are some 51 organizations on campus. There is no reason why other organizations can't come together and be considered a group of people living in a fraternity or sorority house. I think it's important to have all the students living in a fraternity house be enrolled in the University of Delaware. The Police, in their comments in the report, were concerned with rogue fraternities. We've heard comments at other Commissioner hearings with respect to other institutions wanting to live in the Newark community in the lifestyle of the college campus. I still maintain my position that the University

of Delaware should sanction the organization and recognize the student living in the building as being a member of a fraternity or sorority, again, through whatever means the University chooses. With regard to income producing, the fraternities themselves, the owners of the building, whether they're a distant organization, should be permitted to have individual rooms or apartments that they can lease to fraternity members as opposed to communal areas. And again, that goes to more modern building layouts and more modern building styles, particularly mixed-use. So, perhaps the definition may be one, may be expanded to include some of those ideas.

Mr. Hurd: Commissioner Silverman, did you have a definition you wanted to put forth into the language or do we want to just discuss it around those points?

Mr. Silverman: I do have a definition that I believe was sent as an email . . .

Mr. Hurd: Yes.

Mr. Silverman: To the director. I don't know whether it was distributed to the Commissioners.

Mr. Hurd: It was not.

Mr. Silverman: I sent it to Mr. Bilodeau for his review and consideration also. There are just some points I raised. I don't know whether any of the other Commissioners might want to think more broadly with respect to a building versus a dwelling kind of thing. I know we've been focused on the Kappa Alpha house which is a more traditional way we think of fraternities, but there may be living arrangements for future fraternities in and around Newark that may want other configurations that takes the pressure off occupying . . .

Mr. Hurd: Do you want me to read the definition you had submitted for consideration?

Mr. Silverman: It also takes what may have been a former single-family detached residential unit and permits other kinds of residential arrangements. Would you please?

Mr. Hurd: Yeah, I'll read that in. So, this is a proposed definition for fraternity/sorority house that would replace the existing definition under 32-4 (a) (46). Excuse me. A. A building or portion thereof used for sleeping accommodations with or without accessory common rooms and cooking and eating facilities for groups of unmarried students who meet the following requirements: 1. All students living in the building are enrolled at the University of Delaware, and 2. The University of Delaware has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures the University of Delaware uses to render such a sanction or recognition. B. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals but occupancy is limited to members of a specific fraternity or sorority regardless of the ownership of the building or the means by which occupancy is so limited

I will just note I think that item B helps cover some of the issues of Mr. Abbott and such in that you could have an owner who then basically rents or leases out space to an organization without having to pass the special use permit around. Any further comments, Mr. Silverman?

Mr. Silverman: No, I have no other comments.

Mr. Hurd: Okay, moving on to Commissioner Stozek.

Mr. Stozek: Yeah, I agree with some of the other changes that were made about line 142 and such, but I guess my main comment comes back to what Alan was just talking about. My concern is we're still, because of the language we're using, we're still honing in on fraternity and sorority, where within that definition we're including other social groups. Social or professional groups, in fact. And I guess I have a problem with stigmatizing all the possible organizations this could

apply to by designating them as fraternities and sororities. I think fraternities and sororities, as Mike said at the beginning, are two or four recognized groupings of people on the campus. And I think we need a broader definition or we just need to say here are the four groupings, you know, it's a fraternity, traditional fraternity, sorority, or a society with a common or social or professional interest, or some such words. We're talking about something than just fraternities and sororities. That's my main problem.

Mr. Hurd: Okay, so I'll ask Mr. Fortner or Mr. Bilodeau, or both I guess, to comment on, because I think, Mike, your presentation had listed those 51 recognized groups and is it your understanding that they are considered fraternities or sororities in the University's sort of language?

Mr. Fortner: Yes, they are part of the Greek Council and it is my understanding that they are fraternities. My view of the way the definition is written, and if I'm wrong, I'm wrong, correct me if I'm wrong, but the definition that we have currently would apply to all four of those types even though the last two rarely, I mean even the social fraternities and sororities, most of them do not have fraternity houses. They don't have a house where they live. I do see it as a, keeping the language dwelling. I do believe a fraternity house is a very specialized type of residential dwelling. Otherwise it's a rental house or a boarding house. And so, I think it's important to keep the University designation that it's an organization that's recognized by the University and it is a type of house. It's a type of rental house that's different than other types of rental houses because we allow, mostly because we allow them to keep more students in there than the normal rental permit. And I believe any of those four organizational groups could try to purchase a home and apply for a special use permit to be a fraternity or sorority house, whether it's a traditional fraternity/sorority or the multi-cultural fraternity or the co-ed fraternities, that they have there. Even though those last two . . .

Mr. Silverman: Will, if I might comment . . .

Mr. Hurd: Yes, Mr. Silverman.

Mr. Silverman: On the comments of Mr. Fortner.

Mr. Drake: Chairman Hurd, this is Pete Drake. I need to exit the meeting.

Mr. Hurd: Okay.

Mr. Drake: Good night.

Mr. Hurd: Alright, thank you, sir.

[Secretary's Note: Commissioner Pete Drake exited the meeting at 9:06 p.m.]

Mr. Silverman: Mr. Chairman?

Mr. Hurd: Mr. Silverman, yes.

Mr. Silverman: With respect to what Mike was saying, I'm looking at the use in a more broad context, more broadly. For example, if I were a property owner and one of the non-Greek style fraternity groups wanted to enter into a contract with me for reduced rent for renting an entire building in my complex or renting a six-pack of townhouses or renting the floor in my apartment building, that's the kind of context I see the definition that I'm proposing offering.

Mr. Hurd: Okay. I think it raises to be considered is that is something like that, is a group of affiliated students living together on the floor of an apartment something that the City is concerned enough, or are we concerned enough about to require a special use permit to allow that to happen. I think Mr. Fortner actually makes a good point that what we are probably more

concerned with, and it's a concern that sort of translates into why we are using a special use permit, I think what we are concerned with is a residential style building located on a piece of land occupied by a single group of students. I think Mr. Stozek's comments, while I think you're right, I don't want to feel like we are singling out fraternities or sororities for previously preconceptions of behaviors and saying that they're the ones that need to be sort of highly managed. I think we're just trying to say is that the situation, that a single group of students living in a denser format in a single building, is that what we're concerned with, because if it is, we want to make sure the definition reflects that. And also, I think to your point, Mr. Silverman, does this code prevent the other things that you're looking for. Could, you know, I always feel that if you want to rent out rooms, rent out apartments in a building, that dwelling density is already established. And I think in this case we're looking to establish a denser use than is typical within that area. So that's sort of my initial thoughts on that. But back to Mr. Stozek, did you have anything further that you wanted to bring up? And does Mr. Fortner's sort of response address your concerns?

Mr. Stozek: I guess it does. Again, what I'm struggling with is are we just talking about, suppose we're talking about some other organization like a fraternity, professional society or whatever. Are we only talking about those kinds of things that are associated with the University? Do they have to be associated with the University to fall under this ordinance or can they be independent?

Mr. Fortner: I . . . go ahead, Will.

Mr. Hurd: Well, I was going to say, the way the definition is currently written and the way the code is currently written, they have to be associated with the University to get the special use permit.

Mr. Stozek: Okay. But I mean suppose another organization wanted to have the same type of dwelling, would they have to have a special use permit?

Mr. Fortner: In my interpretation, they would not be eligible if they're not associated with, if they're not recognized by the University. They would not be eligible to get a special use permit to be a fraternity or sorority.

Mr. Hurd: Now with that said, in the RM zone, for example, they could determine themselves to be a boarding house . . .

Ms. Gray: Right.

Mr. Hurd: And get that density and that kind of usage of single rooms, common space, you know, multiple residents and not have to go through the burden of the special use permit and the sanction, basically the sanction from the University.

Mr. Stozek: Okay, I just want to be clear about that. Say it was an old soldiers' home . . .

Mr. Hurd: Right.

Mr. Stozek: I mean, and they wanted to establish a property in Newark, how would they do that?

Mr. Fortner: Mr. Chairman?

Mr. Hurd: Yes, go ahead.

Mr. Fortner: There's something called a group home that is established by the state and those are usually for people with disabilities or who need some sort of assistance. And those are permitted in our code. An old soldiers' home might qualify in that category. I don't know if there is a specific reason why they would need to live together for some sort of care service. So that

might apply to that group. Otherwise that would be considered a group home and allowed by our code, not a fraternity or sorority as in this ordinance.

Mr. Stozek: Maybe old soldiers' home was not a good example.

Mr. Fortner: Group home people with physical disabilities, for example . . .

Mr. Stozek: I'm not inferring because of disabilities. I'm just saying a group, some sort of societal group, social group, that wants to have a property to live together.

Mr. Hurd: Like the Elks, say, or the Masons . . .

Mr. Stozek: Yeah.

Mr. Hurd: Who wanted to have a group home.

Mr. Fortner: Under this definition, no, they would have to be recognized by the University of Delaware as a fraternity or sorority. So, the Elks would not be able to have a residential dwelling where they all lived together, at least more than four people. They could do three people depending on the zoning, but they couldn't do more.

Mr. Hurd: Mike, correct me, they could make themselves a boarding house though, correct?

Mr. Fortner: Yeah, I supposed they could. It would be a boarding house and then they would have to follow the qualifications of boarding house.

Mr. Hurd: Okay.

Mr. Stozek: Okay. Thank you. That's all.

Mr. Hurd: Alright, my comments. I'll try not to be all over the place, but we are kind of all over the place. I'm coming, I was with Mr. Silverman on the definition but I'm now not so sure it's addressing the issue that the special use permit is trying to address. So, I think I'm leaning toward leaving the definition alone. But certainly, that can be part, we can make that a portion of the motion and amend it as such in the process. Considering . . .

Mr. Silverman: Will, this is Alan Silverman.

Mr. Hurd: Yes, Mr. Silverman?

Mr. Silverman: I concur with backing off the definition that I proposed. Listening to the comments and giving it further thought, I don't think it would be appropriate with respect to the special use permit. I think it addresses some other issues as you and some of the other Commissioners pointed out that are independent of this discussion.

Mr. Hurd: Okay.

Mr. Silverman: So, I'd rather not confuse anything.

Mr. Hurd: Alright, the other item that was brought up was the factors for consideration. And I will just note that the line about other information as appropriate exists currently in the special use permit code for alcohol licenses. But I think I am hearing, and it probably does concern me a little bit, that it is broad and it doesn't, it doesn't address, I think, the factors that we want to consider which are things like violations of laws, health and safety issues dealing with the building or occupancy, other sort of things and other considerations. So, I think I'm in agreement that we could strike that and not lose anything. The only thing I might consider adding, but this might be considered under item ii, Director Gray, you can comment. You had been working on a better

definition of nuisance property and a better methodology of identifying those. Would that fall under either the zoning or the building compliance factors?

Ms. Gray: Well, I can't really say right now because we don't have the language, I don't have the nuisance property language in front of me and . . .

Mr. Hurd: What section does it live in?

Ms. Gray: What section does it live in? It lives in Chapter 7.

Mr. Hurd: Okay, so a Code Enforcement Division evaluation sort of in compliance with Chapter 7, if the nuisance house sort of code gets figured out, it would be in there?

Ms. Gray: Yeah.

Mr. Hurd: So, I think that was a concern that was brought up. Okay, so I think that I'm also in favor of striking item v from item b. I'm also in favor, I think, of striking dormitory as a condition of super majority because I think it's going to be, if we want fraternity houses and such to be in proximity to University property and conditions and people, they're going to also probably end up being close to dormitories. So, I think dormitories pushes them away from a place where we might want them to be.

One item that hasn't been brought up for conversation that I will just mention my thoughts on and we can see how people go to that, is the issue of permanent revocation of the special use permit, which is different than the current language for special use permits, especially for alcohol, which is a limit of a year. I have to say I'm in favor of permanent revocation because I feel that that puts it in line with the current code that applies to non-conforming uses, so it basically puts people back into the situation where they are currently. That is, if you're a non-conforming use and you stop being a non-conforming use, it ends. It doesn't resume after a year. I think that if the Council had intended that in 2002, they would have said that the non-conforming use is suspended perhaps for the portion of the University suspension. And they very clearly said, no, if the University suspends the organization, the use ends. That said, I think the special use permit gives the organizations a better path. They don't immediately lose the non-conforming use, as we discussed, currently, you know, under this they wouldn't lose it as they would currently, they get the chance to go in front of Council and basically make their argument. And they can argue that the University made a capricious determination of the suspension and we would like to just be temporarily suspended, if that's their pleasure, for the duration for the University suspension, for example, and then resume. So, there is, I feel, a way for the organization, the affected organization to not get immediately booted out but to come back through and have someone listen to them who isn't necessarily the University.

The last one is kind of the tricky one and I don't know how we need to word it and that is item e, and that is who the special use permit is issued to. Is it the organization, is it the landowner, and how does that work? Because I think the landowner would be the one who applies for the special use permit but if it's not transferrable and they're not the actual occupant, we have this sort of mix-up. I will turn to Mr. Bilodeau to see if he has any thoughts on language that might address that concern.

Mr. Bilodeau: I think I'd rather stay muted for this one. Let me, if you could circle back to me . . .

Mr. Hurd: Would you like to punt it to Mr. Walton?

Mr. Bilodeau: Sure, if Mr. Walton is still listening, I'd like to hear what he has to say.

Mr. Hurd: Michelle, you may need to unmute Caller 01. I don't know if he can do it himself.

Mr. Walton: I am now unmuted. Thank you.

Mr. Hurd: There you go.

Mr. Walton: So, if you're going to have a special use permit issued to a fraternity or a particular fraternity, then ultimately it can't be sort of transferred from one to the other sort of logically. The property owner, in my view, could still have a boarding house on the property without it being a fraternity or sorority under the particular zoning and then the special use would have to go with the people who are renting or are living in the property. That's the way I view it. So, ultimately, if you're going to have this special designation limited to fraternities or sororities, I think that whatever the organization that's there ought to have, in my view, ought to have the special use permit issued to that particular organization. The landowner still has the right, again, to the boarding house use for the particular property but it doesn't mean that there's a right to have a fraternity in there. So, I would say that it would be fine to leave this language in. Or, if the Planning Commission so chose, they could make it so that the designation is issued to the owner.

Mr. Hurd: Okay. And as you were talking, I was thinking and realizing that oftentimes a restaurant will apply for a special use permit for alcohol service. They're not the owner. They are leasing property from a landlord, but the tenant is still the one that comes and applies for the permit. So, I think I just want to be sure that this language allows the organization/occupant/user, tenant as it were, to apply for the special use permit, and not require the landowner to apply for the permit. Mr. Bilodeau . . .

Mr. Walton: Yes, that's the intent. I am reading quickly on whether or not there is an easy fix to determine, or to make that clear.

Mr. Silverman: While Mr. Walton is doing his searching, may I address Mr. Abbott?

Mr. Hurd: And while you're looking that up, I am reminded I am going to take the Chair's prerogative to extend the meeting to 9:30 or the completion of this item, after which we can then see if the Commission is interested in continuing the meeting for the remaining items.

Mr. Silverman: Will, this is Alan Silverman, may I address Mr. Abbott?

Mr. Hurd: Yes, Mr. Silverman.

Mr. Silverman: Mr. Abbott, I know it may be unique circumstances, the KA circumstances, but is there a landlord/tenant relationship in the contracts that are there, any contracts that are in place?

Mr. Abbott: At the moment, I'm not aware of any, but under the financial and suspension circumstances, my client is marketing and currently, I believe, negotiating a potential lease with a different fraternity. So, if it's a special user permit rather than a special use permit, that fraternity would need to apply and obtain the permit although there's, I think, an inconsistency because the language I'm reading seems to imply that the owner has to apply for the special use permit. But perhaps . . .

Mr. Silverman: This is where I'm . . . I'm sorry.

Mr. Abbott: But perhaps I'm not reading it correctly, so I just, I saw an inconsistency in that it seemed to state that my client, Kappa Alpha Educational Foundation, would have to make the application but yet the user would be the party that gets the permit. So, I'm not understanding the connection there.

Mr. Hurd: Right. Mr. Abbott, that's the issue that I'm trying to make sure that we've got addressed here.

Mr. Abbott: And normally in zoning situations, the use applies to the land. It applies to the dirt. That's why we would prefer that the permit be applied for, for fraternity or sorority use because there may be a lease entered into with a sorority instead. And so, having that type of [inaudible], which is not extensive given the definitional requirements, any fraternity or sorority would be permitted in that use, however, subject to the language regarding suspensions, etcetera, if the fraternity or sorority got in trouble.

Mr. Hurd: Oh good, correct. Because if there was an issue with the occupant and the special use was terminated, then it's terminated, and you'd have to reapply.

Mr. Abbott: Correct.

Mr. Hurd: So, maybe this isn't, maybe we can strike letter e and just let this run as a special use permit as a use with the land since Council still has jurisdiction over both the granting of it and the revoking of it.

Mr. Abbott: I would agree.

Mr. Hurd: Mr. Bilodeau, does that comport . . .

Mr. Bilodeau: No, I was talking more about I guess at the beginning of the ordinance where it says, you know, the Section 32-11 (b) RM districts, the following uses require, I would change that to the following uses will require the tenants or the occupants to seek or acquire the special use permit, if you want to specify who needs to do it. I would not get rid of e.

Mr. Hurd: Okay.

Mr. Bilodeau: I would want to make sure that's clear that this is not transferable at all.

Mr. Hurd: Alright, thank you for that opinion. Okay. I think my last comment is just sort of a general one is that I want to be sure that we're not creating, essentially, a currently non-conforming use. I think we want to make sure that we maintain some of the protections and considerations that the code has on non-conforming uses so that they don't get to exist in perpetuity because that's not what a non-conforming use is. That would be an actual use. Alright, any further comments from the Commissioners?

Mr. Wampler: I have a couple of quick comments.

Mr. Hurd: Sure, Commissioner Wampler.

Mr. Wampler: This is Tom Wampler. With regard to line 142, actually I see that as being redundant because section b ends with Council may consider additional pertinent facts including but not limited to and then it lists one through four. And if you read it Council may consider additional pertinent factors including other information as appropriate, it seems redundant to me. I think that other information as appropriate is already included in the last sentence before letter i.

Mr. Hurd: I would concur with you on that.

Mr. Wampler: And the people who think we can just eliminate v I think are right. It doesn't really serve a purpose since it's already included there.

Mr. Hurd: Okay.

Mr. Wampler: And my reading of e, where it's not transferable, I think that makes it clear to me that the special use permit, just as it would be for a bar or restaurant or any business, is a function of the organization that's using the property. And I'm very much in favor of saying that it's the

fraternity or sorority that gets the permit and not the owner. I don't see the owner of a business on Main Street getting special use permits on the chance that somebody might want to come in and operate a business. I think if someone want to come in and operate a business that needs a special use permit, it's their responsibility to do it, not the owner. That's just the way I read the way that's written.

Mr. Hurd: Okay. Mr. Bilodeau, so you had language that you thought was necessary to add to make it clear that it was the tenants, as it were . . .

Mr. Bilodeau: The tenants or the occupants. It would just be at the very beginning of the ordinance in both amendment 1 and amendments 2, and it would just say the following uses, and right now it reads requires special use permits. I think what I would say is the following uses will require tenants or occupants to require special use permits as provided.

Mr. Hurd: Okay.

Mr. Fortner: Paul, that Section D there is at the beginning of the entire, I mean we would be changing every Zoning Code. That's generic language in the front of every Section B, not specific to fraternities and sororities. Does that make sense? So, right there, that's not new language. That's the beginning and that's there to show that Section B, all the uses listed under there . . .

Mr. Bilodeau: Okay.

Mr. Fortner: So, you would be having to change that . . .

Mr. Hurd: That would be bad.

Mr. Bilodeau: I get what you're saying, Michael. Thank you.

Mr. Hurd: I guess I'm comfortable at the moment leaving it and seeing how Council takes it. But I think it seems to me that it's clear from the way that it operates that it's typically the tenant or the user that applies for a special use permit like in the BB zone and that use, I guess does that use then expire if the tenant moves out?

Mr. Fortner: So, one thing is that it's tied to the land. So, if the Kappa Alpha Order gets a special use permit for 19 Amstel and they stay in good standing but they decide they'd like to move into a different house, they can't take that special use permit and transfer it to a new house. I think that's one reason that section is in there. It's not the special user, it doesn't belong to them.

Mr. Hurd: Oh, that's a good point.

Mr. Fortner: Okay, so it does run with the land, but it also runs with that specific chapter. I think the intent of that thing is let's say the Kappa Alpha Order, they're operating at 19 Amstel, they have a special use permit, they don't get suspended, they have excellent behavior but it just dissolves because their finances are bad and they just dissolve. So, then that homeowner's group, they find another fraternity. I think the intent is for that new fraternity to come in and apply for a special use permit to operate at 19 Amstel and it gives Council a chance to reinforce the laws and what their expectations are for behavior from that fraternity. In front of Council that Chapter will have to illustrate to Council that they will act responsibly as well and that they'll be good, they won't be disruptive to the neighborhood, and they'll meet the requirements of the special use permit. It educates that fraternity, it will reassure Council, it will reassure the neighbors . . . I know there are not a lot of neighbors there . . . but it will reassure the people in the area that this fraternity will operate nicely. And so, I think that the process that it's looking to go through. So, each new fraternity at 19 Amstel would go through this process of a special use permit. So, if one goes away, it would dissolve, and a new fraternity would have to apply for one.

Mr. Hurd: Understood, and I think that lines up with sort of what we're thinking here. Okay, any further comments or discussion? Alright, hearing none . . .

Mr. Walton: Mr. Chair?

Mr. Hurd: Yes?

Mr. Walton: This is Max Walton and I just wanted to bring up a textual inconsistency while you're dealing with this. It's the Commission's prerogative to use the definition in 32-4(a)(46), lines 86 through 92, the definition of a fraternity or sorority requires the approval and/or sanction of the University of Delaware to operate as a fraternity or sorority. But if you go to lines 139, 140 and 141, it says one of the factors for revocation is whether the fraternity or sorority is no longer in good standing and/or no longer recognized by the national organization or the University of Delaware. I think that those definitional pieces need to line up. Because in the definition, by definition, it's not a fraternity or sorority if it's not sanctioned from the University of Delaware. So, you would have to, I think you would either have to add, just make one or the other consistent. In the definition it should deal with or recognized by a national organization or change them just to make them consistent.

Mr. Hurd: Gotcha. Yeah, I'm looking at them just trying to think here. Part of my mind is thinking that the consideration for revocation, I think the factor, using Kappa Alpha again as an example, the fact that the national organization is still supporting them while the University isn't could be a factor but I think to call it, I think for the initial application they would need to be sanctioned or recognized by the University of Delaware. So, maybe we just have to add and recognized by a national organization to the definition just to broaden that one.

Mr. Walton: I don't know what the ramifications of that would be, just to be fair.

Mr. Hurd: Okay.

Mr. Walton: I just noticed that there's a discrepancy in the language and so again if we change definitions here along the way and which one are we going to go with. So, I probably should have noticed that earlier, but I can't say what the ramifications would be.

Mr. Hurd: Okay. Well in my mind what I thought what we would be changing, just looking at line 112 is we would say that a fraternity or sorority house, as defined in the code, which would be you know under the 32-4(a)(46), is a use that requires a special use permit. But then I'm okay with keeping national organization recognition as a factor of consideration for suspension or revocation but not necessarily to make it part of the definition for the uses.

Mr. Walton: Okay, that's fine. I just wanted to bring up the discrepancy.

Mr. Hurd: I understand. Alright, Mary Ellen . . .

Ms. Gray: Commissioner Hurd.

Mr. Hurd: Are you prepared to read our amended language that we would propose to be inserted into the Zoning Code for RM and RA, basically in Section 32-1(b), 32-11(b) and 32-12(b).

Ms. Gray: No.

Mr. Hurd: Okay.

Ms. Gray: There wasn't any specific direction given during the discussion to include one thing or another, so no. So, we're going to have to go back through.

Mr. Hurd: Okay, I will try to summarize the Council, sorry Commissions . . .

Ms. Gray: And Commissioner Hurd, if we could start on any, because the language, the ordinance, because folks in their discussion have been going back into the body of the report using the language and if we could use the language starting on line 227, which is the actual proposed ordinance, that would be helpful.

Mr. Hurd: Sure. I understand. And I was just going to say that I think as we're looking, the language in both the RM and the RA zoning are identical, correct?

Mr. Bilodeau: Correct.

Mr. Hurd: So, if we do it for one, we do it for the other. Okay. Alright well I'm going to start back at the beginning. It seemed to me that there was a general agreement to not alter the definition of fraternity or sorority contained in the Zoning Code under 32-4(a)(46). Alright, in reading through the code, and I have to flip back and forth, so line 231 would read fraternity and/or sorority houses . . .

Ms. Gray: And/or?

Mr. Hurd: And/or, just because that keeps it consistent to the definition, as defined in the City of Newark Zoning Code 32-4(a)(46). Do we need to say as defined? Is that better?

Ms. Gray: Well, we have a definition, if we're using the definition that's in the Code.

Mr. Hurd: Okay so we just say fraternity and/or sorority houses. Well, actually it's just fraternity and/or sorority because house isn't part of the definition.

Ms. Gray: So just have 14, on line 231, just delete the rest after sorority.

Mr. Hurd: Right, just say fraternity and/or sorority so that it's the same text as the definition.

Mr. Bilodeau: I think you should still have the section of the definition that you want to quote. I would say as defined in Section 32-whatever and just leave it at that.

Mr. Hurd: That's fine. I mean I don't mind clarity.

Ms. Gray: As . . . okay . . .

Mr. Hurd: So, as defined. Okay.

Ms. Gray: As defined. Let me get this section there. Hold on. City Code . . .

Mr. Hurd: 32-4 . . . do you want me to read it to you or do you have it?

Ms. Gray: No, I'm sorry, wait. 32-4(a)(46), yes.

Mr. Hurd: Correct. Okay. Line 266, striking item x, other information as appropriate.

Ms. Gray: Hold on, hold on, I'm still working on the first part. Okay, line 236, say that again, please.

Mr. Hurd: Line 266, striking item x, other information as appropriate.

Ms. Gray: Okay.

Mr. Hurd: Line 275, starting on line 275, striking dormitory. Alright, so we need to do the same edits to the RM since they have different line numbers and numbers?

Ms. Gray: Sure, for clarity, that would be . . .

Mr. Hurd: Okay.

Ms. Gray: Let's see, fraternity, sorority, fraternity and/or sorority.

Mr. Hurd: That's line 290.

Ms. Gray: And/or sorority houses, I'll get that one, as defined. Okay, as defined in Section 32-4(a)(46) and then . . .

Mr. Hurd: Going to line 321, striking item five or v, as I recall.

Ms. Gray: 321 is, yes, item v as in Victor.

Mr. Hurd: And then starting line 329, striking dormitory.

Ms. Gray: Got it.

Mr. Hurd: As far as I know, that was the substantive comments on the ordinance. If anyone wants to add anything, you can unmute and add. Otherwise, I believe that that would be the ordinance, as worded, that we will be voting on. Alright, seeing none, Mr. Secretary Wampler, can you call the motion, please.

Mr. Wampler: Alright, let's try this.

Mr. Hurd: Yes.

Mr. Wampler: I think I have it. I move that we recommend to City Council that fraternity and sorority houses be a permitted use in RM and RA districts by adopting the changes detailed in the Planning Department April 28, 2020 report as amended during the Planning Commission meeting of May 5, 2020.

Mr. Hurd: That works for me. Do I have a second?

Mr. Silverman: I'll second.

Mr. Hurd: I'm sorry, Director Gray, you had a . . .

Ms. Gray: It might be helpful for clarity sake for the motion, I'd be happy to read into the record what those specific changes are with the sections and the line numbers.

Mr. Bilodeau: Okay.

Mr. Hurd: Okay.

Ms. Gray: So those changes are on line 231, section 32-11(b)(14), the line shall now read fraternity and/or sorority houses as defined in Section 32-4(a)(46) of the City of Newark Code provided that.

Mr. Hurd: Okay.

Ms. Gray: The next change is on line 267, striking item x, wait a second, section x, striking the entire line other information as appropriate. And line 333, striking section d, striking the word dormitory. And I started on the last section here, I need to go back up.

Mr. Hurd: Oh, okay.

Ms. Gray: Yeah, sorry, I started at the end.

Mr. Wampler: Line 277.

Ms. Gray: Line 277 . . .

Mr. Hurd: Right, dormitory.

Ms. Gray: Yes, in line 277, section i, striking the word dormitory. I believe those were all the changes.

Mr. Hurd: Okay, we have a second from Commissioner Silverman. Any discussion or comments on the motion before us? Alright seeing no one leaping for their buttons, I will call the vote. Commissioner Drake is absent, so Commissioner Kadar?

Mr. Kadar: I agree and support the proposal.

Mr. Hurd: Thank you. Commissioner McNatt?

Ms. McNatt: In favor.

Mr. Hurd: Thank you. Commissioner Silverman? Commissioner Silverman, your vote?

Mr. Silverman: In favor.

Mr. Hurd: Thank you. Commissioner Stozek?

Mr. Stozek: In favor.

Mr. Hurd: Thank you. Commissioner Wampler?

Mr. Wampler: In favor.

Mr. Hurd: Thank you. And this is Commissioner Hurd and I am also in favor. So, motion carries.

MOTION BY WAMPLER, SECONDED BY SILVERMAN THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL AMEND CHAPTER 32 ZONING TO ALLOW FRATERNITY AND SORORITY HOUSES TO BE A PERMITTED USE IN RM AND RA ZONING DISTRICTS BY ADOPTING THE CHANGES DETAILED IN THE PLANNING AND DEVELOPMENT REPORT DATED APRIL 28, 2020 AND AS AMENDED BY THE PLANNING COMMISSION AT THEIR MEETING ON MAY 5, 2020:

A. CHAPTER 32, SECTION 32-11

- a. (b) (14) SHALL READ, "FRATERNITY AND/OR SORORITY HOUSES AS DEFINED IN SECTION 32-4 (a) (46) OF THE CITY OF NEWARK CODE PROVIDED THAT:"
- b. (b) (14) g – STRIKE THE SECTION "x. OTHER INFORMATION AS APPROPRIATE"
- c. (b) (14) i – STRIKE THE WORD "DORMITORY"

B. CHAPTER 32, SECTION 32-12

- a. (b) (10) SHALL READ, "FRATERNITY AND/OR SORORITY HOUSES AS DEFINED IN SECTION 32-4 (a) (46) OF THE CITY OF NEWARK CODE PROVIDED THAT:"
- b. (b) (10) b – STRIKE THE SECTION "v. OTHER INFORMATION AS APPROPRIATE"
- c. (b) (10) d – STRIKE THE WORD "DORMITORY"

VOTE: 6-0

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

NAY: NONE

ABSENT: DRAKE

MOTION PASSED

5. REVIEW AND CONSIDERATION OF AN ORDINANCE TO AMEND CHAPTER 32 APPENDIX XXV-LANDSCAPE SCREENING AND TREATMENT.

Mr. Hurd: Alright, it's late. I don't believe we have enough time to effectively the landscape screening and treatment ordinance, so we will have to postpone that. I'm sorry for that. And then we have to postpone the other things. So, unless there is interest in continuing the meeting, I will call for a motion to adjourn.

Ms. Gray: Chairman Hurd?

Mr. Hurd: Yes?

Ms. Gray: I believe you would need to have a motion to, since the landscaping ordinance is an action item, I believe you would need to have a motion to table it or continue the hearing to the next meeting, if that's your desire.

Mr. Hurd: Alright, then I'll look for a motion to table item 5 to the next meeting.

Mr. Wampler: So moved.

Mr. Silverman: So moved.

Mr. Hurd: Alright, and that sounds like a second in there too because there's two motions.

Ms. McNatt: Second.

Mr. Stozek: Second.

Mr. Hurd: Alright, let's, I'll just call the roll, I guess. Commissioner Kadar?

Mr. Kadar: Agree.

Mr. Hurd: Commissioner McNatt.

Ms. McNatt: In favor.

Mr. Hurd: Commissioner Silverman?

Mr. Silverman: In favor.

Mr. Hurd: Commissioner Stozek.

Mr. Stozek: Aye.

Mr. Hurd: Commissioner Wampler?

Mr. Wampler: Yes

Mr. Hurd: And Commissioner Hurd says Aye. Thank you, Director Gray, for keeping us legal.

MOTION BY WAMPLER, SECONDED BY MCNATT THAT THE PLANNING COMMISSION TABLE THE REVIEW AND CONSIDERATION OF AN ORDINANCE TO AMEND CHAPTER 32 APPENDIX XXV-LANDSCAPE SCREENING AND TREATMENT UNTIL THE NEXT PLANNING COMMISSION MEETING.

VOTE: 6-0

AYE: HURD, KADAR, MCNATT, SILVERMAN, STOZEK, WAMPLER
NAY: NONE
ABSENT: DRAKE

MOTION PASSED

Mr. Hurd: Alright, now I'll look for a motion to adjourn.

Mr. Wampler: So moved.

Mr. Hurd: Alright, Commissioner Wampler moved. Do I have a second?

Mr. Stozek: Second.

Ms. McNatt: Second

Mr. Hurd: Okay, can we all just nod our heads, or do we have to . . . okay.

THE MAY 5, 2020 PLANNING COMMISSION MEETING WAS ADJOURNED.

Mr. Hurd: Thank you everyone. Drive safe and we'll see you later.

6. REVIEW AND CONSIDERATION OF PLANNING COMMISSION RULES OF PROCEDURE BYLAWS. [WITHDRAWN UNTIL A FUTURE PLANNING COMMISSION MEETING.]

[Secretary's Note: Item 6, review and consideration of Planning Commission Rules of Procedure Bylaws was withdrawn from the agenda until a future Planning Commission meeting.]

7. DISCUSSION OF TOPICS FOR PLANNING COMMISSION TRAINING.

[Secretary's Note: The May 5, 2020 Planning Commission meeting adjourned prior to agenda item 7, Discussion of Topics for Planning Commission Training.]

8. INFORMATIONAL ITEMS.

- a. PLANNING AND DEVELOPMENT DEPARTMENT CURRENT PROJECTS**
- b. PLANNING COMMISSION 2020 WORK PLAN QUARTERLY REPORT**
- c. PLANNING DIRECTOR'S REPORT**
- d. BOARD OF TRUSTEES RETREAT GIVES UPDATES ON UNIVERSITY AND VISION FOR FUTURE (UD REVIEW)**

[Secretary's Note: The May 5, 2020 Planning Commission meeting adjourned prior to discussion of agenda item 8, Informational Items.]

9. NEW BUSINESS

[Secretary's Note: The May 5, 2020 Planning Commission meeting adjourned prior to discussion of agenda item 9, New Business.]

10. GENERAL PUBLIC COMMENT

[Secretary's Note: The May 5, 2020 Planning Commission meeting adjourned prior to agenda item 10, General Public Comment.]

The May 5, 2020 Planning Commission meeting adjourned at 9:46 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 \(Rezoning of 19 Amstel Avenue\)](#)
- Exhibit B: [Planning and Development Department presentation \(Rezoning of 19 Amstel Avenue\)](#)
- Exhibit C: [Richard Abbott's letter to Planning Commission \(Rezoning of 19 Amstel Avenue\)](#)
- Exhibit D: [Planning and Development Department report \(Fraternity & Sorority Ordinance\)](#)
- Exhibit E: [Planning and Development Department presentation \(Fraternity & Sorority Ordinance\)](#)
- Exhibit F: [Written public comment received May 1, 2020 \(Fraternity & Sorority Ordinance\)](#)
- Exhibit G: [Richard Abbott's letter to Planning Commission \(Fraternity & Sorority Ordinance\)](#)
- Exhibit H: [Mark Adcock's presentation \(Fraternity & Sorority Ordinance\)](#)