

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

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

December 1, 2020

7:00 p.m.

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

Chairman: Will Hurd

Commissioners Present: Karl Kadar
Alan Silverman
Tom Wampler
Allison Stine

Commissioners Absent: Stacy McNatt

At-Large (Vacant)

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

Mr. Will Hurd called the Planning Commission meeting to order at 7:05 p.m.

Mr. Hurd: Good evening everyone and welcome to the December 1, 2020 City of Newark Planning Commission meeting. This is Will Hurd, Chair of the Planning Commission. We are following the State and Council directives on remote meetings and holding this meeting through the GoToMeeting platform. Our goal is to support the participation of everyone in this meeting. Angela Conrad, our shared Administrative Professional, 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 or applicant to present first. Once the presentation is complete, I will call on each Commissioner in rotating alphabetical order to offer their comments. If a Commissioner has additional comments they would like to add afterwards, they can unmute themselves and I will call on them to make it clear who is speaking next. Angela will be keeping all other attendees on mute to prevent background noise and echo. Please do try to avoid talking over other people so that everyone listening in can hear clearly. We will then take public comment on each item, in accordance with the Governor's declaration on remote meetings. Everyone giving public comment will need to identify themselves. We will first read into the records comments received by email prior to the meeting. If members of the public would like to comment on an agenda item during the meeting, they should send a message through the chat function with their name, district or address, and which agenda item they wish to comment on. The chat window is accessed by clicking on the speech bubble icon on the top bar. For those attendees connected to the meeting only through their phone, and at the moment I do not see anyone who is, oh I see one person might be following, I will call on you separately. You can press star 6 to unmute yourself and when I see that you are unmuted, I can identify you and call on you for your comments. If there are any issues during the meeting we may address these guidelines if necessary. Beginning with Item 1.

1. Chair's remarks.

I first want to commend the Planning Department's staff on their extraordinary efforts to get the reports and packets prepared for this meeting. I understand there was a lot of obstacles in your way that you overcome and kudos to all of you. I asked the Commissioners please do ask questions on anything that isn't clear, so that corrections can be made to the reports on items that move onto Council. Because we have a very full agenda at the moment, I'm going to use the Chair's discretion to reduce public comments to three minutes. I will reconsider that for each item based on how many people seem to be asking to comment. I just want to make sure that we get through all the public comment and through a sufficient amount of deliberation without running this meeting past ten o'clock. So, moving then to Item 2. The minutes to the October 6th Planning Commission Meeting.

2. The minutes of the October 6 and November 3, 2020(item withdrawn) Planning Commission Meeting.

We have the edited minutes from the October 6th meeting. The minutes from the October 20th CIP meeting and November 3rd meeting are not ready yet. So those will be reviewed at a later date. Do I have any corrections or comments from the Commissioners? Commissioner Stine. You do need to unmute yourself though.

Ms. Stine: I just have a misspelling.

Mr. Hurd: Okay.

Ms. Stine: On line sixteen, Allison is with two L's.

Mr. Hurd: Oh dear, that's terrible. We have to get that right.

Ms. Stine: You'll get used to it. Thank you.

Mr. Hurd: Alright, seeing no others. Okay seeing no other action, minutes stand by acclamation. It takes us to Item 3.

3. Review and consideration of a major subdivision with site plan approval, special use permit, and parking waiver for the property at 132-138 East Main Street. The plan proposes a mixed-use development of commercial space and residential apartments.

Mr. Hurd: Just a reminder again, please, remember to keep your line muted until called on to speak. If you wish to provide public comment, please use the chat window to let us know. At the moment, it's still three minutes but we will see about that. Comments must be germane to the agenda item and directed to the Planning Commission not to the applicant. Each person may only comment once per agenda item and I will be keeping time and will let you know when you have one-minute remaining and then when your time is up. Since it's been a while since we've had a project seeking discretionary site plan approval, I just wanted to quickly remind the Commissioners of some important parts of the process. The purpose of site plan approval from the code itself, is to provide alternatives for new development proposals, to encourage variety and flexibility for new development or redevelopment and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations stated in this chapter. Site plan approval shall be based upon distinctiveness and excellence of site arrangement and design. So, our approval is discretionary and based on our belief that the project provides value to the city. From the code for the site plan approval, the Planning Commission shall review the plans and consider recommendation made by the planning director and other aforementioned departments. The commission may recommend, in approving the plan, conditions and variations pertaining to permitted uses, lot sizes, yard dimensions, distance between buildings, height of buildings, density, the placements of sign and etc. In recommending the approval of the site plan, the Planning Commission may designate such conditions in

connection therewith as will in its opinion, assure that the improvement and development will conform to the foregoing requirements or modifications thereof including but not limited to provisions for protection of adjacent property, access and design for off street parking and loading as shall be deemed necessary to secure the general intent of the district and the best development of the neighborhood and to reduce injury to the property value of the neighborhood. Action by the Planning Commission shall be considered preliminary site plan approval, approval with conditions or disapproval. Alright, so the format for this item will be the staff presentation which is typically short because it's usually all in the report, but any clarifications or additional comments from the staff are welcome, and then the applicant presentation, Commissioner comments and questions, public comment and then final discussion by the Commissioners and the vote. Director Gray who is handling the staff report for this?

Ms. Gray: That would be me.

Mr. Hurd: Okay.

Ms. Gray: Chairman Hurd. Okay, I shall start, thank you. Good evening Planning Commission Chair Hurd and Planning commission. The Planning and Development Department has put together a report that has been distributed to the Planning Commission and posted on with the meeting agenda. Our presentation as Commissioner, Planning Chair Hurd, indicated will not be reviewing the entire report rather I will be reviewing the highlights of this report. On October 10, 2018, the Planning and Development Department received a sketch plan on this project for a major subdivision by site plan approval, special use permit, and parking waiver for a property located at 134 and 136 East Main Street. The property in size is .65 acres. The original application back in 2018 was for mix of retail, apartments and hotel. Subsequent versions did not include the hotel. The current request includes replacing the structure at 132 East Main Street, with a five-story mixed use building including 4,400 square feet of retail space and 33 apartments, while leaving the existing structure at 136 East Main Street unchanged. The existing zoning for the parcel is BB and will not be changing. The property's currently support about 5,000 square feet of commercial retail space and four residential apartment units at 132 East Main as well as 5,450 square feet of commercial retail space at 136 East Main Street, which is currently occupied by Chipotle Mexican Grill and that is proposed not to change, the Chipotle. The parcels include thirty parking spaces of City lot four which is currently being leased to the City. The applicant proposes to demolish the structure at 134 East Main Street which currently or recently housed Tasty Wok, Playa Bowls and Margherita's Pizza. The structure at 136 as I just indicated which currently contains Chipotle will not be changed. The structure at 134 East Main Street will be replaced by 11,750 square foot structure that wraps around the back of the existing structure of 136 which is Chipotle. The new structure will be about 4,400 square feet of retail space in the front with about 6,600 square feet of apartments and 2 – three bedroom ADA accessible apartments in the rear on the ground floor with 12 – four bedroom and 19 - two bedroom apartments on the second to fifth floors. As previously stated, this project is being applied for under Section 32 - Site Plan Approval Provision as Chairman Hurd just indicated, which allows for waivers of area, density and use provisions of the code. Also, as Chairman Hurd indicated, the purpose and intent of site plan approval is to provide alternatives for new development or redevelopment proposals to encourage variety and flexibility and to provide the opportunity for energy efficient land use by permitting reasonable variations from use and area regulations. Site plan approval should be based on distinctiveness and excellence of site arrangement and design. The applicant is requesting site plan approval for relief for the following four provisions: for non-allowed use of apartments on the ground floor, apartment unit density, front building setback and building side yards setback. Regarding the requested waiver for density as the applicant indicated in the project narrative and included in your report as Exhibit G, this request is mitigated by the fact that the majority of the units are two-bedroom units which limit the impact of the development and while the density calculations is required by code for this development limits the number of apartment units for the property to twenty-five. However, the unit, restriction does not limit the number of bedrooms per unit. Many recently approved projects included apartments up to six bedrooms per unit. As such, the density of bedrooms provided for this project is line with other recent projects. Regarding the request to waiver for the apartments on the first floor, the

applicant indicates the inclusion of the two first floor ADA apartments compatible apartment units as a desirable component to the plan for those with disabilities. The Planning and Development Department notes that the current commercial space is being maintained with this proposed plan and will consequently not affect the available retail space on Main Street and the ground floor apartments located in the rear of the structure and therefore the Planning and Development Department feels that this waiver request is in keeping with the intent of mixed floor use on the first floor. Planning and Development Department report describes how the applicant is providing distinctiveness and excellence in site arrangement, which the applicant will cover in their presentation. The main aspects include unique treatment of parking facilities and outstanding architectural design as well as energy conservation. The Planning Commission and ultimately the City Council will need to consider whether the proposed waivers of non-allowed use of apartments on the ground floor, apartment use density, from building setback and building side yard requests on the site plan approval provision, and consider whether if this meets the purpose and intent of the site plan approval, which again is to provide alternatives for new development or redevelopment proposals to encourage variety and flexibility and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations. This proposed plan does conform to the Comprehensive Development Plan V and will not require any amendments to change the designation. This project does require a special use for the apartments, which are permitted in conjunction with any non-residential uses in this district. However, it's noted, that by code the applications for uses, this application is only as I indicated .65 acres and for Planning Commission to make a recommendation for special use permit, by code, the property needs to be an acre. So while this is part of the report, this is not to be, the Planning Commission will not be making a recommendation on this special use permit. I just wanted to make a couple of comments on refuse collection, this project proposes an access aisle on the west side of lot four to the rear of the subject's site that will require removal of five existing trash dumpsters. The applicant has indicated the intent to consolidate refuse collection in lot four to one trash compactor that may be collected by the City of Newark Public Works and Water Resources Department. The Public Works and Water Resources Department supports the consolidation of trash in this area and its collection by the Public Works and Water Resources Department. The parking waiver, this project does include a parking waiver and the number of spaces is required, the number of spaces, as requested is sixty-six parking space waiver. The applicant has indicated in their parking waiver letter dated November 6th that this project is decoupling parking from the residential units to discourage on-site parking of vehicles for those residing in the building, a practice consistent with the city's evolving desire to discourage use of vehicles in favor walking, biking and use of mass transit or ride sharing within the downtown area. The Planning and Development Department concurs with this approach for decoupling parking, discouraging on site of vehicles as well as discouraging the use of vehicles in favor of alternative means of transit in the downtown area, and notes this is also in line with the recommendations of the parking sub-committee. Section 32-45(b)(9), the applicant is required to pay the city a fee in lieu of required parking spaces for a parking waiver. The fee could also include in lieu of the fee it could include in kind services or land donations, granting of easements or rights of way, or similar parking improvement activities. As such the applicant has indicated they will provide a sixty-five-year lease to the city for the remaining fourteen parking spaces. As the Planning and Development Department had indicated in the May 29th SAC letter, these agreements in the past related to parking waivers, including the one next door to Kate's Place has typically been for ninety-nine years. Consequently, the Planning and Development Department recommends that this lease agreement be for ninety-nine years. This proposed development meets all the requirements detailed in the Municipal Code of the City of Newark, Delaware Chapter 27. In conclusion, because the special use permit and major subdivision plan with site plan approval with the Sub-Division Advisory Committee (SAC) recommended conditions should not have a negative impact on the adjacent and nearby properties, because proposed use does not conflict with the Comprehensive Development Plan, the Planning Department suggest the Planning Commission take the follow actions: that they recommend to approval of the major sub-division plan and because it should have a negative impact on the adjacent nearby properties because the proposed plan does not conflict with development pattern in the nearby area and based on November 24, 2020 Planning and Development Report that recommends that the commission approve the 132-136 East Main Street Major Sub-Division

and site plan approval plan as shown on the Pelsa Company site plan approval, special use permit and major sub-division plan dated August 5, 2019, revised November 5, 2020 with the Sub-Division Advisory Committee (SAC) conditions as described in the November 24, 2020 Planning and Development Report and because it should not have a negative impact on the adjacent nearby properties and because the plan does not conflict with the development pattern in the nearby area, recommend approval of the sixty-six-parking waiver for 132-136 East Main Street with the following conditions that the lease agreement for the parking shall be ninety-nine years. That concludes my report. Thank you.

Mr. Hurd: Thank you so much. Who is presenting for the applicant?

Mr. Tracy: Mr. Chairman, John Tracy from the Young Connelly, Star and Taylor.

Mr. Hurd: Okay, I will ask if you can please keep it to fifteen-minutes or less and that will help us.

Mr. Tracy: You know me better than that, Mr. Hurd. I will do my very best. I appreciate the opportunity to do this virtually tonight. I appreciate the opportunity of the Commission and like others around this state. try to carry as much business as usual during these interesting times. I also appreciate not having the requirement to turn my camera on because my face is kind of doing COVID shaving at the moment. But in any event, with me virtually this evening, I think I've seen them all in the list George Danneman who is the property owner, Joanne Pellegrini who is from PELSA, Kevin Wilson and Nick Fedrick from Architectural Alliance, the project architects and Craig Johnson from North Star Construction Management. Each of these folks has their own particular expertise and will be available for questions as we move along. As Ms. Gray noted, there is a very extensive report that has been prepared and I will not obviously read verbatim from it, but I will likely highlight some of the things that were replaced in the report. However, on the onset and before diving into the Power Point that we have, I wanted to note that the project and its design is somewhat indicated by Ms. Gray as the result in the collaborative process with the city and its departments. As she noted this was a much larger project that extended to ten stories and included much of the area within lot four with a plan that it be a partnership with the city as far as ownership and operation of a parking garage. In fact, that plan was vetted by the Downtown Newark Partnership (DNP) where we received the positive recommendation on the design of the structure as well with at least one community meeting with some favorable feedback was received. This project, however, proved to be too ambitious and was revised to something (unclear) you see this evening. In contemplating different uses, at one point, there was a thought of doing a smaller hotel which would not have required some of the relief that we are seeking tonight, but based on some reactions from other projects we thought it was better to pursue this mixed use development that is more in line in what you see in city. In doing this, however, we retained many of the design elements that had been discussed and incorporated into the larger project into this project. As originally proposed, this project was a 92,000 square foot building with an elevated pad in the back with parking underneath and a total number of apartments at forty-seven. It was ultimately revised to what you see tonight which is a 60,000 square foot building with thirty-three apartments. However, we did, as I mentioned go through a number of architectural and design changes that have been incorporated with consultation with the city. This includes among others, a mansard roof being added to the fourth floor on the Main Street façade to reduce the scale of the perceived building height, enhancing the appearance of brick veneer on the side and rear façade of the buildings as long as well as respacing windows in the area of this brick veneer which created articulations of the building all the way to the cornices which further created some visual interest. A reduction of the building scale to allow for traffic to move around behind the building as opposed under it which was a concern of some of the city agencies. Enhancing the construction type in the building that is something more in line with what you see with taller buildings and adding pedestrian interconnections from Main Street to the residential as well as from the parking in the rear to the commercial for both people using the building and as well as for fire safety reasons. So, in short, we believe that this proposal has responded to every comment that has been offered by the city and its agencies in the spirit of collaboration in fact, that is what we think in part has led to positive recommendation from the department. With that, I am going to move to the Power

Point that we presented. Initially you will see an aerial photograph of the site area with our property identified this is on the next slide. Which I presuming I am not controlling somebody else is? This aerial photograph shows that we are within the central business district along Main Street. There we go. Which is familiar as the past home of Margherita's Pizza as well as the current home of Chipotle. This exhibit also notes several six story or larger proposals or approvals in proximity to ours, which again is a five-story project. The area's decidedly commercial, coupled with several mixed-use student housing projects. As Ms. Gray noted, the zoning and comp plan supports this use and so we believe what we are proposing will fit comfortably within this mix of uses and will reflect the desire to place students in areas where services and amenities exist; to reduce the need for vehicular traffic and support existing and proposed businesses on Main Street. If we could move the next slide, this reflects what is currently on the property. You'll see it's a two-story building that contains the Tasty Wok and Playa Bowls and the former Margherita's as well as Chipotle next door. You will notice the Kate's Place apartments to the right of the screen. The next slide shows the properties as you enter from Center Street. You can see there that this is almost entirely paved. The home of lot four within the city. You see the Walgreen's building closest to the camera which sits West to the property as well as again Kate's Place both apartments and the townhouses to the rear. The next slide is the existing condition slide for this property. You can see existing and neighboring uses on and bordering the properties along with the existing parking configuration. You'll note the property lines for the parcels we are discussing this evening, extend all the way through the parking lot to the properties to the rear. As Ms. Gray noted, the city presently leases all the spots on our property from my client and as a note at a below market rate. Although there are some passes that are available to the businesses who are on our lot, on our property for this lot. The parking, these properties are in the middle so obviously you can see people will traverse across our property to and fro within Lot four. There are four existing restaurant spaces in these buildings along with a small office and four 2-bedroom apartments. The next slide is the general overview for the project. As you can see, our proposal for the replacement of the existing two-story mixed-use buildings that house the restaurants with a five-story mixed use building that wraps around the rear of the Chipotle building which will remain as it sits. The parking lot to the rear of both our property and adjacent properties is being redesigned to ensure the continued ability of traffic across our lot to access other parts of lot four as well as incorporating new handicapped parking spaces as well as an electric vehicle charging space. The proposal reduces the total retail store fronts to three which includes Chipotle. It allows for the continued cross access through the property. As Ms. Gray noted the proposal would also consolidate the existing dumpsters that are largely on our property into the trash compactor that presently exists within the lot as well. If we move to the next slide where we work through floor plans for the property with the first slide there, the first four you can see that we are proposing three again as opposed to four commercial units along Main Street. Access to commercial sites will be provided for Main Street although you can see hallway access to the rear from Lot four will also be provided. Access to the residential units will be both from Main Street as well as the side of the building. You will note some amenities on the first floor including study rooms and a fitness room for the residential units. There is also some internal storage space as well as bike racks immediately to the west of the existing of the building there against the side. Additionally, what you will see which again Ms. Gray alluded to is somewhat innovative I think here is the two ADA accessible units on the first floor of the building as Ms. Gray notes. These are to the rear of the building so they will not be impacting the traditional commercial spaces along Main Street but it provides the opportunity for those or with disabilities to not have navigate or use elevators for instance to move up and down to their dwelling unit that they can get there from the first floor directly. The next slide is the second through fourth floor layout which is essentially the same mixing two- and four-bedroom apartments each of the apartment's bedrooms will have their own bathrooms something in the current environment which is becoming more of a necessity opposed to a luxury. On each of these floors they will be additional storage units for bicycles and other items on the floor. The next slide reflects the fifth story which has the setback you will note, which I referenced earlier, it's a slightly smaller floor. Again, generally similar layout but one fewer apartment on this floor. The next slide begins the discussion of the architecture for this building I will just give a little preamble and then cede over to Kevin Wilson, from Architectural Alliance to add any further color to this. You will note on this slide, you can see the comparison the Newark Opera house

which was the model for what we were proposing to use including the setback to reduce the height from Main Street, the next slide shows the materials as they are disbursed throughout the building itself starting on the Main Street level and working north to the top floor which again references the setback in it as well and then additionally we have several renderings from different angles, photo renderings that have been included in this as well. As Kevin talks, they can move through this as well, but I would ask if Kevin Wilson wants to talk briefly about the architectural before returning back to me.

Mr. Wilson: Good evening Chairman and members of the commission. As John mentioned this project is drawing inspiration from the nearby historic Newark Opera House, and this slide in particular gives you good idea of this building in particular and (audible). Looking at this slide, you see the retail area, the store front that define the entries, canopies over the doorway, has store front glass (audible)

Mr. Tracy: Kevin doesn't have the best connection here. I tell you what I will move on.

Mr. Hurd: Let's look at the pictures, I think they are more detailed than the ones we had in our original packet. It is good to see those.

Mr. Tracy: This is the view looking across diagonally from Main Street, you will see the Panera Bread and then you see our building front and rear if you want to move to the next slide. That essentially looking directly across the street from the building. Moving to the next slide, that's looking down Main Street back towards the building you will see the Walgreens building there close to you and then you are looking back towards our building The next slide show various views of the building both from Center Street and then within the parking lot and ultimately directly behind the building as well.

Mr. Hurd: Okay

Mr. Tracy: This would be the view that is essentially directly behind just off to the left if you are standing behind the building in lot four.

Mr. Hurd: We are rapidly approaching fifteen minutes.

Mr. Tracy: I will get to the site plan criteria very quickly then. As was noted, there are several standards that apply, and we have listed here the deviations we are seeking. We did submit letters that talk about this but in the standards ensure common open space we are proposing no open space, however, it is not required in the BB district. There are amenities within the building for the residents as well as opportunities to incorporate landscaping along the rear of the property lines and we will also be adding a solid wood fence back there as well. For a unique treatment parking facility while utilizing parking to be available for the city we are minimizing the interference and we are redesigning the parking to facilitate the continued use of the entire lot by folks looking to get to lot four. We will be leasing to the city for at least 65 years as well as maintaining the cross access. The architectural design incorporates a number of design elements following our initial community meeting while plans have been substantially revised. Architecturally we maintain the façade as designed and approved by the Design Review Committee. We are one story taller on Main Street than some other buildings, we are also stepping back so that it's not as readily visible to people walking along Main Street. It is an example of what's called "Second Empire Architecture" drawing from other examples along Main Street. The final plans will include a landscape plan consistent with the City of Newark requirements enhanced by the fence I mentioned earlier. Although Storm Water Management is technically not required under state code due to our disturbance levels and the existing impervious, we are including a sub-surface storm water system to manage the ten-year storm both from quality and quantity. We would also be per the Parks and Rec Department adding some landscaping to the concrete areas to the rear. We also believe that it fits comfortably into the central business district, this fits its relationship neighborhood and community by the architectural improvements, the stepping back of the top floor and in addition the fact we are

not burdening other owner-occupied properties in this area. We also think that the addition of the first-floor unit is a very beneficial change to this, addition to this. We also are going to be meeting or exceeding the LEED requirements currently it is for 40 points, right now we are at 45. This chart here demonstrates some of the highlights including the use of the green vehicle charging station, the white roof, renewable energy production, rainwater management, and bicycle storage. We will be fully outfitting the roof of the building to accommodate the installation of solar in the future on this property. As I said, we are exceeding the requirements for the number of points in. Lastly, just as a parking waiver, the department hit most of those aspects in its presentation including the fact that this request is consistent with what the city is looking to do in terms of discouraging additional traffic downtown by bringing more cars to this area; and instead decoupling the parking for the residents from this existing parking lot here. As I said the waiver would be more than compensated for by the parking lot lease at a dollar a year to the city. The maintenance of the cross-access easement for perpetuity as well as improvements to the parking lot on both our property and as well as off of our property following construction, but also, in terms in lining all the parking so that it functions together completely effectively. With that I will stop and turn it over to everybody for questions.

Mr. Hurd: Alright, thank you so much. We will take Commissioner questions and comments. I am starting with Commissioner Kadar.

Mr. Kadar: Good evening, a couple of items that I'm happy to see is there is no zoning changes required. Which is always a plus. I'm also happy to see that the fifth-floor set back which kind of keeps the look of the Main Street environment consistent with the buildings that are next door. So those are two pluses. Now, also glad to see that we are trying to put some ADA apartments on the ground floor. One question I have is it's hard to tell from the drawing but is there a sidewalk access from the entrances from the ADA apartments directly onto Main Street or do we need to weave our way through the parking lot?

Mr. Tracy: Commissioner there's a hallway that connects that lobby on that first floor, the entrance essentially that connects directly to Main Street.

Mr. Kadar: Okay. So, there is direct access without going all the way around.

Mr. Tracy: Yes. Correct that was something also the fire marshal wanted to see as far as the design so that there would be access from Main Street back to the residential apartments. Not just on the first floor but the building itself.

Mr. Kadar: Okay, the setbacks of the front aren't normally 20 feet required and I would like to point out a typo I believe on page 4 on the city's report; November 24th report. Under Front Setback code was twenty feet, the plan shows I believe that's supposed to be 12.1 feet.

Mr. Hurd: You are correct.

Mr. Kadar: Otherwise the math doesn't add up. Okay, so I would like to know, the existing buildings, the businesses that are there the Chipotle and now the defunct Panera Bread, what is their setback?

Mr. Tracy: I would defer to Julian on that, but what I would say for the existing building we're demolishing is technically to Main Street than what we are proposing.

Mr. Kadar: So, the other buildings are at least in the neighborhood of the 12 feet?

Mr. Tracy: It think we can pull it up. As I said, we're moving back the existing construction.

Mr. Kadar: It appears from the drawings that you are consistent with those other two businesses. One is them is 20 feet then. Okay.

Mr. Hurd: I will just add Commissioner Kadar, the 20-foot setback comes into play once the building goes over 3 stories or 35 feet. Under 3 stories, 35 feet there is no front set back required in the BB district.

Mr. Kadar: Okay, let's get to the really thorny issue I think, and that's the parking. I understand the intention of providing essentially no parking to discourage people from, most of these apartments are going to be student apartments. So, this discourages them from bringing automobiles into the city center and that's a good thing. However, we are eliminating quite a few spaces and have few spaces to play with. There could be potentially 92 residents in that building, I think that is correct, but 92 residents and 14 spaces are going to be maintained for those residents. Not really fourteen, we are losing sixteen to begin with, there's fourteen spaces remaining and as I read the proposal one of the foot notes, indicates that 8 of those spaces are going to be leased to the businesses that do use the ground floor which then only leaves six spaces for potential tenants. I worry about that because, I know there are going to be more than 6 automobiles associated with 92 people despite how strongly we try to discourage them from using their cars. So, that's a little bit of a thorn in my side and I don't know how you could change that cause I look at some of the other proposals coming in and around Main Street and almost all of them providing some sort of in-building multi-level parking in the rear to accommodate some of that. Just a comment. Don't know if you are going to change anything as a result but I worry about that.

Mr. Tracy: Well, if I could respond briefly to that, Commissioner, one - the intention is not to create any opportunity for the residents of this building to park within that lot, we certainly will not be offering them any parking spots, it is a city controlled lot. Secondly, we did have some designs that showed more parking or preserved more parking on the property. We had a larger project that obviously went much more vertical that had a parking garage associated with it. We had a smaller project that essentially elevated the back portion of the building that you see. It had parking underneath, but it was something that was problematic or at least caused concerns for the fire marshal and the trash folks. As far as the passes that you see, those passes do not guarantee the holder a parking spot. In other words, if the parking lot were fully occupied those passes don't guarantee them a right to a parking spot. Essentially what it does, is give them a right to park there without paying the parking charge, but it doesn't guarantee them a spot. Those are accommodations that exist now through the existing leases for commercial businesses and as those leases comes up for renewals, there's opportunity to either discontinue those passes or perhaps suggests the use of a parking lot that's not lot four but a different lot within the city.

Mr. Kadar: Okay, I have one other comment that I don't know if it's directly, well it is related to the project in one way or another, it's were looking at projects all along Main Street. We have been for several years where lots of buildings have gone in, and the density requirements for these buildings, for the BB zoning, we need to, I think we need to explore those and revise them appropriately because virtually all of the Main Street buildings that come along now that provide housing for students, two or three bedroom apartments; all of them ask for project waivers around the density so I think that is something that needs to be looked. Do we have the right density given what we are trying to accomplish in the Downtown core? With that, I'm done.

Mr. Hurd: Okay, thank you so much, Commissioner Silverman.

Mr. Silverman: I find the proposed project as laid out generally acceptable. I do have two concerns from a global point of view. Going back to the origin of the BB district. When the BB district was conceived, there was a discussion on Council and quite a bit public discussion of Main Street disappearing into apartment buildings and losing the commercial and mixed-use quality along Main Street. I believe that in one of the visions that was discussed very freely was no residential units on the first floor. The thought was to maintain the first-floor level for nonresidential uses. This was further reinforced with a discussion that took place with the University Bookstore, there was additional discussion about residential not being on the ground level. Yet here we have a proposal that proposes two residential units on the first floor and I'm

not even sure how that was even a consideration. I don't see the site plan development process being used to ignore very clear provisions in the zoning code with respect to permitted uses and how those uses relate to the lot and the content of those buildings. So, I have an out and out issue with residential on the first floor as Mr. Kadar suggested with the densities, maybe it's time the city wants to review that proposal, that the whole notion that the BB district and its contents and configuration as well as its densities be brought to the surface. Also, doing some quick and dirty calculations there is a purpose for overall residential densities in this particular district and I believe with a revision of the unit types that this applicant could have easily met those criteria and been within the number of units to derive the number of beds. Generally speaking some of the major attributes to this particular site, it backs up to one of the proposed focus areas, the Center Street focus area, which indeed is identified with concentrating the student uses again to draw away from the peripheral residential uses in the city. So, it's consistent with that, however, with respect residential when the focus areas were drawn up, there was discussion by staff and by the Planning Commission not to extend the focus area through the BB district on the Main Street. This was to maintain the predominate residential characteristic of the focus area. So, we have an interface here that kind of bridges both of those worlds. The site plan approval as we, as Commissioners have discussed in the past also needs to be looked at. Some of the attributes that are listed in that particular process are readily being met with design criteria that is very common today. For example, the wedding cake setback. If we look at the building immediately to the east, towards Klondike Kates, we find exactly the same set back arrangement there so there's nothing particularly unique about that architecture in the scheme of things as we see that today. So that points in my mind to take a look at the site plan development criteria. Something that I'm very glad to see in this site is the applicant go the extra mile for subsurface storm water management, if I recall this is one of the areas that use to flood before the redevelopment of Main Street, I think that will help mitigate that problem. With the exception of the objections to the possible interpretation of the BB, I find this project generally acceptable. Thank you.

Mr. Hurd: Thank you so much, Commissioner Stine.

Ms. Stine: Thank you, Mr. Chairman. First, I would like to say that I find this, the drawings, the architecture to be very pleasing as a long-time resident of Newark, it looks like a building that's always been there. While it may not be unique, I do appreciate the fact that it seems to fit in nicely with the landscape, it keeps in the spirit of what I always think of when I think of Main Street. I need a little bit of help with the math and the parking spaces. On the ground floor plan dated November 5, 2020, I count twenty-six parking spaces, two of those designated handicap spaces which I'm assuming leaves twenty-four spaces. Are you committing ten spaces to the businesses? Is that how we are getting to fourteen?

Mr. Tracy: No, there were some and I don't know which one you are looking at and you may also be taking to account parking spaces that are technically not on this property. Yes, some of those parking spots that you see right there are actually not on this property they are on adjacent properties. We are making changes, in there, in terms of realigning drive aisles and things like that. Those parking spaces, the fourteen are just in the lot that is essentially behind us, directly behind us.

Ms. Stine: Okay, you said that the businesses are not guaranteed?

Mr. Tracy: They're not guaranteed a spot. They have passes to use the lot if spaces are available. If for some reason the lot is full, they cannot come in and kick someone out. It gives them a right to access to the lot but does not guarantee them a spot if none is available.

Ms. Stine: So, there is no way to get to more than fourteen spaces?

Mr. Tracy: Well again, we had some other designs that showed more parking spaces and with working with the city staff in terms of a layout and the fire marshal and what they wanted to see. They weren't happy, or they didn't like, they liked this design better than the others designs we were proposing. For instance, you'll note that there's large concrete patio areas to the rear of

the building that depending on reconfiguration might have allowed for additional spots, but the design was not something wanted to see.

Ms. Stine: Can somebody answer definitively why we don't allow apartments on the ground floor?

Mr. Tracy: I will give you my take on it. I think this is part of what Commissioner Silverman was alluding to be the desire to obviously preserve the store front atmosphere, the ground floor retail atmosphere that is Main Street. If you are walking up and down Main Street you want to be able to go into the shops. I would also think you might not necessarily want to live on a ground floor building that faces Main Street. That is why with looking at this, we thought it would be useful to include ground floor residents to the rear of the building, so they have no frontage on Main Street. They are in the back of the parking lot, back of the building, you can see the large patios but it also kind of added this idea in our mind that it would be easier from an ADA standpoint to allow for folks to not have use elevators and corridors if they did not want to; in order to access their living spaces. That is my take on it, but I don't want to tell you that a definitive thought by any stretch.

Ms. Stine: If you had put forth a plan that did not include two three-bedroom ADA accessible apartments on the ground floor, could you expand the available parking?

Mr. Tracy: Presumably, if we didn't extend the retail back into those areas, if the building was not used there for apartments obviously, they could be used for something else. Originally, we had an elevated parking design, an elevated second – fifth floor that allowed for parking underneath and vehicles to move through but that was not something after consultation with the fire marshal and trash folks that they were comfortable with.

Ms. Stine: Okay.

Mr. Tracy: I think that the first-floor apartments are kind of a nice amenity you don't typically see.

Ms. Stine: Okay, alright I think that is it for me. Thank you.

Mr. Hurd: Thank you so much. Commissioner Wampler.

Mr. Wampler: Thank you. I have several things I want to address. One is the density is shown on page two of the report that it is thirty-three units per acre but it's only .65 acre. That gives us an actual density per acre of fifty units. Unless I misunderstand the units there, I think that needs to be corrected. Also, when Karl was talking I come up with my understanding is that the apartments can have two people per bedroom and if that's the case I come up with one hundred and eighty four people living in this structure, not Karl, I forget what you had, but it was less than one hundred I think?

Mr. Tracy: Our belief that the two-bedroom apartments will likely be two people, but you are right the code allows up to four. Our belief that it's two beds and two baths the traditional way that these have been used that they will likely be occupied by the number of people equal the number of bathrooms.

Mr. Wampler: My main concern is also the parking. I think it's a great idea to build student apartments close to campus so that the students don't have to bring their car into Newark. My question is do we have any evidence that is actually what happens? Because I know the whole premise has been to build student housing in town, close to campus, so the students do not have to bring cars. I know for example that directly across the street there is the Main Street Plaza and when that opened a while ago, the students were told there were no parking for you. You cannot park here because the parking behind the building is for the businesses. Friends of ours ran one of the businesses for a long time, they were constantly calling Ewing to tow student cars out of

that lot, because the students parked there anyway. My real concern is we have one hundred eighty-four students coming to live here. They are discouraged from parking there it doesn't say anything from being discouraged from bringing a car into Newark at all. Are we just shifting the cars and the traffic away from that building or we actually making a benefit for the City of Newark? I haven't seen any evidence, and I'm hoping someone can show me some evidence, that in fact when an apartment complex for the student is walking distance from campus actually does reduce the number of cars and the amount of traffic that we see. Does anyone have any of that evidence for that premise is true?

Mr. Tracy: We have a small sample size based on our existing apartments here with limited use of cars, and the folks there. I think you are also seeing is over the course of the years and this is anecdotal more than evidence that with the different means of transportation that has been evolving including ride sharing and the like that you have the need to have the cars right where you are. People bring cars and often leave them remotely for traveling to and from home for instance. If you are in a situation where you got the services around, the classrooms around you, the other buildings around you, there is less of a need or less of a desire to take the cars out to those places.

Mr. Hurd: I will just add that the parking subcommittee, the recommendation for decoupling residential parking requirements was predicated on the assumption that there's more of an economical place to park than in the space behind the building if we charged the renters, the actual cost the parking space. It was to encourage developers to basically say, we are going to allow this many spaces, but they are not free with the unit. They are for rent, but the University system has capacity at remote locations. There are other remote lots, but the challenge for us was that those recommendations have not made it into any code changes yet. They are still hanging out there as recommendations waiting to be enacted. I don't know that we have official data from the parking subcommittee recommendations being enacted to work on.

Mr. Tracy: Mr. Wampler if I can just follow up separately but related the other part is the developer will not control the lot, the city will. We won't have the ability to give parking spaces to anybody who is going to be renting a unit. They would have to park as any other person in the city would, paying city parking rates or perhaps more likely or hopefully this is something Mr. Hurd would know better than I, the University lots that are at the one end of Main Street as I remember testifying previously hearings were underutilized as an opportunity for folks to park and these are again by the Deer Park on Main Street for instance, the garage that is over there. That is a University lot I believe.

Mr. Wampler: Along that line though of one of the descriptions of the unit is that they are allowed two-bedroom apartments which would be attractive to people other than students if the student market disappears. My concern is that if you are going to be renting a two-bedroom apartment either to young professionals or to young families and tell them there is no place to park their car, I see that as a real difficulty. If I were moving into Newark and was going to have a job teaching at the University or something even though it was convenient, I would still own a car and have to put it someplace. I don't see that how viable that is, that you could rent a two bedroom apartment to other than students but tell them there is no parking here, so I'm having a real problem with the parking. I understand the philosophy behind it but I don't know, I'm having trouble distinguishing what is in the best interest of the city and what's in the best interest of the people executing this project. As long as it's just the students are discouraged from bringing their car or discouraged from parking; I don't see, I wish I could believe that would actually reduce traffic in Newark but since I live on Park Place directly across the street from the University between Academy and S. College, and there are student rentals in this block who could not possibly be closer to campus, the house next to me has five and six cars parking there all the time. When the kids come to campus, they bring their cars.

Mr. Tracy: Commissioner, that is also an opportunity obviously where the parking is available. The people who rent the houses, they have ability to park in the street, and park in the driveway. When you take that away, they don't have the opportunity to park, and I'm not saying they're

not going to bring their car, but it becomes less vehicle dependent and more dependent of the means of transportation. Particularly living downtown that the city wants to encourage via ride share, via bikes, via University and other bus services that are there. As long as there is good old fashioned walking.

Mr. Wampler: Okay, that is all I have for now, thank you.

Mr. Hurd: Thanks so much. For me, couple of comments, really glad to see that the renderings having context especially the photorealistic ones you showed. Especially showing Kate's Place. I will note that the site plan drawings and the fire marshal drawings, I had a lot of trouble finding the information I needed in there and I didn't understand the truck stuff until I read the SAC comments. Just to comment for the future you need to do a better job explaining and showing the information. For instance, the site plan is lacking the dimension for the front set back. So, there is nowhere on the plan showing what the proposed set back is as opposed as what is being requested. On the floor plans, I am trying to understand what that tiny little room is at every apartment unit.

Mr. Tracy: I believe, I don't know if George Danneman wants to answer that, the architect wants to answer that?

Mr. Hurd: I mean it's like every one, I'm sure blatantly obvious but I'm just curious more than anything.

Mr. Tracy: I will let one of them unmute and respond.

Mr. Hurd: Okay, I will continue moving along, I do appreciate the applicants paying attention to the city's desires and plans around parking and using our concept for decoupling. You understand you have to use the mechanism of parking waivers to kind of achieve the result that we're looking for. I will have to disagree with Mr. Tracy's assertion in his letter that the unit restriction doesn't take the bedrooms into consideration because the calculation for the maximum units for the property is based on the mix of bedroom units in the building. So, the twenty-five is calculating based on the proposed number of units in the project. You can get thirty-three units if you just did two-bedroom apartments, you can get your thirty-three units. I just want to put out there, I know that the math gets confusing.

Mr. Tracy: My only college math class as well and unfortunately that is the truth and no blame on the Delaware. Not to interrupt those small spaces you see outside of each unit are the utility closet, HVAC, water heater.

Mr. Hurd: It's a water heater you are right. Okay. I appreciated that you are mentioning that future monthly passes, you may be trying to find other places to put them; that would be in keeping with the subcommittee's recommendation as well. That we try to move long term parking like employee and businesses to lots on the edges where long-term parking is more appropriate and leaving lots three and four for short term parking. My last comment, I appreciate you are using the existing code, because it was in effect when you applied for the LEED certified as outlined in the site plan approval process. I would love it if you could consider or commit to using the newly enacted amendments to the 2018 IECC which is sixty points from our new check list of credits. I think that will really make you stand out as a building that's really trying to take itself seriously and be a part of Newark.

Mr. Tracy: Mr. Hurd, I appreciate that and we were made aware of this a couple of days ago and we are looking into what we can do, it is my understanding that the new code kind of moves away from LEED and has point structured in a different manner and we have not been able to run through what those are and what we are doing to see where we are in that calculation.

Mr. Hurd: I am not going to go through that here, no one wants that. If the applicant is willing to make some commitment that would certainly help my consideration at the moment. Okay

Commissioners, I'm going to move to public comment. At the moment, I have one person signed up. So, I'm going to give them the full five minutes and we will see if we have anyone else joining in for public comment. So, we will begin with Chris Locke.

Mr. Locke: Thank you Chairman Hurd. Chris Locke, resident of Newark for forty-five years, merchant on Main Street for thirty-two years and General Counsel Senior Vice President for Lang Development for the last seventeen years. First, I want to state I am kind of reluctant to even be here tonight. I have known the Danneman family for over thirty years, the applicant's mom used to have a business Copy Maven on Main Street right across from one of my businesses and we almost spoke every single day. I was actually was in the store when his mom found out he got into law school. We have a long-standing relationship. The Danneman family has been a great family for our community and has long roots here in the City of Newark. I do believe as a developer that all property owners have the right to develop his or her property as they see fit for the greatest economic return. He who takes the greatest risk deserves the greatest reward. I support the right of Mr. Danneman, to redevelop his property, as he should be able to realize the greatest return of his investment. But I have a caveat - he's allowed the greatest return on his investment allowable by law or more specifically by the code of the City of Newark. I have been fortunate and blessed to be part of the development community for the last seventeen years as a developer; but for more than thirty years as an attorney representing developers. And this development community has done some amazing things for the benefit of our city and citizens, but for the development community to thrive and indirectly for the city to thrive there needs to be a set of rules. For a sense of where the boundaries are to the businesses, we are all in. There needs to be a certain level of certainty as to what can and cannot be done. It's kind of like playing Monopoly with your family, before you start the game you need to know the nuances of the game. Who is the banker, how much do you get for passing go, and do you get paid if you land on free parking or not? Tonight, this applicant's proposal and the applicant you will hear later on changes the entire rules of the game if this is approved. I think it will have dire effects on our city and most importantly the downtown area. There are three issues that I would like to bring the Planning Commission to consider when evaluating this proposal. Issue 1: The Purpose of Site Plan Approval. Site plan approval as described in Section 32-97(a) is to be used for projects that show distinctiveness and excellence. This is a nice project, but is it distinctive? It is par excellence? I think that is open for debate. We have started to bastardize the site plan approval process. For pretty much project that is square that we are trying to fit into a round hole. Issue 2: Density. This parcel in the current zoning code would allow twenty-five units. I'm all for Mr. Danneman having twenty-five units that is his right and that is what the code allows. The report says that the density's comparable to other recent projects. That is inaccurate because the projects listed in Exhibit F, none of these projects exceeded the density allowed for that particular property. How do I know that? We own five of the nine properties that are listed in Exhibit F. The applicant wants to use the site plan approval to increase density, but this is strictly prohibited. Section 32-98(2) only allows density bonus specifically for residential districts. It states what those residential districts are and what those bonuses allow. It is not allowed for BB zoning. BB only allows a fifteen percent increase in gross floor area based on certain criteria. It does not allow for density increase. Issue 3: Allowing first floor residential units in BB zoning. Applicant uses the argument that is for ADA compliance but that is not accurate. Since there are more than twenty units and more than three stories, he is required by federal law under the ADA to install an elevator and his ADA units can be on the second, third, fourth or fifth floor. Thus, allowing the parking that one of the Commissioners brought up. Also, and even more important Section 32-18(b)(13) clearly stipulates that this is not permitted under the BB zoning. In this specific case Section 32-98.1 and 98.2 lists a specific set of otherwise not permitted uses and the use category of apartments on the ground floor is not one of them. While SPA (Site Plan Approval) can be used to increase in residential zoning this clearly does not allow such use when they are not currently permitted which is the case here. It's kind of akin to using the site plan approval to be putting a gas station in Fairfield residential neighborhood. You just can't do it. Lastly if you were to allow apartments on the first floor in our downtown area you will literally be putting the death nail in our downtown business community. Every time a first-floor space would become vacant the landlord could try to rezone it for residential purposes, not even rezone it would be permitted. In conclusion I support Mr. Danneman right to develop his property, but in compliance with the

rules, no more than twenty-five units, no first-floor apartments. If we want to increase the density in our downtown era, I'm all for it, but that needs to be done by change to the current zoning. I wish the applicant success on his project with those caveats. Thank you.

Mr. Hurd: Thank you, next up, I have Melanie Milburn.

Ms. Milburn: Okay, it's hard to follow you guys, agree with so many things that you guys brought up especially the parking situation. Chris' density issue I have concerns with that also. Well I appreciate the front façade trying to make it look like other building across the street. I appreciate that but my concern that I have as a resident when I go to Main Street and I go to Home Grown or Stone Balloon or Klondike Kate's that is the parking lot that I usually use. There is going to be less places park. So, I will probably go less. Because it's not going to be convenient or it's going to be full. I'm concerned for the businesses in that area because there is going to be another building proposal coming up not too far away like right across the street, and they are going to take up space also. I worry for those businesses, how this is going to affect how many customers actually continue coming to them since parking is not going to be any easier, it's going to be harder actually more than it is right now. Let's see, I utilize at Klondike Kate's the apartments couple doors down where they have parking underneath the apartments. I utilize that often and so I see parking underneath the apartments as something that I hope you will seriously consider. I think that's I have to say. I am all for not going against the codes, I think that the codes were set for a good reason. I don't think we should be changing the codes. I'm very very concerned about the charm of Main Street just being taken away little by little, you know building by building we keep seeing big brick buildings being built and the personality and the interesting architecture going away. Alright, thank you.

Mr. Hurd: Thank you. Before I forget Director Gray were there any comments submitted by email for this item?

Ms. Gray: Not for this project.

Mr. Hurd: Okay, thank you. I have one comment from chat from J. Bancroft who says, "Parking and density seems tough, how about creating more common space?" I have Matthew Zepp would like to comment.

Mr. Zepp: Hello everyone. I am a long-time resident of Newark and work on Main Street for many, many years and owned a business for quite a while and have done some other business on Main Street. I wanted to echo some of Chris Locke's comments in that I think the first floor issue is a significant issue and a line a city should hold. Whereas other things the city should have flexibility with? I think the first floor, ground floor apartments is a bad deal for the city. You don't want to lose anything that could be parking or commercial, and kinda the ADA discussion I think Chris walked us back through in a more honest way. So, I think that is an important point, maybe not the biggest point. An issue also that I think is important and I think that it was sort of side stepped when it came up is the issue of setback and somebody asked the attorney if the setback matched the adjacent buildings and we never got an answer on that. The answer we got was that it's an improvement over what is there exactly now. I think a better answer is no, it doesn't conform to the setback requirement and I personally think that it should. I think that every opportunity the city has to incorporate these rules that make Main Street more walkable and feel more open should be utilized. Even if it's to the cost of density or even another floor. Which I may not align exactly with Mr. Locke but somewhat. I think the setback is an important issue. The last comment I would like to make if I may, on the parking issue, it is very, very complicated issue, there's no simple answers; but the fantasy that we're somehow going to out of all these residents and we know they are going to be students because someone else made a very intelligent comment that no non-resident would rent an apartment that offers no parking. So, let's say there's no parking but in the fantasy thought that it doesn't somehow jam up that lot because the reality is that it jams up the lot quite a bit. Because students go get their cars and now, they are in that lot and they are sitting in spaces and they are just going to jam up the lot. There are no two ways about it, and it's an important lot. What I have noticed a lot on Main Street and I've been on Main Street

quite a bit lately working on new project, is that there's no parking spaces on the street even when the street is relatively quiet, because of Uber Eats and basically food delivery we now have a situation. Wait until school is back in full session with this new food delivery paradigm of these third-party delivery companies plus the actual original Uber thing to begin with and there is real no way to enforce moving them along out of those spaces. So, I don't know what the solution is, but we basically lost all of Main Street parking, the on-street parking, to the modern paradigm of food delivery and Uber taxi services. At the exact same time we are not having the real meaningful discussion about how to replace those spaces. So that is it for my comments. Thank you for hearing me.

Mr. Hurd: Okay, Thank you so much. The last person I have signed up at the moment is Paul Baumbach.

Mr. Baumbach: Thank you Commissioners for your dedication and your service. I want to reinforce themes that have come up already. I know that in the past I have raised questions on the various parking waivers and city parking waiver system. I am not sure if this is specific to this project, but I would encourage the Commission to perhaps explore the most recent parking waivers that have been accepted and to measure whether the level of success they have had. When you have an applicant, who says oh well the plans call for this but we are only going to give less than this because we are going to have tenants who don't have cars; let's measure and see how successful that is and whether or not indeed tenants without cars do come in or whether tenants with cars come in and worsen our downtown areas as far as parking availability. I think trust but verify would be good approach for parking waivers and since that's involved it is worth raising at this time. I would like to reinforce that Mr. Silverman and several others raised including members the public regarding the first-floor apartment violation of the standard rules. I think that our frontage on Main Street in this area, the zoning BB, has a prohibition for residential on the ground floor for a very good reason and I think that the Commission should think very seriously before it would consider waiving that restriction. I know on this very parcel there was some shall we say egregious behavior done on roof a few years back from the residential units. I think it's important that the residents of the city can count on when they go along Main Street that they are looking at store fronts and not residences. So, I think that the BB zoning was designed well to prohibit the residential on ground floor and I've not heard a convincing reason for abandoning that facet of the BB zoning, so I'd encourage the committee to recommend against accepting that variance request. Thank you very much.

Mr. Hurd: Thank you so much. That is it for people who are signed up, if there are anyone connected by phone, who wishes to offer public comment. If you are on the phone, star six will unmute you. Watching, seeing none.

Mr. Fruehstorfer: Did I just hear a public comment that we've heard (inaudible) and not hearing it tonight and we have had multiple times request for ADA on the ground floor in the BB zone. So, those people are obviously not on tonight but that has been requested in the past.

Mr. Hurd: Okay, thank you. Alright, that's the gavel. I'm bringing, closing public comments. Bringing this back to the virtual dais for final Commissioner discussion. We will begin with Commissioner Wampler.

Mr. Wampler: Thank you. According to code, in the BB zone a building can be no more than three stories, unless additional stories are permitted based on distinctive design and the five categories of distinction includes, landscape, parking, architectural design, open space and relationship to the community. My biggest problem with a lot of things that go on in Newark, but this in particular is the parking. I understand that the premise is that a student housing where students would live close to campus. They could not park there, there is no place to really park and they would be discouraged from bringing cars, I think that is a real plus. On the minus side, we are looking to get a parking waiver of sixty-six spaces which I think is a lot of spaces. If I completely ignore that, and say that's a wash, then I before I could vote in favor of this and say I think they deserve to have additional stories, I would have to say that there is something distinctive, that

goes above and beyond ordinary design in the landscaping and open space and community relation and architectural design and I think the building looks fine but I don't see anything that is really distinctive to the point that I would say rather than being limited to three stories you can have five stories and have twice as many apartments. The landscaping it's not their fault. They are sandwiched between a street and two other buildings and a parking lot. There is not really any room for landscaping. They are going to put in a couple of trees in, but I don't think anyone would look at this and say the landscaping was going to be so distinctive that we should allow them a variance. Open space, there is no open space. I have trouble seeing how they meet the requirements for the additional spaces so I can't support it.

Mr. Hurd: Okay, Commissioner Wampler I just want to clarify one thing from your statement. The additional floors is a bonus called out in the BB zoning for providing more two-bedroom units instead of three or four bedrooms. It's not part of site plan approval. So, the site plan approval is only dealing with the units beyond what the BB zone calculations would state as the maximum for this property.

Mr. Wampler: Okay, am I understanding that over fifty percent the apartments in the building have to be no more than two bedrooms to qualify. Is that correct?

Mr. Hurd: I believe that's the number but I will turn to Director Gray.

Mr. Wampler: I was under the impression that it had to be that and that the building needed to be distinctive. If that's the only requirement, they've met their requirement then my objections don't mean anything.

Mr. Hurd: The BB zoning says you can get additional floors if you provide sixty percent or more of the units as two bedrooms. There is a calculation in there that set that basically calculates the maximum number of units based on the proposed number of two bedroom, three- and four-bedroom units. There is basically its ratios the percentages - you get fifty units per acre for two bedrooms you get twenty units per acre for three and four. So, there is a calculation that this is the ratio of units of density divided by your lot size and that's the number of units you are allowed. That calculation is what came up with the twenty-five units maximum for this project on this property. So, the, but that unit mix, is thirty-three total so that's why there is a discrepancy they are providing more units than the code calculations allows and that is part of the site plan approval is to ask for those additional eight units. If I am summarizing that correctly, I hope.

Mr. Wampler: No, I think that part to my satisfaction, thank you.

Mr. Hurd: Okay, Commissioner Kadar.

Mr. Kadar: Three issues that I think have caused me some serious concern about this project more I think about it and the comments that I've heard. The parking issues to me are a serious flaw. Even if the tenants don't park there as we are encouraging not to do; they are going to have visitors. They are college kids. There are going to be a lot of visitors coming in and visitors will be using lot number four near the building, thereby starving the community on Main Street, businesses on Main Street for potential parking spaces close to the businesses. The density is inconsistent with the ordinance and if the ordinance is too restrictive then we need to revise the ordinance and not to continue not to grant waivers. The first-floor apartments are also a concern because they establish a precedence. If we eliminate those apartments we can place under building parking just like we have down by the Hertz Rental Car for example on Delaware Avenue, where the entire building next door is has a first floor available for parking rental cars. We can do the same thing here. So, I'm having trouble with approving what I see.

Mr. Hurd: Alright, thank you. Commissioner Silverman.

Mr. Silverman: I did not have a problem with the parking circumstances one of the things that was called out in the report in the Parking Committee was people are used to a suburban

shopping center mentality where they can pull up literally in front of the business. They only have to walk a few feet - this is an urbanized area, if you look at what's available within two city blocks, of this particular site there's a significant amount of drop in parking available. It may not be convenient in the sense of a suburban shopping center, but this is a CBD. The comment that Commissioner Hurd brought up in respect to students and automobiles, one of the ideas is to encourage the students to park their weekend car or their go to work car, remotely from where they live. Just as a personal side, when my wife and I were first married, we lived in the Academy building. There was no parking available. We managed to locate a parking space behind businesses on Main Street and it was five minute or ten-minute walk with groceries from where we parked our car. We chose the Main Street urban environment and that goes along with it. The first-floor units I would like to see us condition our recommendation, if we choose to move forward with a positive recommendation that those first-floor residential units be eliminated. Ideally, I would like to see them go to commercial or non-other office uses. From a building construction point of view, it's a whole different ball game; when you start putting automobiles underneath buildings and I don't think extending parking underneath the building is viable and I think it will be burden on the developer at this time. Thank you.

Mr. Hurd: Okay, Commissioner Stine.

Ms. Stine: Thank you, parking seems to be a very complicated issue. I guess I understand the decoupling parking as what we tell you being the developer that we want to see. I guess we get hung up apparently issuing the waivers. So maybe we just aren't there yet on completely decoupling parking from the residential apartments. If these apartments were to, we would be giving, if these apartments were to revert back to use by anyone other than students, I would, I wholeheartedly believe that lack of parking seals their fate. They will forever be unattractive to professionals or families alike because of the lack of parking. I think that is just the reality of it. I don't like the precedence of the ground floor apartments, while I don't have really solid explanation of why they're not permitted I don't have compelling argument in my opinion that there are necessary in this case; given the fact that this is an elevator building. I am new to the Commission, I guess one thing you should know I am a big fan of anything that is by-rights. I'm not pro-developer, I'm not anti-developer, but I am pro-community. I think one way for me to be consistent in my thinking and in my reasoning and in my decision making, is that we just consider plans that are by-rights. While I absolutely, positively, disagree with some of my colleagues, maybe it's not unique architecture but to me it warms my heart to see it. I absolutely love the way it works and I hope that Mr. Danneman can find a way to bring this project back to this commission without these ground floor apartments and perhaps with some alternative with the lack of parking. I'm undecided at this point. Thank you for the opportunity to address.

Mr. Hurd: For myself, I think I am agreeing that the first floor apartments is definitely a, it's a precedent that we may not be ready to do and may not haven't read the code as closely as Mr. Locke has recently. It may be in fact not be something we can do. I do see about the approval uses not in the code, so I don't know you know if that falls into that gray area. For me I think I agree with Commissioner Silverman. The parking is not the sticking point because this project, I mean this project in particular because it backs up to lot four, there's no way it could ever reach the mandated parking by zoning. It has a thirty lot, thirty space lot So it is already hampered, but it is also attached to a large public lot that is you know with keeping up with the parking subcommittee was seeking to do. I think for me there is too much density being asked for. As I noted, you can get the unit count by complying, by you doing two-bedroom units and not doing any of the larger ones. So, it's the desire to do the larger ones that is hampering this projects ability to meet code. While I do appreciate the architecture, I kind of feel like the architecture that's what we should be asking for, for a minimum on Main Street. It meets the Design Guidelines, that is what the Design Guidelines are for. I think that this meeting those and kind of - let's back up, I've always struggled with the use of site plan approval on redevelopment projects in dense urban areas such as this. I do feel the code as written hampers the developer's ability to meet the criteria that we ask of them. That said, it would require the applicant to step it up on the architecture, on the energy, and perhaps even on the parking in the terms of creative solutions to those issues. As well as coming forward perhaps with innovative solutions to

problems that we have identified with redevelopment projects before. Most notably storm water and traffic were always the big one. Those are my concerns as well. Alright, that is, is any Commissioners needing to say anything final? Alright, Commissioner Wampler, can we move to the motion reading please?

Mr. Wampler: We can, a lot of people seem to think that they would be more in favor of this if the two, if the apartments on the ground floor were eliminated, but I'm not sure if we can include that in the motion because that would be redesigning the project. Are we looking for them to take another look at it and come back to us or are we looking on just voting on it as presented now with the ground level apartments included?

Mr. Hurd: Well let's see. I will turn to Solicitor Bilodeau because we haven't had a chance to use him yet, for his opinion as to whether we could form a motion to revise, whether that's an amendment to the motion or whether we table this through our rules of procedure?

Mr. Bilodeau: Good evening everyone. Usually with Mr. Locke, I can't always say I agree with him, but in this case, I looked at the section of code that is in the site plan regulations that talks about density and it clearly says there's a density bonus that's allowed under the site plan review process and it lists the various zoning categories where the density bonus is allowed, and the BB zone is not one of the ones listed. There is an issue, I was looking at this just now, so I think there is an issue with the density bonuses being sought as well and being contrary to our site plan regulations.

Mr. Hurd: To just ask on that cause I feel like, I feel like on this instance it's not a density bonus they are asking for through design efforts but a relief from the limit imposed by the zoning code. So, I don't know where that falls in as a thing. I feel like we have approved projects that have had more units than the code allowed through the site plan approval process, and it may have been in error. I feel like we have approved...

Mr. Bilodeau: In the BB zone?

Mr. Hurd: I don't know if it was in the BB zone or not?

Ms. Gray: Yes, I don't know if we should be discussing this at the moment, but Section 32-97(a) and in the first sentence indicates provisions for site plan approval are hereby made for the area and density regulations for all permitted uses within a zoning district as described in this chapter. That was the provision that we were going off on regarding density.

Mr. Fruehstorfer: If I could add, I had the same thought years ago when I started reviewing these. It was discussed with Council and staff, management staff at the time and it was decided that the additional densities were appropriate, were allowed, and it wasn't limited by that. Determination at the time was, that was a provision that kind of almost by-right allowed it in a site plan approval, but people were free to ask for additional variances beyond that. That was a discussion and a determination made years ago and that's what the department has been running on since then.

Mr. Hurd: Okay. To Commissioner Wampler's question, we could, the Chair would entertain a motion from a Commissioner who wants to essentially place restrictions upon the project or which we could do through the amendments from the first motion or to request, essentially tabling and sending back. One moment, Chris Locke, very quickly please, because public comment is closed. This must germane to this issue.

Mr. Locke: I'm so sorry but the density 32-98 clearly states what's allowed for density bonus and it specifically states each residential zoning, what is allowed and then there is a paragraph at the end of that, that talks about BB, that density is not allowed for BB. It's only fifteen percent gross floor. Density is not allowed on the site plan approval for BB.

Mr. Hurd: Okay.

Mr. Silverman: Mr. Bilodeau?

Mr. Bilodeau: Commissioner Silverman, yes? I would suggest possibly a motion to table this so these legal issues can be vetted a little bit.

Mr. Hurd: That is kind of where we were heading. It does seem we are having interpretation issue and I do not want to make you have to do one of those on the fly.

Mr. Bilodeau: I appreciate that.

Mr. Hurd: Commissioner Silverman. You had a question.

Mr. Silverman: No, I just was suggesting we get Mr. Bilodeau involved.

Mr. Hurd: Right, okay. Alright. Given the nature of the questions, the Chair will entertain a motion to table this application to the next meeting so that the City Solicitor can prepare an opinion on whether density, relief from the density requirements in the BB zone or is in the purview of the site plan approval process. Does that seem to cover it, Solicitor Bilodeau?

Mr. Bilodeau: Yes, it does, Is there any other issues besides density?

Mr. Silverman: Mr. Chairman?

Mr. Hurd: Yes, Mr. Silverman.

Mr. Silverman: There's the issue of are residential units permitted on the first floor?

Mr. Hurd: We will need a reading as to whether the site plan approval can allow first floor apartments as a use.

Mr. Silverman: Whether the code is very clear that the first-floor apartments are not permitted.

Mr. Hurd: Right.

Ms. Gray: This is Director Gray, certainly the Solicitor can look into that but if there is a recommendation to it appears that there might be a recommendation to not allow them, not allow apartments on the first floor from the Commission. So, if there's a going to be a tabling of this plan, if there's other direction you want to give the applicant to bring back, I would suggest that including that in the motion as well.

Mr. Hurd: That is where I am sort of sticking because part of me says let's go through the motion and any amendments, and those amendments may remove the issues in front of us that have to do with the suitability of site plan approval. If they don't and we I don't know and we voted against it, and then we could we further table it or I don't know, I don't know functionally how we would do that.

Mr. Wampler: I think we could make a motion to approve providing that the developer came back with a plan that removed the first-floor apartments but I don't think we can, I think the legal problem has to resolved before we can do anything anyway, regarding the density, I think we need a firm decision on the density in the BB zoning.

Mr. Hurd: Okay. Commissioner Silverman?

Mr. Silverman: Would it be appropriate if the developer would commit to maintaining the number of units provided in the existing BB district now as a voluntarily change to the application? So maybe we could move forward with this? The only question would be the legal question with respect to residential units on the first floor.

Mr. Hurd: Okay, Mr. Tracy, your thoughts?

Mr. Tracy: Mr. Chairman, I think at this point, because we are virtual and we are trying to communicate as all this is going on in real time, I think probably the easiest thing, unless my client gets back to me while I'm rambling here, would be to have Mr. Bilodeau take a look at those legal issues. So, either I don't make a concession or deny doing something that we may otherwise have to do. I think it sounds, you probably will want to know whether or not for this project and others, you can, such a density relief is permissible. So, it seems to me that we should probably have Mr. Bilodeau take a look at that question and then let everybody know.

Mr. Hurd: Yes, Absolutely. Okay.

Mr. Kadar: Commissioner Hurd? This is Karl.

Mr. Hurd: Yes, Commissioner Kadar?

Mr. Kadar: I think in the interest in fairness and clarity that we are obligated to let the developer know what specifically we have concerns with. As I see the issues there are three. One is the density, two is the parking and the third one is essentially the apartments on the first floor. So, given that, what are we tabling? I don't think we don't want to go through this whole process again at the next meeting and start reviewing everything. How do we all feel about parking is that an issue? Then we need to come back with some solution with that. The apartments on the first floor, if that's an issue, then come back with something and so forth. Density is the third item. We need to be really clear on why we are tabling this. Not just well Paul go ahead and find out for us whether or not there is a density issue or not. Well, let's assume there is and the developer needs to do a little bit of work on it. We are obligated to let him know what the concerns are not just say it's going to be tabled and Paul's going to look at the ordinance and we are going to come back and we are going to go through this all over again.

Mr. Hurd: I would agree that I don't have to do the whole review thing again. I would like to pick it up and basically some point in the middle after we look at whatever has changed. My sense of the meeting is that there was general disapproval of first floor apartments, and there was a general sense that the density may not be in scale to what is being asked or what's being provided. I think, I want to leave partly this to Mr. Tracy and his client to review the meeting notes, the transcript and such, and reach their conclusion about sort of where our comments led. I'm loathe to do a vote of any sort even a non-binding vote. I would like them to take our comments back and see what they would bring back to us.

Mr. Tracy: Mr. Hurd, Mr. Chairman, I think the comments of the Commission were aptly summed up by Mr. Kadar. I think we know different Commissioners to me have different vocal concerns but there are several topics, some of which I know Mr. Bilodeau is going to look at that we've taken from this meeting as we further discuss the project internally.

Mr. Hurd: Okay. So, we have a motion in front of us that has been motioned to table this to the following meeting so that the city solicitor can provide an opinion on the scope of the site plan approval process. Do I have a second?

Mr. Kadar: I'll second.

Mr. Hurd: Okay. Any discussion on the motion beyond what we already did at the beginning there?

Mr. Bilodeau: Will, this is Paul Bilodeau one quick question, when we pick this up at the next meeting, will just be, public comment will be closed and we'll just be doing the deliberations?

Mr. Hurd: I feel if they bring back a different project, I need to reopen public comment on that project.

Mr. Bilodeau: Sure, I understand.

Mr. Hurd: Ideally, I recognize most of the comment may be moot because the issues people raised will have been addressed. But I still want to give people that opportunity. Public comment is certainly something that we always try to make sure is available on every time we become before this body. Commissioner Stine.

Ms. Stine: Mr. Chairman, I'm not sure that that motion accomplishes what we are trying to do. I feel like if we are tabling this project just to find out that the density issue is legal or not, then we are bringing Mr. Danneman back in thirty days from now and he's probably going to get the same result because the other issues are over riding in my opinion. I think some of the other Commissioners feel the same way. Still going to be the issue of the ground floor apartments and parking to content with and also the density. So, getting a legal interpretation of the density between now and the next meeting I think just delays Mr. Dannemans' project by that number of days.

Mr. Hurd: I guess my hope would be that the opinion could happen soon so that the applicant would have information as to what they are could be coming to us for site plan approval of, and the applicant would then have the opportunity to revise the project to be in compliance with what the interpretation of the site plan approval process is.

Ms. Stine: Could we add to that and to address the concerns about parking and the concerns about the ground floor apartments?

Mr. Hurd: The ground floor apartments is part of the area we are asking the solicitor to look at because there is a question as to whether that's, because it is excluded in code whether that is something we can allow through the site plan approval process. So that and density relief are the two questions that he's looking at. The parking concern may just either be as it is, and we have to discuss and decide it on our own. I would say that our guidelines allow us thirty days to table, I'm willing to say that we can look at I don't want to make the applicant be forever. We have advertising requirement deadlines and we have to give staff time to review the project and so we may have to be in negotiation with the applicant about when basically they are coming back as soon as possible once they have an opinion, they have time to review and adjust the project and get it to the department in time to be on an agenda for a future meeting.

Ms. Gray: Chairman Hurd, this is Director Gray, timing, two things, one – I really would prefer, I think it would be most helpful to give more direction to the applicant. Second, timing, it will be an impossible task for staff to, without, well both ways, even with direction to turn around a plan for the applicant to submit a revision and for us to turn around a plan and a staff report by the next meeting.

Mr. Hurd: Yes, I was feeling that. That is true. Alright, Mr. Tracy.

Mr. Tracy: Yes sir.

Mr. Hurd: Do you need more direction from us? I'm loathe to give specific direction.

Mr. Tracy: Mr. Hurd, I don't think that we need further direction from this Commission. We know what those issues are. Some of which, the legality of which is in Paul's hands, which I presume we would have some opportunity to respond to and then others are design decisions we would have to make that either may or may not influenced by what Paul ultimately says.

Mr. Hurd: Okay, so let's say in the amendment, so this will be a modification, that the applicant will return as soon as possible Because there is a possibility if Paul determines that yes, we can look at these two issues as part of the site plan approval process, then the applicant has to make no changes effectively to their project if they wish and return with it as it is. We will pick up where we were. If there are issues of legality within the project than obviously the applicant has to

redesign or revise and then we are back into that cycle of they have to submit, and the staff has to prepare a report. I don't want to set a cap of thirty days, but I do want to say basically, I don't know, they jump the line or something when they come back? Because they are in process application. I don't think we have a mechanism for that perse. That would be my amendment to the motion.

Ms. Gray: Chairman Hurd, the applicant wouldn't jump the line they would be under old business so they would be first before any new applicants.

Mr. Hurd: Okay, that would be fine then. Commissioner Silverman did you have a question or comment?

Mr. Silverman: I'd like to discuss parking, but I don't think it's germane to what were doing. I do have some observations on the issue with parking and us even discussing parking from a practical point of view with the applicant giving the size configuration of the existing parcel and the structure.

Mr. Hurd: Yes.

Mr. Silverman: I would like to side bar this after the motion.

Mr. Kadar: Commission Hurd, just for a little bit clarity. The issue of parking to me is not the paramount issue. The paramount issue to me is the density and the apartments on the first floor. If those could be resolved, I am okay to allow parking variance, the parking waiver, because I understand the reality of where the building is and what's available. So, to me that's really the third item, not necessarily the first.

Mr. Hurd: Okay. That was the sense I was getting from the discussion and I hope that is the sense that the applicant is getting from our comments. Alright, so, Commissioner Wampler, can we formulate that motion that's been somewhat modified, or do you need me to restate it?

Mr. Wampler: No, I don't think so. I just said so moved. I move that this item to be tabled so that counsel can get back to us on the technicality about density in BB zoning and also to give the applicant a chance to address questions that have been raised regarding density and parking and apartments on the first floor.

Mr. Hurd: Right, I will add that the solicitor is looking at the question of whether we can approve first floor apartments in the BB zone or ground floor residential I should be clearer. Okay, that sounds like the motion. Do I have a, well I guess that's the motion from Commissioner Wampler, do I have a second?

Mr. Kadar: Okay, I will second.

Mr. Hurd: Okay, thank you Commissioner Kadar. Any discussion on the motion as is? Alright, seeing none, I will move to the vote. Commissioner Stine?

Ms. Stine: Aye.

Mr. Hurd: Commissioner Wampler?

Mr. Wampler: Aye.

Mr. Hurd: Commissioner Kadar?

Mr. Kadar: Aye.

Mr. Hurd: Commissioner Silverman?

Mr. Silverman: Aye.

Mr. Hurd: And Aye for myself as well. Motion passes. Thank you. Alright, the rest of the motions are moot. Closing item number three. I am going to use the chair's prerogative to extend us to 9:30 at least. I'm going to make an observation as we enter item four which is that one of the issues on the table is in site plan approval for a density increase. Which falls into that same bucket of waiting for an opinion from the solicitor. So, Solicitor Bilodeau, can we proceed if this is a question?

Mr. Bilodeau: I would say no. We basically came to a screeching halt with the last application on this issue so if we plodded forward with this one with the same issue hovering over our heads it would not be consistent decision.

Mr. Hill: Could I step in there? Alan Hill with Hillcrest Associates. I am sitting here with my client and in his conference room which is why I am wearing a mask so if I'm a little bit muffled, I apologize. We have been following the discussion on this, and we don't believe that our project is actually is asking for additional density based on the Director Gray's interpretation of the code. We spent a long time working on this project to get it to this point. To have it derailed in a public meeting by a direct competitor to my client with comments that they've made. We feel like that is unfair on us and our process to being able to do this and present at this point tonight. We don't want to delay; we think our density request is different than the density request previously requested. We would like to go ahead and present our plan and show that our density request is different and Director Gray's interpretation of the code which we are following is also correct. We would respectfully ask that we can go in this route and move forward with our application tonight?

Mr. Hurd: Okay. Well that's what I like to hear – confidence. Alright, so with that we are moving to Item 4.

4. Review and consideration of a major subdivision with site plan approval, special use permit, and parking waiver for the property at 141, 143, 145 East Main Street and 19 Haines St. The plan proposes a mixed-use development of commercial space and residential apartments.

Same format, staff presentation, applicant presentation, Commissioners' comments, public comment and final discussion by the Commissioners. Alright, Director Gray are you taking this?

Ms. Gray: Yes, Chairman Hurd. I am in the interest of brevity; I will just condense my presentation so the applicant can give their presentation. The project is a major sub-division by site plan approval, special use permit. The application, applicant is proposing to develop a six-story mixed use building composed of 17,540 square feet of office retail, a 221 square, excuse me, space parking garage split between four levels and five stories of apartments including ninety-four units. This plan is under site plan approval and they are looking for a waiver for density and that the applicant will get into a description of that and why they feel it meets that provision. Let me scroll down here, excuse me, alright, regarding the site design the building, the Planning and Development Department staff is in favor of the overall design of the building and appreciates the stepping back, the wedding cake style of the building, facing East Main and Delaware Avenue as well as incorporation of the brick work and design elements from the current streetscape into the first floor along East Main, Haines Street and Delaware Avenue and the top floor facing Delaware Avenue. However, the Planning and Development Department feels the architecture still does not complement the streetscape and does not meet the Design Guidelines in Chapter 27 Appendix 13. Design Review for Downtown Commercial Properties in the code or the Downtown Newark Design Partnership Guidelines. The proposed plan does conform to the Comprehensive Development Plan V and will not require any amendments. This project includes apartments which are permitted in conjunction with nonresidential uses and does require a special use permit since this property is over an acre the Planning Commission will be required or by code is to look at and make a recommendation on the special use permit. The proposed use is not expected to adversely affective the health or safety of persons residing or working

within the city of Newark boundaries or within one mile of the city of Newark boundaries within the State of Delaware be detrimental to the public health, welfare or injurious the property or improvements within the City of Newark boundaries within one mile of the City of Newark boundaries within State of Delaware or be in conflict with the purposes of the Comprehensive Development Plan which is the standards for the special use permit. This project does not provide the code required number of parking spaces and the applicant is looking for a parking waiver of eighty-four spaces. I will let the applicant describe their reasons for the parking waiver but per the section regarding parking waiver as with the previous application, the applicant can either pay a fee or do a fee in lieu and the applicant in this case, this application, is to looking to do a shared use parking arrangement in which the city is in support of that arrangement. The applicant has indicated that they will be providing a hundred and one parking spaces for the retail portion of the application to be utilized by patrons of the city and public parking situation. As indicated in the shared parking arrangement. The proposed development meets all the requirements detailed in the municipal code of the City of Newark, Delaware Chapter 27 Subdivisions with the site plan approval process as detailed below. The Planning and Development Department does suggest that the Planning Commission take the following actions, that recommends approval of the major subdivision plan because it should not have a negative impact in the adjacent and nearby properties and because a proposed plan does not conflict with the development pattern in the nearby area, recommends approval for the site plan, excuse me, for the special use permit because it should not have negative impact on adjacent and nearby properties because the project does not conflict with development pattern in the nearby area. Also, recommends approval of the parking waiver for the eighty-four space parking waiver with the following conditions: that the applicant shall work with staff on a shared parking arrangement and we have some other notes indicated in the reason there regarding working, a frame work of the shared parking arrangement, to be and the details of the parking arrangement shall be reviewed by the City Solicitor and approved by City Council if the City Solicitor deems it appropriate prior to the issuance of the first building permit. Mr. Chair.

Mr. Hurd: Alright. Thank you so much. Excuse me, Mr. Hill.

Mr. Hill: I am hoping I can have my Power Point Presentation on the screen.

Mr. Hurd: It was just there a minute ago.

Mr. Hill: That wasn't my power point that came up.

Mr. Fruehstorfer: We're working on switching screen power over to me. I have two computers open and Angie gave it to the wrong computer so she's.

Mr. Hurd: There we go.

Mr. Hill: It's all going nice and smooth. That's not the power point.

Ms. Conrad: Tom, is that one good?

Mr. Hill: That's the power point.

Mr. Hurd: Okay.

Ms. Conrad: Are we good?

Mr. Fruehstorfer: I think so.

Ms. Conrad: Okay.

Mr. Hurd: Okay, let's full screen that.

Mr. Fruehstorfer: Working on it.

Mr. Hurd: Okay. There we go, okay.

Mr. Hill: I will just ask when I need clicking forward to the next page. If you want, click the next slide and we'll start. There you go, thank you. So, again my name is Allan Hill and I'm with Hillcrest Associates, presenting tonight on behalf of my client Main Street Acquisition Co. LLC, who I am here in the conference room with Michael Scally (?) and we have some of the other partners remotely as well. We're here for, to present the application for the special use permit, the major subdivision with site plan approval and parking waiver with the intent to receive positive recommendations to take to City Council. This proposal is for a single building which includes ninety-four student rental apartments, 17, 540 square feet of retail space and 221 parking spaces. Next slide please. Could I have the next slide?

Mr. Fruehstorfer: It takes a minute, I hit it as soon as you said.

Mr. Hill: I'm sorry. There you go, thank you. Looking (audible) you can see the location of the project highlighted in yellow that is the intersections of East Main Street, Haines Street and Delaware Avenue. Next slide please. This parcel and much of the surrounding area is zoned central business district, formally known as BB, which allows a mix of commercial, residential and institutional uses with apartments above non development residential uses. This proposal also conforms with the City of Newark Comprehensive Development Plan which designates the area as mixed urban. Next slide please. Moving closer to the property most will recognize the location as the current Starbucks, DelOne Credit Union, Duck Donuts, and the former tenants of Wooden Wheels and Simon Eye. Currently the property has approximately 16,000 square feet of retail office space plus parking which the applicant is currently leasing to the city for a nominal amount for public parking to aid with their lack of parking on Main Street. Next slide please. Here we show the street view of the existing buildings. The Simon Eye and Wooden Wheels building will be demolished along with, while the existing buildings and tenants of Starbucks, DelOne, Duck Donuts will remain with new facades as part of the redevelopment project. Next slide please. This slide shows the outline of the ground floor of the proposed building. At the Main Street end of the building we can see the existing parking aisle to remain to allow access to parking garage as well as the existing buildings of Duck Donuts, DelOne and Starbucks' Moving south along Haines Street we can see the new retail office space replacing the former Wooden Wheels building followed by a two way access into the parking garage. South of the parking garage we are adding new retail space all the way to Delaware Avenue. In total we are proposing an increase of approximately 1500 square feet of retail office space for a total of 17,540 square feet. Next slide please. As required by the BB zoning special permit is required, special use permit sorry, is required as part of the application to allow apartments in conjunction with any nonresidential uses permitted in the BB district. Mary Ellen previously stated what the requirements were for the special use permits and we do comply with those. Another part of the apartment's requirement is the unit density and at least fifty percent of the building has to be two bedrooms with no more four unrelated tenants. Which again we comply. We use this section of the special use permit requirements to calculate our by-right plan unit count and parking requirements. Next slide please. We started by calculating our right, by-right unit count, using the two-bedroom four-person density. BB allows a maximum of fifty units per acre using a net acreage of the property of 1.28 acres allows sixty-one maximum two-bedroom, four person units. If we convert this maximum unit count into allowable tenants this totals 244 tenants permissible by-right in the BB zoning district. However, in an attempt to create a better and a more diverse product which will help future proof the building for not only for any conversion to nonstudent accommodation but also to provide a (inaudible) number of individual bedrooms which if we learned anything this year then it is the value of safe personal space. With this in mind, we divided the 244 tenants into a variety of 1, 2, 3- and 4-bedroom units. Our proposal has two full bedroom units, 18 – 3 bedroom, 20 - 1 bedroom, 29 – 2 bedroom single occupant per bedroom and 25 – 2 bedroom double occupancy unit for a total of 240 tenants, four tenants less than the equivalent of right plan of sixty-one 2 bedroom four person units. Next slide please. We also based our parking design around the by-right sixty-unit plan, but we are required to apply for the parking waiver

due to the actual unit count. So, in breaking down the parking we are required to provide ninety-seven spaces for the retail office space and if we were to provide parking for the by-right plan of sixty units: 120 spaces for a total of 217 spaces. Our proposal includes 221 parking spaces, however, with the proposed unit count we are required to provide a total of 208 residential spaces in addition to the 97 office retail spaces for a total of 305 spaces. Thus, requiring the waiver of 84 spaces. We feel a waiver is justified in this case with the project central location within the City of Newark and the walkability this location provides to future residents. We feel that cars are not imperative for them to navigate the city. Furthermore, we are of the opinion if we do not provide parking spaces for students, they will not bring a car to school. This in turn reduces traffic volume that this project would create on the local infrastructure. Lastly, based upon our justification above providing the same number of tenants so it would utilize sixty - 2 bedroom apartments, we are also providing enough spaces dedicated to the tenants that would be required if this project was to utilize the sixty units. With only providing only 120 spaces for the tenants this will leave 101 parking spaces that will be available for public use under the terms of the shared parking agreement that the applicant is currently working with the city. Next slide please. This is a large building with multiple elements and over the next few slides I hope to be able to give an insight into the flow and connectivity of the building. We also feel that it is important as part of the site plan approval to show the layout of the proposed building with the different unit types as opposed to the sixty unit by-right plan that could be proposed with the same building shell. Next slide please. Starting at the ground floor, we can clearly see the three elements of the building with parking in brown, retail office in blue, and the residential in green. Next slide please. With keeping the existing buildings along East Main Street, we had to elevate the first floor of the residential units higher than normal, but this allows us to include an intermediate parking level between the ground floor and the second floor. Next slide please. On the second floor we see, 13 residential units and parking. Next slide. On the third floor, this third floor of the building shows the top level of parking along with 13 residential units. Next slide. The fourth floor of the building attaches the residential units all the way from East Main Street to East Delaware Avenue with a total of 21 units. The center core of the building for the fourth fifth and sixth floors will house amenity space for the tenants that may include a gym, yoga studio, lounges, conference and study rooms, technology centers, and bike storage. Next slide please. The fifth floor has an additional 25 units. Next slide. While the sixth floor has 22 units for a total of 94 residential units. Again, this building can be configured as 60 units, two bedrooms within the same building shell to meet the density requirements and also meet the parking requirements without any parking waiver or the perceived density bonus that we don't believe we are asking for because we are keeping the units at that total number of tenants the same. Next slide please. So, finally we are going to move onto the part that everybody is an expert on and while we, Hillcrest that is, and the client are very happy with the design of the building, we are always looking, looking to find ways to improve the design and feedback is very welcome as long as it is constructive and not from the trolls on social media who seems to make cheap shot comments that would never make to our faces. I apologize for my little soap box. It has to be said from time to time. With that said, the inspiration for this building was the late nineteenth and the early twenty century downtown department stores such as the Litt Brothers and the (inaudible) building in Philadelphia with a tightly contained cube with symmetrical composition and early sixteenth century Italian elements. One of the elements that have been added as result of the reviews by the City departments was the additional, the addition of brick for the ground floor retail spaces to tie into the look of other redevelopment projects along East Main Street. The first view is from the intersection of East Main Street and Haines Street. Next slide please. This is looking west from East Delaware Avenue. I'm sorry this is from Haines Street and East Delaware Avenue. Next slide please. This is looking west from East Delaware Avenue. Next slide please. This is Main Street looking east along Main Street or looking west along Main Street. Next slide please. This is the Main Street flat elevation. Next slide. The same flat elevation along Haines Street. Next slide please. The East Delaware Avenue elevation. Next slide please. This is the predesign elevation if we could have the next slide. So, I'm just going to change my closing here a little bit from what I had planned. So we are proposing 94 units here for the same number of tenants that we would be proposing for 60 units. And the reason for that is it creates a building that is more flexible, cost more to the developer to do and those additional costs are in the cost of doing the additional kitchens, bathrooms, we have to go through the process of a parking

waiver. We could have done this as a 60 unit by-right plan where we would just need the special use permit. We chose to go this route based on the feedback from the Planning Department and our belief, and their belief in the density could be something that could be effected by the site plan approval process. Here's my sunset slide which I believe signals the end of the presentation. So, I would like to thank everybody for their time and consideration. I'm happy to answer any questions that people may have.

Mr. Hurd: Alright, thank you so much. We will begin with Commissioner comments with Commissioner Silverman. Oh! Hold first up, housekeeping we are just at 9:30, to extend to 10:00 and complete the item on the table we do need approval of the majority of the Commission. We can either do that by acclamation if there's no one against or we can do a roll call vote or we can wave our hands at the camera. Alright, I am hearing no objections, so I'm taking that as by acclamation and we are extended to 10:00. Alright, now Commissioner Silverman.

Mr. Silverman: Please come back to me.

Mr. Hurd: Absolutely, Commissioner Stine.

Ms. Stine: Thank you, Chairman, is it, should we understand the parking arrangement before we issue a waiver?

Mr. Hurd: That is indeed a question that we could be considering. I can't recall all the projects, but I know, I'm sure there have been some projects where legal agreements haven't been finalized when brought to us and have been concluded by the time it gets to Council. But as parking waivers are part of our purview specifically that could be an item of consideration.

Ms. Stine: Will this, I see that there was no design review because the design review committee is not meeting currently.

Mr. Hurd: Correct.

Ms. Stine: Will they be meeting? Is this still subject to design review?

Mr. Hurd: Director Gray do you want to take a

Ms. Gray: Sure, this is Director Gray. I would be happy to answer Commissioner Stine. So, the Design Committee is currently at their request, they've elected to suspend their meeting until the code is changed to designate them as a Design Committee outside of the Newark Downtown Committee and also the Design Committee's review is a recommendation in the code and it's not a requirement So applicants are encouraged to have their applications reviewed by the Design Committee, but they are not required to do so.

Ms. Stine: So, the Design Guidelines for downtown Newark have not been applied to this project and won't be applied to this project?

Ms. Gray: The application of the Design Guidelines and the Design Committee are two separate things and that there are Design Guidelines in the code and there is a Design Committee which is volunteer committee which was established in another part of the code but when there was a Newark Downtown Partnership and they were established to review plans that in the Downtown area and make recommendations for how they met the Design Guidelines.

Ms. Stine: Am I reading correctly that it is the opinion of your department that this project does not meet the Design Guidelines for Downtown Newark?

Ms. Gray: Yes, and we are not architects, we are not designers but that is our just the Planning and Development Departments staff's opinion. Yes.

Ms. Stine: Is there a specific? Can you summarize what the objections are or why you think it doesn't meet the Design Guidelines for Downtown Newark?

Ms. Gray: This is Director Gray again; we feel they, as articulated in the report, we feel the way the building is laid out is appropriate, but the coloring of the building and the materials used, and the scale does perhaps doesn't exactly fit in with the rest of the buildings in the area. That is our architectural opinion here again citing we are not architects.

Ms. Stine: No fair enough, thank you. I guess I would just say I think until I would understand the terms of the shared parking arrangements since it is this, it is our job to issue any parking waivers. I think it's just a little premature to review the project without knowing what that shared parking arrangement is going to look like so we can decide if we are going to issue a parking waiver. I guess that's my only comment then, at this point. Thank you.

Mr. Hurd: Sure, Commissioner Wampler.

Mr. Wampler: Thank you. I have, well I guess three issues – one is the parking again it looks like they're providing 94 apartments for students and no parking. I'm not sure if that is going to work out the way people think it's going to work out. I have a couple of other concerns that don't really make sense to me. The way it is presented building 94 apartments which will be, have the same equivalency of 60 apartments and the only way that, the way it is shown is that there will be one bedroom, two-bedroom, three-bedroom, four-bedroom apartments. The occupancy of those apartments is going to be one person per bedroom which is really unusual with a student apartment complex. I want to point out that if they didn't do that, the ninety-four units which are seventy-four are two-bedroom and twenty are three-bedroom. The total occupancy if you put four people into two bedroom and six people into a three-bedroom apartment that would be 416 people. I don't understand why they are building a structure this large which could legally hold 416 people in the 94 apartments, and they are going to limit to 240 people. If you only wanted to build a building for 240 people, why wouldn't you just build the 60 - 2-bedroom apartment and not have such a gigantic structure? This structure is even taller than 1 Easton. If you go down to the shopping center and look at the size of 1 Easton and then imagine that on the corner of Haines Street and Main Street, I just think it's a gigantic structure. Furthermore, the way you get the equivalency of 60 - 2-bedroom apartments is to say that only one person is going to live in each bedroom. How is that going to be enforced? If you got students that rented an apartment and it's a three-bedroom apartment, how are you going to enforce that only three people are living there? I am baffled by why you would build such an enormous structure to house no more people than a structure that would have only 60 - 2-bedroom apartments. A lot of this doesn't make any sense to me and beyond that, there's also the comment if the student market drops out and it's not a student apartment then it would be marketed to non-students. Which I would assume would be young families and young professionals; but again it looks to me like no parking is going to be provided for any of those apartments and the difficulty of attracting young families into an apartment building where there's no parking I can't get my head around that either. I'm really struggling with this concept and I wish the applicant would explain to me what is the advantage of having two-bedroom apartments which could have four people and only having two people and having such a large structure with 94 apartments but limiting it to 240 people instead of the 400 people could live there. I don't understand the story behind that.

Mr. Hurd: I think the applicant itching to answer those questions.

Mr. Hill: I'm dying to answer the questions Mr. Wampler. First off, parking: we are proposing 120 parking spaces solely for the tenants and so it's not that there is no parking for the tenants. We are proposing 120 parking spaces for the tenants that will be reserved completely for them. Moving on to the unit count, so by-right in this BB district we can do 60 - 2 bedroom 4 tenants apartments, and this is what the building was designed for. So, the size of the building is based on the 60 units. Those 60 units would have four persons in each unit per code. So that's 244 tenants if I have my notes right here. When we split that up into a different unit count to get the unit count there, we have a combination of units. We have four-bedroom units, we have three-

bedroom units, we have two-bedroom units, and we have one-bedroom units. The four-bedroom units are restricted still to four-person, same way as the two bedrooms would be. The three-bedroom unit is restricted to three tenants. 29 of the 2-bedroom units are restricted to two people. Only 25 of the units are going to be two bedroom four person, four unrelated person units and to be honest if we could have fitted those 25 and turn them into another 25 unshared bedrooms in the space that we have in the building we would of done that. The goal was to give every single one of those 244 tenants, 240 tenants I apologize, a single bedroom. With the current situation we are finding ourselves in this year, we are finding that it's more important to have individual bedrooms. A lot of the townhouse units that we do have individual bedrooms. We have done quite a few apartment buildings that have individual bedrooms as well so, the building size is restricted by the 60 units. That is what we designed a 60-unit building with parking. Wanting to give the City something better, we reconfigured it to be able to give the City the parking agreement so they could get some public parking out of this. I mean it's a 109 parking spaces that are going to be available to the City for public parking, this seems a whole lot better for the City then it does for the client to be honest. We already have an agreement for the current property for parking. The parking agreement is still being worked on and it can't be finalized until the parking waiver is in place to my understanding is we can't finalize the parking agreement until the waiver is in place. Almost sounds a chicken and an egg for some of the Commissioners but I just want to point out that at this time I think if I have to answer more questions on this, I'm very open to answer more questions and helping with the confusion. I know it's something that it's a little bit unusual with what we are trying to do and I know we tried to explain it but I'm sure it's going to take a little more explaining as well what the concepts of what we are trying to do here is. I'd like to pass it back over to the Commissioners and let them continue with their ...

Mr. Hurd: I think one question is still outstanding, Mr. Hill, what's the owner's intention or how does the owner intend to enforce those tenant restrictions?

Mr. Hill: Following the approval, the approval will have that restriction in there and the rental permits will have that restriction in there so, the project will be managed by national property management company and enforced by the city and the rental permits, so I believe the city does a really good job of maintaining of what people are saying in these public hearings what we are putting in the units, so, we are relying on the city and the property managers to comply with the approval. Really what it is.

Mr. Hurd: Okay, Commissioner Wampler, does that answer your questions?

Mr. Wampler: Yes, it does, thank you.

Mr. Hurd: Okay, thank you.

Mr. Bilodeau: Chairman Hurd?

Mr. Hurd: Yes.

Mr. Bilodeau: This is Paul Bilodeau, just real quickly to address Commissioner Stine's issue with the parking, the chicken before the egg, I did work with this developer on the current lease for parking on this property and we did work really work together in coming up with a lease for the current parking arrangement. It's a little bit different the indoor garage parking but I don't see that as a hurdle.

Mr. Hurd: Okay. I'm not aware, is the City, does the City have any arrangements like this in a private garage where portions of it are private and some portions are public? I remember the Trader Alley project had that proposed and there was like a gated cut off but that one never moved forward. So, I didn't know if we have run into this situation before.

Mr. Bilodeau: I believe it was also the Green Mansion.

Mr. Hurd: Oh, the Green Mansion, okay.

Mr. Bilodeau: Yeah.

Mr. Hurd: I just didn't want this to be the first one that we had to deal if we could.

Ms. Gray: This is Director Gray, this would be, the Green Mansion project was the proposal was for, wasn't a shared parking arrangement, that was that the applicant was going to make public parking available if they had the spaces available. This would be the first shared parking arrangement in a parking garage situation. But we welcome this opportunity and believe that we would be able to make a success out of it.

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

Mr. Kadar: Ok, couple comments. But first, I'd like a clarification, in the city's report it indicated a common open space what would be increased and I know the pictures I have seen so far, I have trouble understanding where's that's the case. I know, currently it's one big impervious parking lot with a couple of buildings. Where exactly is this open space that's supposed to enhance?

Mr. Hill: So, the open space areas we're not really pushing the open space. We have less impervious on the property then we currently, proposed less impervious than we currently have. So, right now the paving goes all the way to the property lines down along the side of Traders Alley. We have a green strip shall we say down that side of the property up to about fifteen feet and then about twenty feet around the Campus Edge property. So that's where we are adding pervious surface should we call it. I wouldn't go in and say it's an area that we are counting as open space, but we are decreasing the impervious surface on the property with the proposal.

Mr. Kadar: So that point A on open spaces on page four of the city report is a little bit misleading then. Okay, I understand what you are doing because when you mentioned opened space my mind goes to where is the atrium, where's the little park, you know that kind of stuff. Okay, alright, so, I have in relative to the parking waiver I believe you made a good effort to provide parking spaces for the tenants and then offered the bonus some parking revenue and spaces for the City and that's a good thing. The density limits I know you have explained them and while I agree with Commissioner Wampler that this is a heck of a lot of building for as many units as you are putting in there but none the less, let's say that by leases and rental agreements, you can control whether there's two people in a bedroom or one person in a two bedroom apartment for each bedroom. I'm fine with that. The biggest concern I have is when I look at this building it's just so out of character with what we see in downtown Newark it looks massive and overpowering and it's not a bad looking building, don't get me wrong, I like the architecture and all that. In my mind, and I'm not an architect, so a non-architect's, architectural opinion is it just doesn't fit in and with that I will pass it on.

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

Mr. Silverman: Yes, I am.

Mr. Hurd: Alright.

Mr. Silverman: Mr. Chairman. If I'm going to use One Easton as a reference for building mass, this is a large building. However, I think, it has its place, it can be an anchor for what's happening on the South side of Main Street. If we look at the properties between Main and Chapel, their relatively low story, some of them are obsolete buildings, and this style building could precipitate an additional renewal particularly in that direction. So, even though I'm uncomfortable with the mass of the building, I think it's a, a pioneer, it can be an anchor, could be a door opener for this super block. One of the things that does concern me, however, is the owner's restriction on the occupancy in the building and I'm going to direct this back through Mr. Bilodeau and Director Gray. How are these agreements that exist with this particular owner memorialized?

Commitment to certain of number of people per unit, and number of one-bedroom units etc. are they part of the city's subdivision agreement and do they run with the property? So when this building is flipped two, three, five, seven years from now and goes into another owner's hands, is that future owner bound by the same kind of restrictions as the original proposal we're going to be looking at? I go back to the Reserve along Elkton Road as an example of how times change, intentions change and ownerships change. That's my major question.

Mr. Bilodeau: This is Solicitor Bilodeau, very good question. Obviously that the restriction would be in the sub-division agreement. I would recommend as well that it be placed in the deed of this property that so if anybody is doing a title search on the property and they see a reference to the sub-division agreement that its subject to that the property is subject to that it will put the potential owners on notice that they need to check out that subdivision agreement to find out what they can and cannot do. Just like putting an easement on record with the deed.

Mr. Hill: Can I just clarify something as well? Just talking with the client, they have no issues with putting it in the deed or sub-division agreement and they don't like the presumption that they are going to break the law with their leases. I know that is the not the intent of what people are saying but they have no history of breaking the law with their leases in the past and they don't intend to do it on this project.

Mr. Silverman: This is Commissioner Silverman, I did not imply that, I'm thinking down the road the City and the residents of the City had an experience with I believe was with the Reserve or Preserve, whatever off of Elkton Road with intentions being laid out and then the landscape changed with respect to the University's efforts on the Star Campus and that project is in the hands I think of its third owner now and probably less than ten years. There are some very tight things that have been talked about here with the respect with parking spaces and bed and tenant unit utilization that I would like to see stay with the property for future owners.

Mr. Hurd: I will just add.

Mr. Hill: That's our intention to make sure everything is tied down for future owners as well. It wasn't directed as a single commissioner. It was a general comment.

Mr. Silverman: That's understood.

Mr. Hurd: I think there's a general concern within the City and this may be more with the single family residential rentals that though they are permitted for three, there's no way the City can enforce it without being allowed in to do inspections and there's issues around allowing in for inspections. It feels to me, that the apartment building that its owned by a single owner there's a different set of constraints around that. It's not a single-family home but maybe there is some. I think that's a general over arching concern of more people in this space than they are allowed and the issues that come along with that. So, alright Commissioner Silverman, was that?

Mr. Silverman: That concludes my comments, yes.

Mr. Hurd: Well for me, as the architect. Geeze everybody talking how they are not an architect. Puts all the pressure on me. I really appreciated your follow up presentation; I think it helped explain the building a little better to me. It's still to me, I'm agreeing with it's very tall, it's very big, I think, again my opinion, there's parts that really aren't well resolved. I think especially with around the back that sort of additional office area and the parking garage is always impossible to integrate into a building, so I think One Easton did the smart thing and put it facing the railroad tracks and hardly anyone sees it unless you are outside of town. But it is really hard to put a parking garage and wrap it in an apartment building and make that work in any way effectively. I mean, that back view from Trader's Alley with the tall legs it's just not feeling well resolved to me. So that's architecturally, that's a concern for me I do I understand where you are going with the argument about tenants versus units versus density and I guess we are going to have to see in conversation if we're open to basically suspending the current definition of density in the code

which is units per acre to sort of this hybrid thing. I will also comment that one of my problems with sort of reviewing this that all the elevations and renderings have no context whatsoever. You don't see the adjacent buildings and I think that really disguises its impact because it is six stories, its big, next to one story and maybe some two story stuff and so without seeing the scale it's very at times to sort of understand and be okay with that. A question for you Mr. Hill, if I could. If this were 60 - two-bedroom apartments, you are saying this would be the same size building?

Mr. Hill: Yes, that's correct. That is what we started with. We did the 60 - two-bedroom, four tenant building and then reconfigured it to meet what we, this goes with the clients about trying to do something better for the city. We actually had to sell the client on that premise and with the conversation tonight that they are quite happy to jump back into a traditional sixty by-right plan and move forward, based on the by-right plan based on the conversation tonight. With the building will look the same.

Mr. Hurd: So, doing it as all two bedrooms is that is what got you the three additional floors? Integrated parking or what?

Mr. Hill: The combination of the integrated parking and the two-bedroom units, yes.

Mr. Hurd: So that got you to six floors through the BB provisions, okay.

Mr. Hill: Through the provisions, yes.

Mr. Hurd: Alright, I guess my other comment similar to the previous project. I would love to see you guys be leaders in our new Energy Efficiency System and commit to using our new sixty point system, using the amendments to the 2018 IECC. I do understand that you applied earlier which means you are under the previous code.

Mr. Hill: No, we are using eighteen.

Mr. Hurd: Well, no, so, you are using 2018 but with the LEED, the previous LEED credits and the previous provisions of the site plan approval which only requires certified, LEED certified as sort of meeting the energy requirements.

Mr. Hill: We intend to exceed that and if we and we don't have an issue going with the new LEED certifications part of the site plan approval.

Mr. Hurd: It's not LEED.

Mr. Hill: Your version, yes.

Mr. Hurd: Your version, yes, okay. Thank you, that is a commitment that I

Mr. Hill: We haven't worked with it yet, but we are looking forward to it.

Mr. Hurd: It's lovely, you are going to love it.

Mr. Hill: Especially if it's not called LEED, I'm quite happy to work with it.

Mr. Hurd: It's not called LEED. Yes, Okay, alright, that seems to be the discussion. Any further comments or questions from the Commissioners?

Mr. Wampler: I have a couple quick questions, if I could please?

Mr. Hurd: Sure.

Mr. Wampler: It's my understanding that the building that Duck Donuts is in and the building that Starbucks is in, those buildings will remain intact and will somehow be incorporated into this structure? Is that right?

Mr. Hill: That is correct, we are going to re-facade as you can see on the screen. That is part of what has driven the look of the building is we are holding; the actual existing Starbucks look pretty much intact. That was the starting point for it. We are going to extend that across the Duck Donuts and the Credit One. So, we are re-facading that building with the intention right now is a thin façade if we can't remove the current existing façade. That's what we're going to do with that. We are keeping those buildings and those tenants. Those tenants are signed up through this process.

Mr. Wampler: Okay, and my other question is the information I got, I don't think showed how many apartments were on each floor and you showed me that. Could you repeat for me please, how many apartments on the sixth floor?

Mr. Hill: On the sixth floor I need my notes for this, the sixth floor has twenty-two units on the sixth floor.

Mr. Wampler: And on the fifth floor?

Mr. Hill: Twenty-five.

Mr. Wampler: Okay, thank you.

Mr. Hill: Okay.

Mr. Hurd: Alright, any further commissioner questions? Moving to public comment. At the moment, Chris Locke is signed up. So, Chris Locke, go and I am going to do three minutes this time cause it's super late.

Mr. Locke: Okay, thank you. As for this proposal I won't repeat what I had said in the first applicant for the sake of time. But once again, we're seeing the abuse of the site plan approval process. Here the applicant is even abusing the site plan approval more than the first applicant. The proposal in front of you, is using the site plan approval process to increase his density by 50%. Once again, site plan approval does not allow increase density in BB zoning, only in residential. Again, it's a nice project, is it distinctive? Maybe, because I got talking, garage idea, but this again does not allow site plan approval with the BB. In addition, the applicant is arguing because I have seventy-four of my ninety-four units are two bedrooms, I should be able to get more units. That is not what the code allows. The code allows you go higher not wider. In other words, I get height bonus over the thirty-five feet, 3 stories restriction but I don't get more units. I still have to live with the density of units. There's no more than sixty-one units allowed regardless of the bedroom types that the applicant wants to put in. Bedroom types are only considered for parking requirements. Again, comments in the report says this density is comparable to other projects and it looks at Exhibit F, none of these projects exceed allowable density, also I think it's very important to note that the density of this project is 61.8 units per acre compared to other Main Street projects at 26.4, 27.2 and 6.7. The only one that comes close to this density is the Opera House at 51.6 but I believe this was done prior to the code being instituted by the City. If this project is allowed to move forward, then every future project would use site plan approval and this two-bedroom unit argument to grotesquely request a voluminous number of units and reduce parking waiver applications. His analysis of the parking waiver is not anywhere in the code. Though very creative, I mean my hats off to Mr. Hill, it's not legal. He needs to calculate the waiver based on type of bedroom counts and the commercial space he has. Which would be a much higher waiver. Mr. Wampler is absolutely correct in his analysis and if allowed every developer would use this same argument and there will be a substantial loss of parking waiver revenue to the City. As for Mr. Hill's earlier comment about me derailing projects because I am a competitor is totally inaccurate and Mr. Hill knows that.

Mr. Hurd: Mr. Locke to the Commissioners please.

Mr. Locke: The record shows I have been supportive to every development project in the city for the last twenty years. Including projects that Mr. Hill has proposed to the city. I welcome competition. It makes us all better property owners. I use the analogy that's why the Red Sox and the Yankees are better and why Duke and North Carolina are better. But we all must play by the same rules of the game. I hope Mr. Hill will at some point reach out to me and I look forward to speaking with him. Once again, I am all for the applicant to develop his property. I support his rights to do so, but in compliance with the rules. Approve sixty-one units that's what's allowed by the code. I really don't care what his bedroom configuration types are, he's allowed sixty-one units and if we want to increase the density downtown I'm all for it, but it has to do by changing the zoning code not by the use of site plan approval. I thank you for your time.

Mr. Hurd: Alright, thank you. I will just reiterate again that the calculated unit max is based on bedroom types per units within the thing. So, within the project. So, the sixty-one is because there are 70 two bedrooms and twenty-four more than 2 bedrooms in the project and that calculates out to 61 units per for the project site. I just really want to get clear again that the unit type does impact the maximum units allowed for the project. It's not a straight you get 61 units it's you do get more units if you do them as two-bedroom units as opposed to more than two bedrooms. Next up, we have Melanie Milburn.

Ms. Milburn: Hi, I'm just speaking as a long-term resident. I grew up here. I love the town, but I think, I'm very distressed. I know a lot of people that I talk to are very distressed with how the architecture and the feel of Newark is getting farther and farther away from the charm that it used to have. That's very important to me but I don't own property on Main Street so I might feel different if I was trying to make money with my property. The codes, whatever codes we have for how tall the buildings are on Main Street, I think, that's very important and needs to be honored and upheld. I am not happy with seeing taller and taller buildings all over my town. Seems like there's apartment buildings being built everywhere so as a resident of the town a lot of people are not happy about that. Luckily the architecture for a lot of the places are being well done. Okay, so, I'm pleasantly surprised with some of the nice architecture that is going up. But how it looks is very important and I'm just distressed with 6 stories on Main Street and I think Mr. Hurd you said something about you really don't see how it is compared to the rest of Main Street because we don't see the other buildings. I think that's quite true and it's just going to be overwhelming in my opinion. I appreciate having parking incorporated into it. Again, I think it's really, really important to the residents of Newark to not lose the small-town charm that Main Street is losing fairly quickly these days. That's all I have to say.

Mr. Hurd: Alright, thank you so much. I have nobody else asking to speak. I will open the floor, virtually that is.

Mr. Hill: Can I speak in Will?

Mr. Hurd: I will get back to you, this is still public comment so, you're an applicant. You're different. I am not seeing anyone unmuting, so I am going to.

Ms. Gray: Mr. Chair, this is Director Gray. I have two emailed comments.

Mr. Hurd: Okay, yes, I meant to ask. So, ignore that gavel.

Ms. Gray: Un-gavel.

Mr. Hurd: Un-gavel.

Ms. Gray: Okay, this an email from Rob and Donna Paraskewich. "They are property owners on 18 Haines Street and they wanted to be know to the Planning Commission and the new property owner that they are excited and support the proposed development plans and they realize the potential and possibilities it will bring to Haines Street and the City of Newark and look forward

to meeting their new neighbors.” Now they do by full disclosure had some questions regarding the construction and time frames and some access to lots and we were able to answer them via email today. So, I won't take up everyone's time with that and I have one more that was submitted on Friday and this was an email submitted by Pamela Bobbs and “Dear Director Gray, my apologies for a late response to your letters of November 19, 2020, regarding the properties located at 141, 142, 145 E. Main Street and 19 Haines Street and the properties located at 132 – 138 E. Main Street.” Oh, my apologies, I should have read this into the record for 132. I thought this was just for 141. “While I have tried diligently over the past 12 years to get the City of Newark to provide reasonably priced owner-occupied housing in downtown no progress has been made. However, given the turmoil our nation has been through as a result of the pandemic I'm wondering if building another 127 units of 2, 3, and 4-bedroom apartments with the hope that they will all be filled with students is realistic. We have realized that it is possible to do more online than we ever imagined. It is unlikely that we will go back to life exactly the way it was pre-pandemic. Is it prudent to build more of the same kind of housing with the expectation that many students are going to return to residential learning as before? Just something to think about before starting to build more massive projects without re-running the numbers and doing a little more due diligence regarding how things likely to change in the next few years. We seem to have enough of an eye sore with the dear old Green Mansion that was touted as to something wonderful for the business development of downtown and now sits abandoned in the perilous predicament. How long will this be allowed to dominate Main Street? If all the ballyhoo about the hotel turns out to be so much fluff, we note this too will be added to list of student housing projects. This is a University town, that is a good thing most of the time, but that doesn't mean it can't be fit for other people to live in. People with long term jobs would like the convenience of living downtown if there were adult housing available to do so. This would also encourage more downtown business development oriented around things other than food and drink. This is my last attempt to get some more wholesome and long term thinking about the development of our city. Cutting down trees to build massive buildings is spoiling the fitness of the downtown for more than students, eatery's and bars. Fortunately, I am of the age that I don't have to be concerned about what it will be like in fifteen years, but it would be nice if someone would be. Respectfully Yours, Pamela A. Bobbs. Washington House 206, 113 E. Main Street, Newark, Delaware.” This is also Doctor and Mrs. Lee G. Anderson of 206 Sypherd Drive wanted to add their names to this email as well. Mr. Chair.

Mr. Hurd: Thank you. I have had a request from Rob Paraskewich to add some additional comments to his written and our rules do allow for oral and written so I'm allowing it but I'm going to ask him to be brief. Rob?

Mr. Paraskewich: Thank you, I appreciate the opportunity to talk and my wife Donna and I do own a property 18 Haines and we were excited to hear about the development opportunities across the street from us because it's been relatively dilapidated for the last few years that the property hasn't been occupied. After seeing the size of the proposed building, we definitely have some concerns and we definitely agree with Mr. Locke on you know playing by the rules. We agree with Ms. Milburn also about trying to hold together the integrity of Main Street. You know, won the Downtown Main Street Reward a few years ago and that was because the integrity of the Main Street of itself. If you are on, or have been on Haines Street like we have been for the last six to seven years, you know it's a very narrow, small street and the size of that complex, the possibility of two-hundred some odd cars traveling back and forth on that little street and just the density and increase of population car, foot traffic, that little street I just can't see how it would work in that confined little space there. I leave our office building sometimes at six o'clock at night and I sit four cars deep just turn onto Main Street. So between this proposed building occupying that entire corner of that block and even the new proposed building that's going to be where Margherita's Pizza is you're talking about a lot of traffic, a lot of cars, a lot of congestion and I just don't know if the size of that type of a complex would be sustainable in that small little environment there. Again, I do agree with Mr. Locke, playing by the rules and conforming to what is set up in the code. Probably really is viable and valuable that in a sense it dictates some of those items I described there. It's really a density issue and I welcome anybody to drive down Main Street or Haines Street and turn onto Main Street between five and six o'clock and you are

going to be sitting in traffic just like me. It's a great building, it looks fantastic but if we sit across from that building in our little building, we are going to look like a shed next to a mansion. Thank you.

Mr. Hurd: Thank you. Last call for public comment. Okay, closing public comment. Bringing it back to the dais. Now Mr. Hill you said you had a couple of things you wanted to....

Mr. Hill: I just wanted to, I had a couple of things one of them was the parking waiver there were questions whether we were counting during the parking waiver for the proposed building or the sixty unit building if the parking waiver is for the ninety-four units based on the unit bedroom count, so that is what the parking waiver is on there, I've also been told by my client that we have had a long conversation about this. They are more than happy to save money and go with a sixty-unit building, it will look exactly the same as this, it won't require a parking waiver, won't require any density, will meet the code as been requested and won't have to enter into a parking agreement with the City. They will own their own parking. So, they are more than happy to do that just so that everybody is aware of that. That the building won't be smaller it will be the same building with sixty units. I'm not a big fan of kind of throwing threats out there but my client wants to go that route if the city doesn't want it to go the route that we've been trying to go with this project. So, it's a more expensive building to build for the client the way we designed it and I just want to make sure that everyone's aware that we can do a by-right building that is exactly the same stature as this building. And would be the same stature and we also whilst we're tall, the building could be seven stories; we are only at six stories so we could be seven stories. We don't do with the sixty units that's why the building is ninety-four and not more with the recalculations to density. Just want to make sure everybody is aware of that. I kind of was told I treaded a little lightly around that subject so I wanted to make sure that everybody knew what the intention of what we are trying to do here was and what we could do. But we want to do something, I want to do something better for the city. I have pushed hard on this and now I'm getting my push back now. I just want to make sure everyone is aware of that. That is can be a sixty unit in the same shell with no parking waivers.

Mr. Silverman: Commissioner Hurd?

Mr. Hurd: Yes?

Mr. Silverman: Does Mr. Bilodeau and Director Gray concur with the statement of Mr. Hill respect to by-right?

Mr. Hurd: Director Gray?

Mr. Silverman: Because that makes a major difference in how I view the applicant's proposal. I have to choose between by-right and the applicant's proposal. I'm going to lean very heavily to the applicant's proposal. I like the variety, I like the offered parking to the city, that's the end of my question.

Ms. Gray: This is Director Gray. So regarding the height of the building, yes, that is allowed by code. I'm just going through here, going through the check list. There are no setbacks that are required, they meet the setbacks. It's a little late in the evening for me to do an analysis on the parking. I got to look at the parking numbers again. So if we were to go to sixty units got to look at that because if we are going with larger units like three bedrooms and four bedrooms that kicks up the parking requirements. It's three parking spaces so I can't equivocally say yes, would have to take a moment to look at it.

Mr. Hurd: Yes, it was my understanding as a two-bedroom only building it would gain the floor bonuses in the code while holding down the parking requirements because it's only a two-bedroom.

Mr. Fruehstorfer: It sounds good I wouldn't want to say yes without sitting down and looking at it.

Ms. Gray: Yes.

Mr. Hurd: Director Gray you didn't analyze it for those.

Ms. Gray: We didn't analyze this again, is Director Gray again and we need to there is another code provision that gives height bonuses for parking and subterranean parking so yes, as I stated and reiterated by Planner Fruehstorfer we need to take a look at it. Yes.

Mr. Hurd: Okay, I guess the only thing I will note is that height is not one of the issues being asked for relief. I'm kind of leaning on that to assume that the height or stories was suitable to code; similar to the 132 projects. Which was it being five stories, it was five-stories because that is what they gained in height bonuses separate from our discussion for approval? I'm going to go around the horn quickly, Commissioner Silverman has already led us off. We will go to Commissioner Stine.

Ms. Stine: Thank you. I too was concerned that I was not able to see an elevation with the adjoining buildings and that might be by design because I don't think it will look all that good for lack of a better term. I like the idea of having the favorable recommendation from staff regarding Design Guidelines for Downtown Newark. I would like to see a plan come back that had a favorable recommendation from staff versus one that doesn't, and I would like to see a sixty or sixty-one unit by-rights plan. I understand sir that you can build it, I don't know it would make sense for you to build it if was by-rights. Maybe we could see what you would offer with sixty units after you have had some time to consider that. Those are my only comments. Thank you.

Mr. Hurd: Commissioner Wampler.

Mr. Wampler: My only question is are we going to vote on the project as presented ninety-four units or is the applicant going to come back to us with another design which would only be sixty units and I still don't understand if the building is six stories tall and has ninety-four apartments in it, if you would remove thirty-four of those apartments why does the building still have to be six stories tall? That is just a comment, I'm not asking someone to explain it to me it just seems odd to me. When we get to the vote, are we voting on as proposed the ninety-four apartments or we don't need to vote on the sixty apartments right? Because that's by-rights.

Mr. Bilodeau: This is Solicitor, we need to vote on what's before us tonight, Commissioner Wampler.

Mr. Wampler: Okay.

Mr. Hurd: We had this conversation before, we can't vote on things that are offered to us sort of from the floor as it were. So, it will be on this project.

Mr. Wampler: I would hate to admit it, where I was going was are we going to table this also because the last one we tabled because it was going to be changed. I'm ready to vote as presented.

Mr. Hurd: Okay, Commissioner Kadar.

Mr. Kadar: I'll echo what Ms. Stine said. My biggest concern about this project is that the fact I do not believe that will fit in favorably what's existing in Downtown Newark right now. I have heard Commissioner Silverman say that this could be a great anchor building for future expansion around that site but it's large and the character of the outside of the building. As a stand alone building out in let's say the Star Campus, this would be fabulous, and I would have no problems with it. However, in downtown Newark, when in my mind I'm trying to visualize the buildings that are on either side front and back of this it's just an overpowering edifice. That's my major concern - it just would not look right. That's it.

Mr. Hurd: Okay, thank you for that. For me,

Mr. Hill: Will.

Mr. Hurd: Yes, Mr. Hill.

Mr. Hill: I was just saying to one of the partners I have to let you talk before I can start waving my hand and ask to speak again.

Mr. Hurd: Thank you. I'm kind of in agreement about the size and such. The issue that I see is looking at it from a planning and architecture standpoint when we are requiring the parking that we do, this is the size of the building that we get on a lot of this size. The only way to reduce this is to start looking at things like decoupling parking and not requiring and removing parking minimums for commercial spaces so that this building would only be the size of the residential units and not have to be wrapping a four story, four-five story parking garage. Part of me says that we have painted them into this corner to say that on this lot if you want to do that development that's the size building you get but I'm also thinking I would love to see this as a much smaller building with ground floor parking between it and Trader's Alley to help buffer some of that and to reduce the visual impact on Haines. That would certainly be my preference. But this is the project we have in front of us. I'm struggling still with the parking waiver, there is a part of me that goes you have the parking available to meet the requirements as you defined them so that's that, but I also appreciate the adding parking to the city inventory. The only way to do that is through a parking waiver for the requirements of the building. I'm not fully set yet, I think it's time to move to the motion and I will see. Mr. Hill, yes, one final please.

Mr. Hill: One final question, there are several different things on here that we are asking for. One is the special use permit, ones the site plan approval major subdivision and the other one is the parking waiver. The only thing we would need to be able to convert this into a by-right plan would be the special use permit. Could that be voted on separately for the special use permit? The next question, really goes to Director Gray, is would we have to come back to the Planning Commission to or resubmit to changes to the by-right plan before we would be able to go to Council?

Mr. Hurd: I will turn to our Solicitor and Director for I have my opinion on that, but I will look to them.

Mr. Bilodeau: This is the Solicitor, I've got my opinions as well, but couple things, one, Mr. Hill had an interesting way of attacking the density issue. I still don't see how the density issue here is any different, on how we define density is number of units so if we're going to we may still have the same problem with approving the density bonus here as with the previous moving forward. As to question of by-right plan versus a site approval process, I believe if you are going to go through the by-right plan you need to start over again. I will also defer to Mary Ellen on that, but that's my initial thought.

Ms. Gray: This is Director Gray. I concur with Solicitor Bilodeau's opinion on the site plan approval/by-right plan. Yes, you would have to come back through the Planning Commission for the by-right plan and then go to Council.

Mr. Hill: That is what I was afraid you were going to say. We're trying hard to keep the project moving.

Mr. Hurd: Understand.

Mr. Hill: Just a little concerned the legally density is still an issue for you and that is something that can be easily corrected on our end but we would rather do the plan that we have in front of you to be honest with you. It's a better plan, a better solution for the city and better solution for us. Actually, I've just been asked a question, can you. And this is really is for Paul is can you vote on this subject to getting a confirmation after the vote from Paul on the density issue?

Mr. Hurd: So to effectively vote on it as if we could approve for additional density based on your argument.

Mr. Hill: Yes.

Mr. Hurd: Can we?

Mr. Bilodeau: I don't think you can have conditional votes that can flip two weeks from now if I say something else. I don't see how that can hold up.

Mr. Hurd: The thing I'm struggling with from a procedural standpoint is that we have before us the definition of density as it is in the code and you are making an argument as to why your building complies with as it were the intention that is providing a similar number of tenants but the code rightly or wrongly doesn't look at density in that the number of people per acre which quite honestly it probably should because that really is what has more of an impact than how many units you have, it's how many bodies are in the building. We kind of have to take the code as it's written and so I'm struggling to ask the commission to consider basically circumventing what is defined in the code without better direction from the solicitor. I think we have arrived at that screeching halt for the first one.

Ms. Gray: This is Director Gray. An option would be to maintain site plan approval but if the applicant is so willing to reduce the number of units to sixty units.

Mr. Hill: We can do that.

Mr. Bilodeau: Isn't code sixty-one?

Mr. Hill: (inaudible) – Code sixty-one, we're at sixty.

Mr. Hurd: So that brings us back to approving a project that doesn't.

Ms. Gray: So you wouldn't need the density waiver.

Mr. Hurd: Doesn't look like what we're looking at

Mr. Silverman: I have a question.

Mr. Hurd: Would that be part of our site plan conditions? Commissioner Silverman, yes.

Mr. Silverman: In your opening description of I believe site plan approval we could approve it, we could approve with conditions, we could deny it. I believe approval with conditions is in one of these steps we are going to do. Am I correct as it's part of site plan approval? You still have that text you were reading?

Mr. Hurd: That's true, okay.

Mr. Silverman: We could put the condition in that Director Gray just talked about. That if the applicant did come back with the by-right sixty or sixty-one units whatever is permitted we could give it a condition, a conditional approval. With Mr. Bilodeau is my logic correct here?

Mr. Bilodeau: Commissioner Silverman, yes, your logic is spot on.

Mr. Hurd: Okay, my interpretation is that it's conditional based on basically the applicant meeting the requirements but I didn't see that it would require a resubmission? I think we can say yes, site plan approval but sixty units instead of ninety-four which effectively makes it a by-right plan and then that moves that item along and then we can consider parking waiver on its own, part of this thing.

Mr. Silverman: I believe we have to vote on each of these three things.

Mr. Hurd: We do. We do have to consider each of these separately. Yes.

Mr. Silverman: As Mr. Hill asked.

Ms. Gray: This is Director Gray, now I'm rethinking that logic but then we don't have a number for the parking waiver if there is going to be a need for a parking waiver, we have no way of calculating that right now.

Mr. Hill: The parking requirements are actually on one of the slides that was in the power point that is up on the screen for the required parking. The sixty - two-bedroom units that would be one hundred twenty spaces required and then for the retail office is ninety-seven which equates to two hundred and seventeen spaces required and we have two hundred and twenty-one right now.

Mr. Hurd: The change would be you are still providing one hundred twenty spaces for the residential and so now we basically have ninety-seven space waiver.

Mr. Hill: No, we wouldn't need the waiver.

Mr. Bilodeau: They have got enough parking.

Mr. Silverman: They are providing 221.

Mr. Hurd: If you still wanted to do a share parking arrangement as part of parking waiver process.

Mr. Hill: We wouldn't be looking to a shared parking.

Mr. Hurd: We're looking at a very different proposal then. We shift to a by-right plan.

Mr. Silverman: Mr. Hill stated earlier that the parking garage would be controlled by the owner not in conjunction with the city under the by-right proposal.

Mr. Hill: We can still do the shared parking arrangement; we can become conditioned on it but we can still do the shared parking arrangement we can still work on that with the city through the process. Ideally, the parking garage would manage by the city. That is the best way of managing a parking garage like this. That would require the shared use agreement. Ideally it stays as a shared use agreement, but we don't need a parking waiver to do it.

Mr. Hurd: But if I'm trying to understand this, because if the parking is being provided as public parking as opposed to dedicated to the uses which is what the parking requirement is don't we need to take those spaces out of the building's requirements through a parking waiver? I'm trying to understand the mechanism.

Mr. Hill: I don't believe we do because the retail space is there people would be using the retail space not necessarily driving. The retail spacing parking is actually a function as if they were stand alone as if there were no other parking in the city. There is other parking in the city, so there are people walking in the city to use those retail establishments, so it just averages itself out. We are providing enough parking for the 60 units and we can work with the city for a shared parking agreement for the retail parking spaces and that can become part of the city pool so to speak. All we are now asking for is condition of being 60 units not 94 units and that takes away the density issue for you.

Mr. Hurd: Okay.

Ms. Gray: I apologize this is Director Gray, we still haven't look, we haven't done an analysis to see whether the height component is allowed by code. The height was being allowed by code with the, okay so you are doing two-bedroom units. Okay.

Mr. Hill: They are all two-bedroom units.

Ms. Gray: Okay, so that's still gives you the height, okay.

Mr. Silverman: That triggers the height.

Ms. Gray: Sorry it's late.

Mr. Hurd: It is, I'm trying to wrap this up. Let me see if I understand where we are. There is, there seems to be a general agreement of asking for 60 - 2 bedrooms as a condition of approval of the site plan which weirdly makes it a by-right plan again but it's not being submitted as by-right plan. In that configuration there are still a 101 spaces excess in the parking not being provided for residential that the applicant would still wish to enter into a shared parking agreement with the city so we would still need the parking waiver to remove these required because the code still says you still have to provide that parking. That's the whole point of the waiver is to remove those parking spaces from your need to provide them and move them into the city's stock. Am I understanding that?

Mr. Hill: I think that makes sense that you grant the parking waiver on the condition that we enter into the shared parking arrangement but that is separate from the 60 unit condition.

Mr. Hurd: Okay, I think there is a strong concern that we don't lose those parking spaces being available to the City. I think we do not want to go down that road if we can. With that said, Commissioner Wampler, may we have the first motion please?

Mr. Wampler: Well the first motion reverts to site plan approval and the site plan approval has the difference of density in it. Which is the problem we have been having all along. If they are going to come back with a by-rights project they don't need the site plan approval. Do we even make that motion for the site plan approval since that includes that controversial wording about the increase in density?

Mr. Hurd: I understand. The way I'm seeing this is that the project in front of us is asking for site plan approval. So that is the mechanism we are going to use. We can as Commissioners amend this motion with conditions of approval and the discussion currently around amending this to make the condition of approval that the project have 60 - 2-bedroom units. That is what I'm hearing as a condition. That then removes the density change from the site plan approval process. I might be going in circles, but I think that is how I'm seeing that we're using the mechanism we have in front of us to basically turn this back into a by-right project that doesn't require the density relief.

Mr. Silverman: Well with Mr. Bilodeau's attentive ear here, I would like approach this from another direction, this is directing to Mr. Bilodeau, does the applicant have the right to withdraw the request for site plan approval? Since this is no longer germane.

Mr. Bilodeau: They certainly do, but the problem is that I think in Commissioner and Director Gray will agree with me, if they withdraw it then I guess we have to start all over again under a by-right plan. I think the best way is to keep this in the site plan approval realm so we can push this forward. It's going to be a site plan approval that is really seeking no bonuses which is very odd, but I think that is the way we need to go if we don't want to start over from scratch.

Mr. Silverman: Okay that satisfies my itch on withdraw, thank you.

Mr. Wampler: Let me read you what we've talking about and I'll make a motion if people don't think it's right then nobody second it.

Mr. Hurd: No, second it then we amend it. We got that process.

Mr. Wampler: I move that the Planning Commission approve the 141 E Main Street major subdivision and site plan approval as shown in the Hillcrest Associates site plan approval special use

permit dated August 5, 2019 and major subdivision plan dated July 17, 2020, as revised November 6, 2020 with the Subdivision Advisory Committee conditions as described in the November 25, 2020, Planning and Development Report on the condition that the project contains 60 - 2-bedroom units.

Mr. Hurd: That sounds right. Do I have a second?

Mr. Silverman: I second that. I will second that. Silverman.

Mr. Hurd: Okay, any discussion of the motion? Commissioner Stine?

Ms. Stine: Are the parking spaces being?

Mr. Hurd: They are a further motion. We have to do them in order because if it fails the first motion, we can't consider the other two. That's the logic it's sequential. Alright, to the motion. Commissioner Kadar:

Mr. Kadar: Nay

Mr. Hurd: Okay, Commissioner Silverman?

Mr. Silverman: Aye.

Mr. Hurd: Commissioner Stine.

Ms. Stine: Aye.

Mr. Hurd: Commissioner Wampler.

Mr. Wampler: No.

Mr. Hurd: I'm voting aye. So, motion passes 3 – 2. To the second motion.

Mr. Wampler: Now we need a motion for the special use permit. I'm going to read it as is but change the special use permit from 94 apartments to 60 - 2-bedroom apartments. I move that the Planning Commission approve the 141 E. Main Street Special Use Permit for 60 - 2-bedroom apartments this is as shown for the Hillcrest Associates site plan approval special use permit dated August 5, 2019 and major subdivision plan dated July 17, 2020, and revised November 6, 2020, conditions as described in the November 25, 2020, Planning and Development Report. My only problem is that it says 94 apartments and we have changed that to sixty apartments, but the sixty apartments are not as shown. As modified.

Mr. Hurd: As amended or modified somewhere in there.

Mr. Bilodeau: That's good.

Mr. Hurd: We have the motion; do we have a second?

Mr. Silverman: I will second. Silverman.

Mr. Hurd: Okay, any discussion of the motion? Okay, seeing none, I will move to the vote. Commissioner Wampler?

Mr. Wampler: No.

Mr. Hurd: Commissioner Kadar.

Mr. Kadar: Nay.

Mr. Hurd: Commissioner Silverman.

Mr. Silverman: Yes.

Mr. Hurd: Commissioner Stine.

Ms. Stine: Aye.

Mr. Hurd: I am aye as well. So 3-2 . It passes for the special use permit. Final motion.

Mr. Wampler: The final motion is for the parking waiver as written it's for 84 spaces. I think we need to approve it as written because the paragraph A has all the wording about the shared parking agreement.

Mr. Hurd: Okay.

Mr. Wampler: I will make a motion that the Planning Commission approve the 84 space parking waiver for 141 E. Main Street with the following conditions, the applicant shall work with the staff on shared parking arrangement, the frame work for the shared parking arrangement can include city management of the parking enforcement, installation at the applicant's expense for the city parking system that comprises the kiosk system and the camera and lighting system, city maintenance of the camera and lighting system, striping and the T-2 parking hardware and software systems city management of the parking permitted for apartment use, and shared parking revenues through the kiosk system with the applicant and the city. The details of the shared parking arrangements shall be reviewed by the City Solicitor and approved by City Council. If the City Solicitor deems it appropriate to prior to issuance of the first building permit.

Mr. Hurd: Thank you, do I have a second?

Mr. Silverman: I will second. Silverman.

Mr. Hurd: Any discussion on the motion.

Mr. Bilodeau: This is Solicitor Bilodeau, is the parking waiver an eighty-four-space waiver or is it one hundred and one spaces that are going to be covered by our shared parking agreement?

Mr. Hurd: Commissioner Wampler , I think rightfully here, we're not going to try to redo the math, so, we are going to do the parking waiver as it is Here with the expectations that the shared parking arrangement will clarify how many spaces are dedicated for the residential and the assumption that I'm hearing is that the balance would then be available for public use. That number fluctuates because if not all 120 residents are parking at the same time there might be more available spaces.

Ms. Gray: This is Director Gray. I'm not sure whether you - cause the parking waiver is the purview of the Planning Commission and the granting of the parking waiver I would need to go back and look at the code real quick, I believe it's based on the number of parking spaces.

Mr. Hurd: We could go back and use the 97 that the math, that Mr. Hill had presented.

Mr. Fruehstorfer: It doesn't need a waiver does it? All they are doing is agreeing to share the parking with us, nothing needs to be waived. They are providing all the needed parking.

Mr. Hurd: Except they are providing the parking that it wouldn't be for pay, it would be parking dedicated to that building and for use by customers of that building only.

Mr. Fruehstorfer: If you look at behind Iron Hill, the same situation is there, the parking provided required by code and is not available to the people, it's paid parking. Same thing is happening behind Taverna now.

Mr. Hurd: My understanding is that to take it out of the parking spaces dedicated to the use of the building and to put into the city's managed inventory, we have to waive it. It's a code requirement at the moment that they provide those spaces.

Mr. Silverman: I agree the mechanism is through the parking waiver.

Ms. Stine: Then how do we specify how many parking spaces the City will control?

Mr. Silverman: Those that are not dedicated.

Mr. Fruehstorfer: They need to tell how many they want to give us. They are providing the required parking, I don't think they need a waiver, they are welcome to saying and tell us that they are willing to enter into this agreement allow us to manage them as city parking spaces.

Mr. Hurd: That current lot has spaces dedicated to some of the retail spaces in that adjacent to that lot. DelOne has spaces, Duck Donuts has spaces and if you are going to DelOne you can park in one of those spaces and not pay for it and go into DelOne and come back out, same for Starbucks.

Mr. Fruehstorfer: I'm telling how parking is working in the city now. I'll leave it at that. I don't think they need a waiver.

Mr. Silverman: In my 11:00 at night comment is look how great Trader's Alley worked out without things being tied down.

Mr. Fruehstorfer: I agree with tied down, but I don't the waiver is the way to do it because it doesn't need a waiver.

Mr. Wampler: I think Mr. Hill was saying they weren't interested in a waiver. Maybe we should not even vote on it. If the plan was going to be a by-rights sixty units' they don't need a parking waiver is that wrong?

Mr. Hurd: My understanding and the reason we went into this longer conversation that Mr. Hill indicated that they were still interested in the parking waiver.

Mr. Fruehstorfer: They are interested in a shared parking agreement but that does not require a waiver.

Mr. Wampler: That was my understanding.

Mr. Silverman: Tom may have a point rethinking this and along with both Tom's. The parking waiver is not required and if the applicant wants to make a good faith effort to when it gets to City Council to make the offer it looks like it just continues. If the Council desires the City to move into that arrangement. If there's not a waiver involved, we don't get involved in parking.

Mr. Fruehstorfer: This should have been a condition as part of your first motion.

Mr. Bilodeau: I would just suggest that we make a motion that starts just with "A" that they will work with staff and me with the shared parking arrangement as a condition to the first motion.

Mr. Silverman: Okay, since it's the same meeting we can move to reconsider the original motion to add your comments Mr. Bilodeau.

Mr. Hurd: Does that clean it up if the site plan approval is conditional on the shared parking agreement?

Mr. Bilodeau: Yes.

Mr. Silverman: I will make the motion to reconsider Paragraph A motion to include the dialog with the respect to shared parking.

Mr. Hurd: Okay, so I have an amendment to the first motion.

Mr. Silverman: Not an amendment, a reconsideration.

Mr. Hurd: A reconsideration to the first motion. Do I have a second?

Mr. Wampler: I will second that.

Mr. Hurd: Commissioner Wampler, alright. Back to the first site plan approval, sixty-two bedroom and shared parking agreement. That is how I understand this, correct?

Mr. Wampler: I think so.

Mr. Hurd: Okay. Commissioner Silverman.

Mr. Silverman: Aye.

Mr. Hurd: Commissioner Stine.

Ms. Stine: I'm not happy with the, are we not having discussion on the proposed change?

Mr. Hurd: Oh, I'm sorry. You're right, we should have had discussion of the motion.

Ms. Stine: My original vote in our first vote was based on the city having one hundred and one parking spaces under a shared parking arrangement. Not the remainder of what's left after we do a calculation. Not whatever is left over that the developer wants to extend to us after he allocates what he wants to allocate to his tenants plus what he is required to provide for his commercial. But it's 101 parking spaces, I just want to be clear that I'm voting for site plan approval with the understanding that the applicant is going to have 60 - two-bedroom apartments which I understand can hold up to one family or 4 unrelated. Right? So potentially 4 cars per 2-bedroom apartment?

Mr. Hurd: Per code, a two-bedroom apartment they are required to provide two parking spaces.

Ms. Stine: We're required to provide, but they can provide whatever they want, they have plenty of parking spaces. I would like for this amendment says where we are talking about the proposed at least the 101 parking spaces under a shared parking arrangement for the City.

Mr. Hurd: Okay, we have an amendment to the motion. Mr. Hill, yes?

Mr. Hill: I just have to jump in, I'm trying not to jump in but have to jump in because some of the agreements with the existing tenants I don't think we can tie all the parking without a parking waiver in there. So, I think we'll have to go back to the parking waiver though I mean we don't have to use the waiver for the eighty-four spaces. Certainly, we don't, we're most likely talking more along the lines most likely fifteen. I think we would have to do that for what you are saying. I'm trying not to cloud it as it already is. If you are to require putting all the parking into the pool for the City, we would need another for the spaces that are currently allocated for the businesses under their lease agreements.

Mr. Hurd: Can that be worked out as part of the shared parking agreement or do you feel that it needs a waiver?

Mr. Hill: Possibly, but I think I would be more comfortable we just kept the waiver where it is and left the original motion where it is and just do the waiver for the eighty-four spaces and if we use them, we use, if we don't, we don't. We're still going to commit to that many people. The building still has 221 spaces, so we probably won't use them but we might need one or two when get into the shared parking arrangement with the city.

Mr. Hurd: 84 was the original number?

Mr. Hill: That was the original number it was just easier.

Mr. Hurd: It may have confused things when you talked about how they are 101 spaces for the shared parking arrangements, but 84 spaces for the waiver. Okay.

Mr. Silverman: Mr. Bilodeau do I withdraw my motion to reconsider and go back to the original motion? It's been moved.

Mr. Bilodeau: We are probably killing parliamentary procedure, but I would say yes.

Mr. Silverman: I withdraw my motion to reconsider.

Mr. Hurd: We are back to the parking waiver motion. Currently asking for 84 spaces.

Mr. Wampler: Right, there is a motion on the table.

Ms. Gray: I apologize this is Director Gray. I just I don't know who's on first and who's on second. I've got to go back to the code here, the parking waiver is for a specific number of parking spaces. I know I started this train going down a path here of this discussion and I apologize. I am not comfortable moving this forward with not knowing how much parking, how much of a waiver is needed or whether a waiver is needed, what the numbers going to be. It's 11:00 at night, I just, I think we need to take a pause on this, and I apologize that's is my thought on that.

Mr. Hurd: Okay.

Mr. Wampler: If I can say really quickly. I made the motion for 84 spaces it is not been seconded. If no one seconds it, then it just dies.

Mr. Hurd: If the parking waiver motion does not get completed or does not pass tonight. Can they come back for the waiver separately when we have the math? Director Gray?

Ms. Gray: Yes.

Mr. Hurd: That does seem to be part of the hang up is calculating what's the number that we were waiving and the process.

Ms. Gray: Yes. If that is coming back, I think the project should come back, I mean everything. I am not comfortable having a piece of the project move forward with the other piece coming behind it. It doesn't make sense to me. I defer this to Mr. Bilodeau for his thoughts on that.

Mr. Bilodeau: The parking waiver part of it is I believe a final vote by the Planning Commission. That is not going to go to Council. I would say it's important that we get that right as to what the waiver is going to be.

Mr. Hill: Can we table that until we've got all the numbers and just come back as an old business item say at the next meeting so we done and done quickly and easily and we won't hold you guys up longer than we need to?

Mr. Hurd: Tabling might be appropriate solution for the parking waiver question. Examined in the light of the project as approved which was the sixty - two bedrooms. Commissioner Wampler let's since your motion is waiting a second. We can withdraw it and put forth a motion to table the parking waiver portion.

Mr. Wampler: I'm happy doing that. Since the motion for the parking waiver was not seconded, I withdraw that, and I make a motion that the vote on the parking waiver be tabled until our next meeting.

Mr. Hurd: Do I have a second?

Mr. Silverman: I'll second.

Mr. Hurd: Okay, thank you. Any discussion on that motion. I recognize it's late and really am trying not to do bad things or impulsive things. I do agree with Director Gray, I want to do this right. This does seem to be the sticking point.

Mr. Silverman: Questions.

Mr. Hurd: Questions, yes.

Mr. Silverman: It will be considered at the next available opportunity under old business?

Mr. Hurd: Yes.

Mr. Silverman: Okay.

Mr. Hurd: There may be some, I don't want to put a time limit on Mr. Hill and tell him he has to give us something within a week as he may need more time and staff needs time to review. So I don't want to force it.

Mr. Silverman: Also, in fairness, I want to build on what Director Gray said earlier by making it old business, it would be considered regardless what else is in queue. Since it's an old business item.

Mr. Hurd: Correct. Moving to the motion. Commissioner Kadar.

Mr. Kadar: Aye.

Mr. Hurd: Commissioner Silverman.

Mr. Silverman: Aye.

Mr. Hurd: Commissioner Stine.

Ms. Stine: Aye.

Mr. Hurd: Commissioner Wampler.

Mr. Wampler: Aye.

Mr. Hurd: I am "aye" as well for tabling. Thank you. Thank you everyone, thank you Mr. Hill, especially for sticking with us.

Mr. Hill: Thank you, no thank you guys for sticking with me. I was more difficult than usual tonight.

Mr. Hurd: It was a challenging one. Given the hour, I don't think I even need to vote for adjournment because we are past our time. Director Gray, I am so sorry that we did not get to

the Steering Committee item, so let's make sure that is first up in January so we can get that moving. Alright, thank you everyone, we are adjourned.

THE PLANNING COMMISSION MEETING WAS ADJOURNED BY ACCLAMATION.

The December 1, 2020 Planning Commission meeting adjourned at 11:00 p.m.