

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

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

February 2, 2021

7:00 p.m.

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

Chairman: Willard F. Hurd, AIA

Commissioners Present: Karl Kadar
Alan Silverman
Tom Wampler
Allison Stine

Commissioners Absent: Stacy McNatt, PE

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 7:00 p.m.

1. Chair's remarks.

Chairman Hurd: Good Evening everyone and welcome to the February 2, 2021 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 to 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 the general meeting logistics and with the assistance of Tom Fruehstorfer who will be managing the screen sharing. 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 and questions. If a Commissioner has additional comments or questions, they would like to add

afterwards they can unmute themselves and I will call on them to make it clear who is speaking next. Please try to avoid talking over other people so that everyone listening in can hear clearly. For items with public comment, we will then take public comments in accordance with the Governor's declaration on remote meetings and Council and standard City of Newark practice everyone giving public comment needs to identify themselves. We will first read into the record comments received by email prior to the meeting, if any. 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. They should send it to everyone so that all the staff and everyone can see that. 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, I can either call on you separately and you can press *6 to unmute yourselves and we can see that and then I can call on you for your comments. We follow public comment with further questions from the Commissioners and then discussion only items and the motions and the vote. If there are any issues during the meeting, we may adjust these guidelines as necessary. That takes us to Item 1 Chair's Remarks.

1. Chair's remarks.

A couple of items here, one is a housekeeping one. On the Agenda, Item 6 the Green Mansion is not seeking site plan approval that was put on there by staff in anticipation that there might be need. Any issues related to that have been resolved and so site plan approval is not part of that process tonight. A couple of comments from my review of the December meeting cause I had to listen to the whole thing when I was checking the minutes. First, I noticed that we are using the term table a lot for when we want to bring an item back for more information but the term that we have in our rules of procedure is continue and that is the term I would like to use. That we are continuing items to a further meeting. Tabling is a recognized term in Robert's rules of order which is not which is not a standard that we have adopted and so I think it eliminates some confusion from other people. Second item is that we often use the term waiver during the site plan approval process, and I want to be clear that waivers are the purview really of the Board of Adjustment and they have specific legal meanings. Site plan approval is for granting relief from Code required items and so that is the term I'd also prefer to use. The last one on this and I will try to get better about it, we need to be better about stating our reasons for the vote for the record especially since we have Max Walton with us tonight and that is one of the things he stresses in his excellent training, Acceptable statements for votes in favor are for example for the reasons stated in the department's reports and for the reasons stated by Commissioner X, so I will be trying to do that more. Alright that takes us to Item 2 the minutes.

2. The Minutes

You all received today the revised December minutes. I gotta congratulate Angela again. It is a slog. She got so much of that right and really all I was doing was fixing technical words that weren't entirely clear and maybe adding some commas and things. So, way to go. The January minutes have come out in draft form but until last night we didn't have the audio to compare them against. I feel that is something we will be working on for the next meeting. Do we have

any additional comments or corrections to the December minutes? Alright seeing none and some actual head shaking the December minutes are approved by acclamation. That takes us to Item 3.

3. Review and Discussion of Planning Commission Rules Procedure and Planning Commission Bylaws

Alright, I guess I am the person presenting this cause it is sort of my baby. This is really back to us because our previously approved Bylaws said that anytime we want to make changes we have to present the changes and then follow up to the following meeting and actually approve them in the month that has passed are there any further corrections, changes, comments and such to them and I will begin with Commissioner Kadar.

Commissioner Kadar: Nope they look fine to me, I have no comments.

Chairman Hurd: Okay. Commissioner Silverman?

Commissioner Silverman: I went back through and on line 147 we state a member who is recused due to a conflict of interest may not be called upon to break a tie or form a quorum. Are we doing a disservice to the Applicant and to the Commission by excluding a member who simply forms a quorum so we can conduct business as opposed to a member who would participate in the business in the Commission?

Chairman Hurd: That is an excellent point. Cause yes in general we determine if we have a quorum at the beginning and then we generally hold it. Okay I am okay with striking that last part and just say he can't be called upon to break a tie because that is actually good because I mean we do have a rule about what to do when we have a tie vote, so ties don't bother us. Should we just strike both that whole sentence?

Commissioner Silverman: Yes, I would.

Chairman Hurd: Okay, so we will strike lines 146 and 147.

Commissioner Silverman: Cause the purpose is for the individual Commissioner to recuse himself from any participation.

Chairman Hurd – Right

Commissioner Silverman: And both those actions are participation.

Chairman Hurd – Yes and we are clear about that. Okay. Anything further?

Commissioner Silverman: That concludes my comments.

Chairman Hurd: Okay, Commissioner Stine

Commissioner Stine: Nothing further, thank you.

Chairman Hurd: Okay. Commissioner Wampler

Commissioner Wampler: No this is pretty much what we talked about and I am also in agreement with removing lines 146 and 147.

Chairman Hurd: Okay thanks. I don't really have anything to say cause we got it all here. So, with that we will open the floor for any public comment on these two documents. No one has indicated they wish to speak anyone who does wish to speak you can unmute yourself from the public. Deathly silence – okay – bringing it back – and I forgot to bring my gavel to start the meeting. Anyway, alright back to the table – anyone need to have further conversation or discussion? Not seeing anything. Okay. Secretary Wampler we will move to the motion then.

Secretary Wampler: Would you like two separate motions or one motion to accept both?

Chairman Hurd: I think we could do one to accept both.

Secretary Wampler: Yeah, that what I thought but I thought I would check further so that we didn't go down the wrong path.

Solicitor Bilodeau: This is Solicitor - I am fine with one motion for both.

Chairman Hurd: Thank you Solicitor Bilodeau.

Secretary Wampler: That's clinches it. In that case I move that the Planning Commission approve the Planning Commission Bylaws and the Rules of Procedure as revised January 5, 2021, with the removal of lines 146 and 147 as discussed on February 2, 2021.

Chairman Hurd: All right, thank you, do I have a second?

Commissioner Kadar: I'll second it.

Chairman Hurd: Thank you Commissioner Kadar. Any discussion on the motion? Alright Seeing none we will move to the vote. Commissioner Silverman.

Commissioner Silverman: Aye

Chairman Hurd: Thank you. Commissioner Stine.

Commissioner Stine: Aye

Chairman Hurd: Thank you. Commissioner Wampler.

Commissioner Wampler: I vote Aye.

Chairman Hurd: Thank you. Commissioner Kadar.

Commissioner Kadar: Aye

Chairman Hurd: and I vote Aye as well. Motion passes. Alright. Look at that we are 5 minutes ahead. Alright Item 4.

4. Review and consideration of a revision to Chapter 32 Article IV Use and Area Regulations for Residence Districts to add a new district “RE” and new conditional use under Section 32-9(b)(12) for “Agricultural, horticultural, and forest land uses”.

Alright. Director Gray did you say Planner Fortner was taking this one?

Director Gray: Hi this is Director Gray speaking, yes, I did.

Chairman Hurd: Okay, Planner Fortner, have at

Planner Fortner: Hi thank you, Mike Fortner, Good evening Mr. Chairman and Commissioners I am presenting two-part bonus one is creating RE residential state zoning district and pairing with a putting an agricultural use in 32-9(b). This on the way of background if you go ahead and go to the next slide, please. In 2019 the owner of the property at 751 Papermill Road and that property is in the upper portion of this slide here the property they came and approached the Planning Department about annexing the family’s property into the city and continuing to operate as a family farm. As stated in the report that property Trustee is Max Walton who as you know is a local attorney who sometimes does work on behalf of the city, he wants to keep the property in his family and operate it as a small farm with agricultural and raising animals. At some point he would like to subdivide a small portion of the property for a house for one of his children. The City of Newark zoning code currently does not permit farm uses listed under any zoning district. New use would need to be added in order to complete the annexation with the uses the applicant desires. The Planning Department did research under the Ordinance and developed a proposed proposal based on state law. The department determined that the farm uses were compatible to residential zoning districts. It developed an Ordinance that we reviewed and in November 2019 where properties in the RH RT and RH zoning district would be eligible that had 10 acres or more. The map that you see on this slide shows all the properties in green that are currently in the city. These are properties that would be eligible if this Ordinance passed 10 acres or more. And then there is properties that are outside the city have little hash mark lines kinda blue outlined in blue those are properties that potentially could be annexed they are adjacent to the city they could be annexed in some sort of future time that might be eligible for the farmland use. And so, you

see that most of these are schools or golf courses there are a couple of properties single family like 151 Capitol Trail which is on the eastern side of the city and then 0 Gravenor Lane is another property residential that could potentially do this use. Go ahead and go to the next slide please. Sorry got things popping up. All right. So, this is we presented an Ordinance at the November 2019 Planning Commission and it had agricultural uses of by-right use and when the Planning Commission reviewed this their major change was to put it in the conditional use. The way you do that as you see from section 32(9) and then in the parenthesis b that used to be an a, a is uses that are a by-right use so what planning commission did is that they put it under section b of that code which all uses under that are I'm sorry are with a special use permit. So, Council and in this case since it is all farms would be over an acre a Planning Commission would review all special use permit applications for a farm use and the planning commission said there were enough externalities and negative possible externalities that maybe we wanna closely look at the surrounding areas and make sure this use is appropriate before we allow the use. And so that is what the planning commission recommended for Council. Make it a use but a special use permit that is reviewed and approved by Planning Commission and Council. Go ahead and go to the next slide please. So, the benefits of this permit's property owners to annex into the city and maintain their agricultural use if that what they were doing and wanted to do that and encourage preservation of the natural environment and also property owners could take advantage of county and city tax farm exemptions and also there is a roll back if they stop being a farm, they would have to pay all these back taxes back. And so, they would allow property owners to participate in that program. So, this your recommendation went to council and there was a lot of discussion on it they liked that it was put into special use permit category they thought that was very appropriate. The thing they got hung up on was a possibility of like a bait-and-switch our interpretation was a property and at this time I think 0 Paper Mill got turned down recently and a property owner could come in and say it want to annex and say we'd like to be a farm and then they would get our lowest zoning district at the time which was RH which was a half-acre lots and that would be better than what they would get in the county. So, once they were annexed then they would basically flip and then come in with a by-right plan for RH type zoning that council would have to approve even if they didn't want to approve it. And so that was from the hang up if someone could lift an annex into the city and get the higher density and take advantage of that and say they were going to be a farm. And so, and then council stated they would also be interested in exploring options to specifically a farmland zoning district and they wanted staff to research that and then so we had a council workshop it was on June 1st, 2020 where we talked about the farmland legislation and what it could look like and we presented a different proposal – go ahead and go to the next slide please. So now I am going to Option 2 which we developed an Ordinance called the FAR or FAR Farming Agriculture and Resource district this was a completely new section to the Code a full zoning district. If you go to Exhibit B of the report that the report to Council, you can see that the complete Ordinance is written in there the highlights is in Section A one thing that you can't do is that you can't just say create a zoning Ordinance district and say the only thing you can do there is farming you have to allow other types of usage you can't take away all other uses. It's just like we experimented with the golf district of a country club you can't just create a zoning district for golf and say that is the only thing you can do there. So it permits agriculture, horticulture, forestland and all this is by-right agriculture cause if you're gonna create a farming district you have to give them by-rights and then it also permits

residential it's kind of confusing but it basically is density not less than one-third units per acre kinda like the same parameters of RH or you could do a semi-detached this was kind of a confusing portion for council and then section B had the special use permits so aquaculture aquaponics garden center nursery petting zoo retail store for their related to uses these types of things would get a special use permit so if they were going to do that so it is kind of an extra layer for a more intensive farm. In section C encourage residents to do a site plan approval if it ever redeveloped and no owner may apply for subdivision approval for 2 years after getting the farm zoning designation and they had to give 120 days' notice if they were going to file an application for a subdivision. So, these were again the whole Ordinance in written out in your Exhibit B. Go ahead and go to the next slide. Next slide please, there you go thank you. Same kind of benefits the issues was basically it's too complicated created a new section that had new definitions to the zoning code it created a zoning district cause you can't do one just for farming there was confusion about the density allowed because there were different levels of density permitted and different scenarios it did not give a definitive answer on what the redevelopment right would be and any property already in the city would have to rezone so if you were this place off of Capitol Trail and you decided you wanted to take your property and make it a farm use you would have to rezone to FAR zoning and give up that potential development rights and so that was I think a big inconvenience or it probably wouldn't be willing to do that. It would be a down zoning. So, what we got here is the story of a kinda of Goldie Locks and the Three Bears where you have one that is not complicated enough and didn't give the protection, they wanted the other one was too complicated and so hopefully the one I am about to show you is just right. And so, we try to work up something. So go ahead and go to the next slide. So, this is kind of a hybrid we ah it based its two steps first of all we create a RE we call Residential Estate it has a minimum lot size of one acre which would be compatible would most of your rules county zoning and we would just add that to Section 32(9) with the RH zoning district. And so, it would like for this I think it is Exhibit C which we show the whole Ordinance the way the way it would look your just adding just another RE and so instead of RH RT and RS we just add RE and that's all there is at least to that section and then you would have in Section C you would add the different minimum requirements. So, the big one is a minimum lot area and so you would have RH RS which is a half-acre RT which is 15,000 sq ft that's the minimum lot size RS is 9,000 sq ft minimum lot size then you have RE the residential estate which would be a minimum lot size of one acre again that makes it a larger lot size so it kind of protects against the lot size bait-and-switch scenario that council was concerned about. Someone is not going to come in with a farm and get the RE zoning and then then they have one acre lot development potential that is probably very similar as to what they are going to get in the county so there is no incentive to annex into the city with that. The rest of section C as you see in your memo other kinds of things minimum setbacks minimum rear yards and those are just in proportional with the other zoning districts. Go ahead and go to the next slide. And then the other thing is in step 2 you add the agricultural with the special use conditional use special use permit under section 32(b) and this language is the exact same language that Planning Commission recommended for in their November meeting of 2019 except for one thing in Section C which we added which is basically as to provide for in Section B8 you have to wait two years after receiving the designation donor or equitable owner of such lands as in type to reapply for subdivision approval. So not sure you need that as much, but it is another extra added provision but if you get this you can't redevelop for two years. But if you already

have the RA ah RE zoning district then that also gives us protection. But also, this is allowed in all residential zoning. So, you could give and even an annex property in RS property if you wanted or a property in zoning city if you have an RS and they could apply for this special use permit and it would go to Planning Commission Council to get their review and approval or not approval. Go ahead and go to the next slide. And so this with the benefits so in addition to the benefits already stated it creates a residential zoning district compatible of low density residential zoning in the county so there is no it doesn't create an incentive to annex into the city to do a bait-and-switch or protect the city against that it allows large properties already in the city to take advantage of the agricultural use as well as having a down zone they wouldn't have to switch to the FAR zoning the farm zoning FAR zoning they could keep there with the head RS like the property on Paper Mill Road not Paper Mill I am sorry it is Capitol Trail has an RS zoning for example but they have a large lot and they can do farming and if they wanted to get the special use permit they wouldn't have to change their zoning to do that. And it continues to allow council to regulate agricultural uses with a special use permit which is what they want. And the FAR If that had that zoning designation then they could do that agricultural as by-right. And go to the next slide please. And that concludes this presentation on the Ordinance and at this time I can answer questions or still taking discussions.

Chairman Hurd: All right thank you Planner Fortner. I want to just commend you guys for really pulling together a lot of different opinions about how this should go and coming up with what I think is a really solid thing. I looked over the minutes from Council Meeting and I think there was some notes in here from the previous one and yeah there were it was like we want, and we want, and it was like pulling in different directions and I think you did a good job of building a framework around that. All right, we will start with Commissioner Stine.

Commissioner Stine: Thank you, just so I am clear, the Council's concern was what they refer to as a bait and switch correct so if somebody gets annexed into the city for farm use and then immediately submits a by rights plan for a redevelopment project. That's what they were referring to when they used the terminology bait-and-switch?

Planner Fortner – Well I might of implied the term bait-and-switch but there was a concern as you described that a property owner would try to annex into the city say they are going to be a farm get the lowest zoning district that we had at the time which is RH which is a half-acre lot which would probably be a denser zoning than what the county zoning was for a lot of adjacent lots. And then once they are in as a farm then they'd say actually we'd like to have we'd like to do a housing development here and here is our by right plan, we already have the zoning, and we are going to have half acre lot houses were going to develop this and then the council not liking it but not having any choice. This way there is no incentive we can give them the acre zoning the RE that's probably much better if better than in the county and then so there's no incentive there and so there would be less bait and switch potential. If at some point they wanted to redevelop it is no necessarily I do know if the city would necessarily want them to redevelop into acre lots but they have that would be their only by right so they would have to come through the city and say actually you know developing by acre lots isn't actually what we wanted to do we would like to develop something denser like in an RS style and then council would have the

leverage to either approve or not approve that development based on whatever they thought at the time whatever our future needs are.

Commissioner Stine: Thank you for that answer but just so I am clear that's only good for two years though right after two years they could apply for a by-right project and redevelop?

Planner Fortner: No, the two years they can't apply for a subdivision for two years under this Ordinance when they do and unless they like ___s this property you're going to hear we are giving in the RE so let's say they so for two years they can't comeback in two years they could come with an RE type zoning and say we'd like to develop this into acre lots. That's not better than he would get in the county. In fact, I think it is a little bit worst.

Commissioner Stine: Excuse me cause I know that this has been going on long before I joined this the Planning Commission but what is the incentive then to want to be annexed into Newark?

Planner Fortner: Well to be a part of our community, I guess but then well sure whether our private big one is electric so if he builds a new house there its eligible for electric for an existing house so yes, the incentive wouldn't be to develop a bait and switch so we can develop denser and get more money from our development then we could in the county.

Commissioner Stine: Right. But is it less expensive to let's say jump ahead and there was 10 acres, and somebody wanted to redevelop even under the RE 10 single family homes is it cheaper to do that in the City of Newark than it is in New Castle County with regard to the cost of infrastructure?

Planner Fortner: Well in terms of the fees that the county charges it would be more expensive in the county but that's really limit very small a particular wider development so really it is the density where a developer would make the money on that. The infrastructure wouldn't cost more than to say then to build the roads and stuff like that wouldn't cost more than to do in the county and the city the city would take over the roads in most cases depending on the subdivision agreement. No, the cost isn't different.

Commissioner Stine: The county doesn't own roads, right? So, the city would take over the roads the city would provide traffic? Do we have an impact fee for connecting a project to sewer and water?

Planner Fortner: the city would not necessarily take over the roads it depends on the subdivision agreements.

Commissioner Stine: Okay

Planner Fortner: They would connect to all our services the city is developing impact fees and has fees for those kinds of things variety so that would all go into city. And then most importantly if the it is likely that the developer a future developer of any property we annex wouldn't want to develop under a RE zoning that's just to keep the leverage with the city they would probably want

something like an RS zoning or RH so they could develop denser and would have to come to the city and ask for that and they would have to turn good development it wouldn't be a by-right plan that's what we are trying to protect with this specific Ordinance.

Commissioner Stine: Okay, yeah well I mean I like the idea of considering annexing this property I am not opposed to it but I want to make sure that it you know that the city is properly compensated for the benefit that we do offer and if we don't have impact fees and other things that you wouldn't pay those to the county right and in my experience is developing 10 lots is like developing you might as well develop a hundred lots you know in terms of expense so we need to be sure I just wanna make that the city is being properly compensated for the future development of the property.

Planner Fortner: The City has fees the city has fees and maybe I could answer this better, but they would pay those fees in the city the county has fees too I think they are higher in the county we are looking to always increase the fees and that is something we are always doing.

Commissioner Stine: Yes, definitely they are. Okay I think that oh keeping dogs. So is that something that they would be able to do by-right.

Planner Fortner: No, it is all special use permit.

Commissioner Stine: Okay

Planner Fortner: Keeping a dog. There's dogs and then there is a farm a type of farm style that's spelled out in the Ordinance and so that would all be part of the special use permit.

Commissioner Stine: Is that like kennels or breeding or something like that?

Planner Fortner: So, a kennel - it would be spelled out it would be part of the Ordinance they would have to come with a special use permit, and they would have to say well we're going to do farming we're going to breed dogs and council and planning commission can say if that's a good idea or not and limit it or what – so it wouldn't be a by-right.

Commissioner Stine: Okay yeah cause there's I've yet to find a kennel near a residential property that made sense you know that wasn't a nuisance.

Planner Fortner: Yeah

Commissioner Stine: Okay, All right that's it. Thanks so much. Thanks for a great presentation.

Planner Fortner: Thank you

Chairman Hurd: All right, thank you. Commissioner Wampler

Commissioner Wampler: I think this is a good solution to the issue and I am in favor of it I think it took a while to get there but I think it does what people intended for it to do and I think good job people.

Chairman Hurd: All right, thank you. Commissioner Kadar

Commissioner Kadar: Yeah, thank you chair. A few questions The Ordinance that we proposed talks about this applying to 10-acre parcels or larger. Explain to me how we can take the 10-acre parcel and allow it to be subdivided with two additional lots which I am assuming in this case would be two 1-acre lots right? And suppose this parcel is 10 acres in size and we could not subdivide it? Is that correct.

Planner Fortner: That is correct the main parcel has to be 10 acres so if they had 10 acres, they couldn't do a subdivision on that and the case that you are seeing we going to review next it is a 14-acre parcel, and they are proposing a subdividing an acre off of that for a future housing a single-family house.

Commissioner Kadar: Yeah, I'm not – no - I understand that a parcel is 14.4 and some odd acres that's not the issue the issue is the Ordinance says 10 and maybe you can subdivide but if you want to continue some farm improvement and some farm work there you cannot subdivide it because there is no way to do that and stay within the within the guidelines so why 10 acres? Why not 11 so there is a capability of subdividing or 12 so we can get down to 10 acres of farmland. A 10-acre lot or something slightly over 10-acre lot is not going to be able to be subdivided period if you want to keep your farm usage.

Planner Fortner: That's right – if someone just had a 10-acre lot then they could not subdivide, and they would need to have 11 at least 11 acres to do one house so that not an if you don't have 11 acres than you're not going to be able to subdivide you can just keep your farm you'd be eligible to do the farm use, but you couldn't subdivide on that.

Commissioner Kadar: I just wanted that clarification because the 10-acre lot is generally 100 percent farming there nothing else you can do with it.

Planner Fortner: Yeah

Chairman Hurd: Commissioner Kadar – I'll just add from my review of the minutes of the previously meetings – the 10 acres comes from the state Code that the state has defined agricultural land as starting at 10 acres and up, so we are using 10 so that we are in line with the state Code and using that work. You'll notice on page 2 where it talks about the special use language it does say properties may be permitted to subdivide to allow no more than 2 interior lots so long as a minimum of 10 acres is reserved for agricultural uses on a single lot having the required street frontage. So, it is locked into the Code that you can cut off two little one-acre pieces but you still have to leave 10 acres behind so that is sort of setting the thing like if you just

wanna be a farm 10 acres you're a farm. If you want to slice off a residential building lot, you got to be 11 or more.

Commissioner Kadar: Ok, well that's a perfect introduction to my next question.

Chairman Hurd: Okay

Commissioner Kadar: Which is I'm reading the proposed changes which are on page 6 to Section 32.9b by adding the following #12 and there you talk about agricultural horticultural and forest land uses such as the growing and selling of crops greenhouses etc. I look at Exhibit A which on page 2 lists what I believe to be Delaware State Code is that correct?

Chairman Hurd: Yes, it is.

Commissioner Kadar: Ok, so let's read 83.330 right at the top of the page land shall be deemed to be an agricultural use when devoted to the production for sale of plants and animals useful to man including but limited to etc etc.

Chairman Hurd: Um mm

Commissioner Kadar: The State code implies that for an agricultural land use it must be land that produces for sale in order words some commercial value. Is that what we are driving for or how is that consistent with what we have got written in our code?

Planner Fortner: Well, I think it is consistent I mean but I don't know if it... mostly it has to be a 10-acre parcel and then that that they are using as the farm and they are following the state guidelines or whatever is put in the special use permit so farming.

Commissioner Kadar: I understand but what I am saying is the city Code says you can have a farm you don't necessarily have to sell stuff – the State code says you can have a farm a farm use is basically a for sale or commercial entity.

Chairman Hurd: I see where you are going Commissioner Kadar and that actually ties into something that I was I'll probably bring up, but I'll just do mention here I think we might be better served if the city Code more closely referenced the state Code and try to sort of tie into those definitions unless as Commissioner Kadar was sort of alluding, we are not requiring necessarily production of things for sale.

Commissioner Kadar: That's the only point I brought this up I saw the two were inconsistent so we go with either one or the other and I agree with Chair Hurd that we should go with the state code so that we don't have any issues of ____ Maybe Paul can put his 2 cents into this one assuming he wants to.

Solicitor Bilodeau: Commissioner Kadar thank you thank you well I do know that the definition that the planning staff is now proposing it says such as growing and selling of crops greenhouses, so the word selling is in the proposed language.

Commissioner Kadar: Yeah, but I read that sentence as being the growing and selling of crops and then other stuff not necessarily selling the other stuff.

Chairman Hurd: It is kind of a or and whereas I think you are right the state Code is very clear it is when devoted to the production for sale. That's their piece.

Planner Fortner: Mr. Chairman ok so we had the Ordinance in the original ordinance at the end of the Ordinance it states as a state law and then in another version it as a state law and then it references 8330 8332, I think it is in one report I forget why we took that out I seemed like we took it out just because maybe when something was changed we just reference state law of if we do wanna just cite that provision of law.

Solicitor Bilodeau: I'd be fine with citing 8330 and the definition.

Planner Fortner: 8330 what about 8331 and 32

Chairman Hurd: Yeah, we need all three of them because those three-outline agricultural horticultural and forest land uses.

Planner Fortner: As from the state law references like in the Ordinance, I think was originally envisioned, I think.

Chairman Hurd: Does that address your concern Commissioner Kadar to be a little more tightly tied.

Commissioner Kadar: Yes, it does I just don't want any conflict with the state law. Oh, other than that I am good. Thank you very much.

Chairman Hurd: All right. Commissioner Silverman

Commissioner Silverman: I support this proposal particularly for the benefits that are described in option 3. One of the major objections when we were looking at expanding the annexation area was the lot size. It was a citizen's objection, and I think that has been answered by using the one-acre SE. I like the references tying back to the state legislature. The only question I have for Mr. Bilodeau is, does that also draw in all of the state's right to farm legislation? In a sense that if I am a farmer and I am spreading green mature at 5 o'clock in the morning or my cows are mooing and disturbing my neighbors, that there is a process outside of normal civil channels that has to be followed to deal with those disputes.

Solicitor Bilodeau: I have to admit I am not familiar with the state right to farm legislation so I couldn't give you a direct answer but instead of referring to these Code 8330 and 8331 and 8332 saying per State Code we would just use those definitions and maybe leave out references to the state code if we are trying to avoid that type of right to farm type of a claim.

Commissioner Silverman: I think that would be a good idea that if we limit ourselves to the descriptions that we just talked about, rather than trying to extend the State legislation into this particular idea it would eliminate a lot of future problems. I was involved with the right-to-farm when I worked with its leans very, very heavily ~~leaning~~ toward the agricultural interest which may not be appropriate here in our urbanized area.

Chairman Hurd: Yeah and Commission Silverman When I was reviewing the minutes I mean you had raised that issue before When I looked back through it cause I was looking at those sections those three sections are solely just the definitions of the uses so to me at least I felt like that we weren't entering into – Tom your emails on the screen – I thought at least that just referencing the state's definition of agricultural uses was acceptable without going so far as to say you know it is a recognized state farmland that extension so to me felt like we were holding back if we were just saying rather than list all of the agricultural uses and all of the horticultural uses or the forest uses we just say per these three sections from the state Code that define them.

Commissioner Silverman: And on the flip side I don't think it precludes the property owner from with 10 acres or more from meeting the state's specifications with respect to tax relief and other programs ~~and~~ I think there is a dollar value of the farm product that has to be sold every year to even qualify for some of the state farm programs. I think with Mr. Bilodeau's thoughts of just using those definitions as we described and excluding other references, I think we are on safe grounds here.

Chairman Hurd: Okay

Commissioner Silverman: One of the other reasons I support this Ordinance is agricultural uses tend to serve the same function as open space in communities. ~~and~~ I would like to use the phrase borrowing someone's open space if my property remains a 10-acre horse farm its functioned like the open space amenity of golf courses, athletic fields and that kind of thing within the community. And that's the end of my comments. Thank you.

Chairman Hurd: Now that brought up a point that I had in the back in May at the Council thing there was some additional proposed changes that you had put in there about the Code related to animals and the Code relating to finance to allow continuation of the farm taxation and such. Is that not part of our thing?

Planner Fortner: Those are in different chapters of the Code and that, so they are one is Finance the other is under Animals and so those are were a misdirect to Council.

Chairman Hurd: But it is something that you are still planning to bring to them?

Planner Fortner: That's right.

Chairman Hurd: Ok, good thank you. I will say also good job on the area regulations. I think you picked good numbers in terms of lot frontage, side yards and such. This was an item that had come up in our first conversation and I don't see that it really got addressed and I am not sure that it needs to be addressed but the question about discharging of firearms on farm property. I'll admit I couldn't at least initially locate anything in my county Code that said basically if you are on a farm its ok, I found a lot of stuff about you know you can't hunt in certain ways and such. Has there been any discussion about that being an issue Mr. Walton you don't think so either? Ok. Cause I know farmers and I know that they occasionally have to shoot things and the City is pretty strict about you know when you can and can't shoot things, so I just want to be sure that we are not creating a problem in that. My last comment and this are partly just from looking at the previous conversations I am personally not sure that two years is long enough. I would be open to ____ saying five years for holding off development but that is just me I haven't seen anyone else really speak to that as being an issue.

Solicitor Bilodeau: This is the Solicitor. There is a I did look into this a little bit and I am sure Mr. Walton will as well there is a limit to how long you can say someone can't file for a subdivision and I think I think somewhere around two or three years is about the limit if you get beyond that you are possibly going to face a legal challenge.

Chairman Hurd: Ok, all right I haven't seen that in the discussion or the notes about the Council meeting cause I think they were still saying can we do five can we do ten.

Solicitor Bilodeau: They wanted ten.

Chairman Hurd: Some wanted ten some wanted five. OK. In that case then if we are dealing with precedence and legal guidelines I'm ok then. All right. Any further Commissioner questions.

Commissioner Wampler: Yeah, I have a question.

Chairman Hurd: Commissioner Wampler yes

Commissioner Wampler: Regarding 8330, 31 and 32 are we going to remove the part where we add section 12 with the definitions that we had and replace the wording that is found in 8330, 31 and 32 or are we going to leave the wording they have in and make a reference to the State descriptions someplace else. Either way I think we need to rewrite something.

Chairman Hurd: I think you are right and that will come up when we are preparing to discuss the motion so I will ask Solicitor Bilodeau if he can sort of start to think about how we might edit that portion of the special use permit code to more tightly tie it to the State Code. Was that your question?

Commissioner Wampler: That is my question, yes.

Chairman Hurd: OK. Commissioner Stine

Commissioner Stine: Going back to my comment about keeping and boarding dogs – so just did a real quick check on the Delaware right to farm laws and it said that it voids any local governmental Ordinance that attempts to regulate agricultural nuisances. So, if we were to attempt to regulate the nuisance of dogs barking in a kennel or boarding you know it sounds to me like the Delaware right to farm laws would void any local governmental Ordinance that attempts to do that. So, I am not sure why or how a dog kennels how they relate to an agricultural use. I could see a cow a chicken a pig I don't understand why we need to give somebody their rights to then consider putting a kennel or boarding dogs you know at Downes Elementary School right next to the neighborhoods. You know you are going to create nuisance problems.

Chairman Hurd: Right. So that reason is the primary reason that approving the agricultural use as a special use action within the city because it gives the city control and I think that's to Commissioner Silverman's point is that we don't want to be saying you're a farm as per the state Code and all of the state Codes associated with being a farm you are an agricultural or horticultural or forest state use within the city subject to a special use permit. So, if the applicant came and said so I've got a dog kennel, Council could go yeah, I know no. Or they could say oh okay you are off to the edge there you got the train tracks on one side you got whatever maybe that's not a problem. You know it gives the applicant a chance to make their argument it gives Council a chance to have the conversation. But yeah, what we were specifically trying to avoid was to say you're an agriculture you're a farm per the State Code and all the rights that you have and no control. Does that sort of address your question Commissioner Stine?

Commissioner Stine: Well, if it is a farm, can we. I mean would it not fall under the Delaware rights to farm law if it is in fact a farm?

Chairman Hurd: Well, I think that is what we are trying to prevent is to say that when it comes into the city as an agricultural use it is being under our control now and not under the state Code.

Commissioner Stine: Can we do that?

Chairman Hurd: Ok yeah Commissioner Silverman I saw you waving I was just trying to make sure we addressed Commissioner Stine.

Commissioner Silverman: Back to Mr. Bilodeau – is there a difference between permitting a use and regulating a use? The right to farm specifically says regulating use – that means you can do it by right, but you control the hours of the kennel operation, the distance from property lines. But if you don't permit it up front then there is nothing to regulate. Is that reasonable logic?

Solicitor Bilodeau – Commissioner, I believe that is the very reasonable logic we are talking permit permitting and regulating are two different things.

Commissioner Silverman: Well then let's just simply modify our text and simply eliminate kennels. I understand that Commissioner Stine is concerned about the nuisance having lived next to a guy who bred hunting dogs.

Chairman Hurd: Well, I am just coming back to sort of how our conversation had gone previously this was I think this was the main reason why we moved this out of the by right agricultural use and into the special use permit so that we had some control – the city had control. Cause I assume the city could also revoke the special use permit I mean as a special use permit you could say hey you said you were just going to a breed horses and now there is a dog kennel. You know, that said you know your agricultural use is gone if I understand the process. So, it and that is partly why I want to make sure that Solicitor Bilodeau is kind of crafting this right cause we don't want to say you come into the city, but you are governed by the State farm Ordinances and such you are an agricultural use as defined by state code in terms of uses but not actions. Is that making sense. Does that seem to address your concerns Commissioner Stine?

Commissioner Stine: I am not sure to know enough about the Delaware right to farm to know whether we can subvert them or not, but I do know that if we can take the kennels out of a use for agricultural use then we could avoid it all together. It looked to me like Code enforcement had some concerns about kennels as well. From the notes

Chairman Hurd: Yeah, I am a little hesitant to start editing the state definition because now we could sit there and go well maybe you don't want swine maybe you don't want a pig farm and then maybe we don't want to and again I think that is partly why you know the main reason why we put it into the special use permit because it lets Council say you tell me what you're coming in to be a farm and what's your agricultural use and we'll decide if you can be doing that. So, it is much more case by case. It's entirely case by case. All right, Commissioner Kadar did you have a question?

Commissioner Kadar: Yeah, so let me be very clear on this before we go to any kind of vote or further discussion and Paul maybe you may want to get involved in this one. If we say in our Ordinance that we are following Delaware State Law 8330, 8331 and 32 then basically that gives us the guidance that tells us what a farm is. If we decide in the city that a farm is something else and i.e., this gets back to the question of the State Code says it has to be basically a commercial operation you either grow food flowers whatever or livestock and animals for sale and the city says no that is not our definition of a farm our definition is it's just an area that you can practice those things, but you don't have to sell anything. The second question then comes up if we call it a farm and the State says no that is not really a farm how we can apply a tax break to something that doesn't meet the definition of a farm in the State Code. I just wanna make sure we are going into this with our eyes open.

Chairman Hurd: I think that – Planner Fortner you wanted to respond.

Planner Fortner: Yeah, Yeah but I was going to say tax breaks are not up to the State it is just the use and the uses as written and as approved as a special use permit whether and so whether the

State considers them a farm or not that is between them and the property owner. We are just approving this use as written.

Commissioner Kadar: Ok so we are going with a special use permit that says that a farm is something else.

Planner Fortner: Well in our Code yeah, I mean right now we are talking about regulating a farm but it is not permitted so we don't permit it all so we've regulated it that way and that would actually have it as a use, and we are putting as a use under our terms is the way I interpret that.

Chairman Hurd: I think the thing to note here is that we are not approving a farm which is a defined term we are approving agricultural horticultural, or forestry uses.

Commissioner Kadar: Which is specifically what the state Code refers to.

Chairman Hurd: Right

Commissioner Kadar: And it says it's a place where you do that agricultural stuff for sale.

Chairman Hurd: Its true. So yeah, that may be why we have the language as it is cause want to just say we want to talk about the uses as they are outlined but maybe not lock it in as tightly to the State Code that may have been the intention, I do know that we are not going beyond just the definition of uses we are not going into any of the state Code that gets into farm operations or farm and such.

Commissioner Kadar: Well all I am saying is we need to be careful of how we write our definitions and make sure we don't run up against any state issues and I know there is state taxing issues associated with the breaks for farms that are used per the state Codes specifically and then we are going into the City of Newark and the city is going to have a different definition for what agriculture is and it is going to provide a different tax break which is not the same as the state's.

Chairman Hurd: Possibly yeah We don't know what that tax ordinance looks like yet but

Commissioner Kadar: Yeah, and I know – I don't want to get into the tax situation that is not our burden.

Chairman Hurd: No. All right. Commissioner Silverman did you have anything further you wanted to add?

Commissioner Silverman: Yeah, I don't think taxing is an issue here. That is between the property owner and the State of Delaware. They either qualify or they don't. They have 10-acres; they meet the sale of product; they meet whatever the state Code says for their taxing. This is a land use within the City of Newark, and I think we are well within our rights to circumscribe the kinds

of agricultural activity that's permitted in the City. This is no different than the definitions we have on styles of residential units.

Chairman Hurd: Right – for accessory dwellings or for uses.

Commissioner Silverman: For accessory dwellings or where you put a two-car garage doesn't make any difference.

Chairman Hurd: Ok. All right. Looks like most of the Commissioners commented. We are going to move to public comment. I'll just reiterate Everyone giving a public comment must identify themselves and speakers will have five minutes comments are to be addressed to the Commission only and need to be germane to the topic and each speaker can only comment once for each agenda item. I have seen no chat about people requesting to give public comment. Tom or Angela or you seeing anything? No, ok. And you said we have received no email comments, correct? Ok, I will open the floor then for public comments if you wish to comment just unmute yourself and then I can recognize you. All right, seeing none I am closing public comment and bringing it back to the dais for discussion which you have already had a fair amount of. Solicitor Bilodeau do we have do you think something?

Solicitor Bilodeau: Yes, Mr. Chairman, I think we have something here for you.

Chairman Hurd: Ok

Solicitor Bilodeau: So I think where we start, I am on page 6 where it starts with the number 12 there it would basically say I'd keep most of that it is an agricultural horticultural and forest land uses such as the growing and selling of crops, greenhouses, delete the keeping and boarding of dogs delete that out of there the raising of livestock, including but not limited to horses, chickens, sheep, and cattle and any agricultural use or similar farm related uses. And then after that I would have I am going to ah and I would say underneath that land shall be deemed agricultural and have that whole paragraph in there from 88 8330 and then underneath that land shall be deemed horticultural in use and have that whole paragraph and then the next one land shall be deemed forest use and have that whole sentence and then I would after those three paragraphs are added without any reference to the state Code then I would go back to the page 6 there and pick up with the a with listing the A, B and C.

Chairman Hurd: Ok so directly incorporate the Delaware definitions and not muddy things by referring to the State Code.

Solicitor Bilodeau: Right and don't say and don't have as outlined in the Delaware Code either.

Chairman Hurd: Ok, cause that is a little big.

Solicitor Bilodeau: Yeah

Chairman Hurd: I liked the previous one where it listed the specific sections but again OK. I can move that. Is there any further Commissioner questions or discussions before we move to the motion? All right, seeing none, Secretary Wampler are you prepared to form the motion?

Secretary Wampler: I am, and I was just going to say as detailed in the report but since we are really changing the wording quite a bit, I think I'll read the entire thing and that way people can see if I jotted down where it is that we want to go. So, this is what I think. I move that the Planning Commission recommend to City Council the addition of a new district RE Residential Estate minimum one acre lot size with the following changes to Chapter 32 zoning. To Section 32-9a add the following Section 32-9 RH district one family detached residential including RH RT RS and RE district a) in an RH RT RS and RE district no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses in Section 39-2b by adding the following: 12. Agricultural horticultural and forest land use such as the growing and selling of crops greenhouses the raising of livestock including but limited to horses chickens sheep and cattle and any agricultural use or similar farm related use. Land shall be deemed to be agricultural use when devoted to the production for sale of plant and animal useful to man including but limited to ___ and crops, grain and feed crops dairy animals, dairy products poultry and poultry products livestock including beef cattle sheep swine horses ponies mules or goats including the breeding and grazing of any or all such animals bees or apiary products for animals trees and forest products or when devoted to and meeting the requirements and qualifications for payment or other compensation pursuant to a sewer conservation program under an agreement with an agency of the Federal government. Land shall be deemed to be horticultural use when devoted to the production or sale of fruit of all kinds including grapes nuts berries vegetables nursery floral ornamental and greenhouse products or when devoted to and meeting the requirements and qualifications for payment other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal government. Land shall be deemed to be in forest use when devoted to tree growth in such quantity and so spaced and maintained as to constitute in the opinion of the state forester a forest barrier. A) property is supposed to have a minimum lot size of 10 acres b) property shall be permitted to subdivide to allow no more than two interior lots lacking street frontage and having shared driveways so long as a minimum of 10-acres is reserved for agricultural use on a single lot having the required street frontage, c) except as provided in subsection b) above for a period of two years after receiving designation no owner or equitable owner of such land shall be entitled to apply for subdivision approval. Amend Section 32-9c 1) minimum lot size by adding the following d). RE-One acre. Amend Section 32-9c 3) minimum lot width by adding the following: d) RE 120 feet. Amend Section 32-9c 5) building set back lines by adding the following d) re 50 feet. Amend Section 32-9c 6) Rear yards by adding the following d. RE 50 feet Corner lots in an RH RT RS and RE district the rear yard maybe reduced 20% in depth to allow for the skewing of a residential dwelling on the lot. Amend Section 32-9c 7) Side yards by adding the following d. RE 15 feet with a minimum aggregate width of the two side yards of 35 feet Amend Section 32-98.2 Density bonus by adding the following g. in RE district up to two dwellings per two-dwelling units per acre with 10% of total site under review for site plan approval set aside for parkland and open space.

Chairman Hurd: I think you have got it. Do I have a second?

Commissioner Silverman: I'll second.

Planner Fortner: Mr. Chairman

Chairman Hurd: Yes

Planner Fortner: This is alternative would it make more sense to put the you know the three Code definition agricultural land use horticulture into the definition sections in 32-4 and then taking them out of section b 12 you can keep that as a tighter Ordinance just adding those three definitions to 32, I think its 4-definition section and we'd put them in there and the alphabet

Chairman Hurd, Yeah, that does make sense I think we'd done that before we have updated the definitions, okay, I'll propose an amendment to the motion to remove the definitions of agricultural, horticultural and forest land uses and place them into was it 32-4 definitions and or just under definitions for the code.

Planner Fortner: No, the definitions section we note. I believe that is section 4 right I can't confirm.

Chairman Hurd: Ok I am not going to say them now I just going to say the definitions do I have a second for the amendment?

Commissioner Silverman: You got a second for the amendments.

Chairman Hurd: Ok thank you. and Commissioner Silverman you were seconding the original amendment, I believe right?

Commissioner Silverman: Correct

Chairman Hurd: Okay, any discussion further discussion on the motion?

Commissioner Silverman: Mr. Chairman, I do.

Chairman Hurd: Okay

Commissioner Silverman: Can I have a fruit and vegetable stand on my property? Can I have a commercial enterprise? Under this provision?

Planner Fortner: That would all be approved under the special use permit they would have to give permission, so if they came with just a farm use and then later, they wanted to update to have a do some sort of sale they would have to go back to Council and as a special use permit if there is any kind of home-based business.

Commissioner Silverman: Ok

Planner Fortner: So, they would have to spell it out. It is not automatic.

Chairman Hurd: Does that address your question.

Commissioner Silverman: Yes, it does.

Chairman Hurd: Okay, any other discussion? All right, moving to the vote.

Commissioner Silverman: We need to vote on the amendment?

Chairman Hurd: Oh, good point. Okay, so first moving to the vote on the amendment to the motion. Commissioner Wampler.

Commissioner Wampler: I vote yes.

Chairman Hurd: Commissioner Kadar

Commissioner Kadar: Aye

Chairman Hurd: Commissioner Silverman

Commissioner Silverman: Aye

Chairman Hurd: Commissioner Stine

Commissioner Stine: I vote yes.

Chairman Hurd: and I vote Aye as well. All right the amendment to the motion passes 5-0. Moving to the vote of the motion itself. Commissioner Kadar.

Commissioner Kadar: Aye

Chairman Hurd: Commissioner Silverman

Commissioner Silverman: Aye

Chairman Hurd: Commissioner Stine

Commissioner Stine: I vote yes.

Chairman Hurd: Thank you. Commissioner Wampler

Commissioner Wampler: Aye

Chairman Hurd: and I vote Aye as well. Motion passes 5 -0, All right. We have an agricultural use in our residential estate. Okay which is good because in our usual tradition of approving and recommending things for things that are following in the Agenda that takes us to Item 5.

5. Review and consideration of annexation, rezoning, minor subdivision, and special use permit for "Agricultural Horticultural and forest land uses, for the property located at 751 Paper Mill Road.

Just a reminder especially for those joining us for the first time, we will begin with staff and applicant presentation, questions from the Commissioners, then public comments and then further discussion by the Commissioners and then the vote itself. Everyone giving public comment needs to identify themselves you will first read into the record comments given by email prior to the meeting if members of the public would like to comment on this Agenda item, please send a message through the chat function with their name and which Agenda item _____ speakers will have five minutes for their comments. Comments are to be addressed to the Commission only and need to be germane to the topic. Each speaker can comment only once per each Agenda item. All right, Director Gray, who is leading this off?

Director Gray: Chairman Hurd, that would be myself Director Gray let me pull up my presentation which I just had – too many windows open – bear with me – there we go.

Chairman Hurd: We have more screens.

Director Gray: I know we do – I do ok, well good evening everyone, I am Mary Ellen Gray, Planning and Development Director for the City of Newark this application is for annexation rezoning and minor subdivision with special use permit for 14.49 +/- acres of property at 751 Paper Mill Road. The applicant is requesting approval to create one additional 1-acre building lot for a residential structure. This application will require a special use permit for agricultural use and is contingent upon the creation of a new RE zoning district that was just discussed. The existing zoning for the parcel is New Castle County for S which is Suburban. The existing uses are approved in the Suburban zoning district. The proposed zoning district as I just mentioned is RE. As a parcel is requesting annexation a rezoning is required to change it from the existing New Castle County zoning to the proposed City of Newark of zoning of RE and the map, I just have listed here which is the property in question. This property does conform to the comprehensive development Plan V. This parcel was added to the Comp Plan on November 23, 2020 as part of Planning Area 7. If this annexation is approved the parcel will be assigned the land use of Residential Low Density which is designated for it by the Comp Plan. So just to mention this proposal includes an agricultural use for special use permit and staff feels that this proposal meets these requirements. This proposed development meets all the requirements detailed in the Municipal Code in the City of Newark because a special use permit in minor subdivision plan which special use permit with the subdivision advisory committee recommended conditions should not have any negative impact on adjacent and nearby properties and because the proposed use does not conflict with the comprehensive Plan V the planning and development department suggests that

the Planning Commission approve both the annexation the rezoning and the major subdivision as well as the minor subdivision and that concludes my presentation. Thank you. Chairman Hurd.

Chairman Hurd: All right, thank you. I think you forgot though in your note the special use permit. I don't think there is a minor subdivision in this there's just a

Director Gray, Oh, my apologies I am sorry in my trying to make it brief – a special use permit, yes, thank you.

Chairman Hurd. Ok, that's fine. All right, is that Mr. Walton whose is going to be presenting next. Or

Mr. Walton: I am sorry I am going to have Mr. Edwards present.

Chairman Hurd: Ok,

Mr. Walton: I am going to try and keep quiet at these things. The applicant

Chairman Hurd: All right, thank you Mr. Edwards.

Mr. Edwards: Hi, pleasure to be with all of you this evening. My name is Baird Edwards, and I am representing the applicant I am going to be pretty brief here so as was noted by Director Gray, what's being sought tonight is recommendation of approval for the annexation and rezoning of subdivision and the commission and the conditional use special permit for agricultural use of the property. Next slide please. So, this is an overview of the slide of the site you can here that it is farm use – next slide please – and what is being sought here is in part the subdivision as you can see on the left-hand side right about the middle is where the one-acre is going to be subdivided and parsed out. Yep, right where the cursor is. And so, what the applicant is requesting obviously is that you approve this. Now under the special condition here tonight I apologize if you can hear the sirens in the background where I am its downtown Dover and there is apparently a fire somewhere, so I apologize. So under the Code for a conditional use approval right we need to demonstrate that this requested use will not have an adverse effect on the health or safety of persons residing or working within the City of Newark boundaries, will not be detrimental to the public welfare or injurious to property or improvements within the Newark boundaries will not be in conflict with the provisions of the for the purposes of the Comprehensive Development Plan we would submit that this property has been used as a farm for decades it has been a good neighbor there haven't been any adverse impact on the area for many many years by approving this all that is going to happen is the farm would go from 14.4 approximately acres down to 13.4 so there'd be a slight reduction in the use and intensity of the farm and there would be the addition of a house. This house as you can see is gonna be set some 200 or so feet back from the Paper Mill Road its gonna hardly even be noticeable minimal traffic is associated with a one unit one dwelling subdivision and so you know we would submit that there is gonna be very minimal if all impact most people probably won't even notice any change. And so with that you can just go to the next slide we just have a couple pictures here next slide just the current property the

existing conditions the farm ... and this is the purpose behind this annexation and to be able to continue to preserve this as a farm for many years into the future so it is not expected that outside of the one unit subdivision one acre that there is going to be any change in the agricultural use it will just continue as it is. ...All right and so with that as an overview of what we're requesting we respectfully request the recommendation to Council for the annexation the rezoning the subdivision and the special use conditional use approval. So, thank you very much.

Chairman Hurd: All right, thank you. We will begin questions with Commissioner Silverman.

Commissioner Silverman: I have no questions beyond what was already commented on in the Director's report however I do have a curiosity question. I noticed that the southerly side of the parcel is owned by DelDot, can anyone shed any light on that? Is that highway right away was it acquired as part of right away and was just leftover I am just curious.

Mr. Walton: Mr. Silverman this is Max Walton I am not familiar with that it must be leftover highway right-away.

Commissioner Silverman: Ok thank you.

Chairman Hurd: All right, thank you. Commissioner Stine.

Commissioner Stine: I have no questions at this time. Thank you.

Chairman Hurd: All right, thank you. Commissioner Wampler.

Commissioner Wampler: I see no detriment to anybody by doing this I think it is a good idea and I have no questions.

Chairman Hurd: All right, thank you. Commissioner Kadar.

Commissioner Kadar: A point of clarification on page 2 there is a statement at the last paragraph on that page that says its anticipated that the annexed properties would convert to the City of Newark water and sewer services. Anticipated – is that a requirement or not?

Given the fact that we have essentially no services there right now. So, the reason I bring that up is because my next question would be is there a sewer line and water line running somewhere near the property to tie into? Can someone clarify where that currently exists? Because there is a statement on page 4 that says that the costs associated with this project, they're considered to be insignificant so if we are going to insist that there is a tie into the City water and sewer system and there is no local or nearby connection then how is the cost to do that insignificant?

Mr. Edwards: This is Baird Edwards again the attorney, would you like me to respond to that or would you like staff to?

Chairman Hurd: Mr. Walton also looked like he had a response. You want to fight it out?

Mr. Walton: If I may Mr. Edwards just go ahead and speak there will be water and sewer run across the road with the development of Milford Run and it will be designed Milford Run will be designed to run the water and sewer lines to the property they will certainly at my house will connect to water sewer and electric and I believe that we just haven't gotten that far for his mom's house I believe it is a requirement under the City code it connects to sewer so you will get by with a house that I would build add water sewer and electric we can do that or build the house until we got the water and sewer lines in from the City that rest at our costs to get them there.

Planner Fruehstorfer: If I could add this is Tom Fruehstorfer, I'm a Planner the new property would need to hook to the sewer, but the existing property would not be required to but certainly it would be beneficial for them to switch over when septic was no longer a good option for them. And as far as the electric goes it would be cost quite a bit probably to transfer the existing home over to City electric, but it would be basically up to the Applicant to decide whether he wanted the new home connected to City electric or not. He could certainly pay to run the power there and it would be available but there is already power up there from Delmarva Power and that our office probably would not have a problem with them selecting Delmarva Power if they wanted to. We would be happy to connect them with electric if they wanted but it would not be a problem either way if there's another option.

Commissioner Kadar: No, I understand the issue around the power, my question is it acceptable to have a septic system in the city?

Planner Fruehstorfer: Yes, it is.

Commissioner Kadar: Ok, so he will not it would not be required to tie into the City sewer system or the City water system? Is that correct?

Planner Fruehstorfer: For the existing home would not need to immediately connect to sewer or water when the new home was constructed, I don't think you can add a sewer system in the City but if something were to annex in with a sewer, we do not I am 99% sure of this we do not require it immediately it is just whenever that septic failed, they would have to connect to City it's my understanding.

Commissioner Kadar: As soon as that home is built on that one-acre subdivided lot and that home needs to tie into the City water and sewer system is that correct?

Planner Fruehstorfer: Correct.

Commissioner Kadar: And is City or is the homeowner going to pay the price to run the sewer lines under Paper Mill Road to tie into the subdivision across the street or is that?

Planner Fruehstorfer: Otherwise, we won't get it, yes.

Commissioner Kadar: Ok that's all I wanted to know. I'm fine. Then the costs truly are insignificant. Thank you very much. I'm done.

Chairman Hurd: Ok thank you. I just had a quick question which is sort of since this goes towards our previously conversation about uses what are the current agricultural and such uses on the property?

Mr. Walton: Horses and chickens currently and probably over the summer we will probably gonna do some growing and things we're do a little bit of [inaudible] and do some sweet potatoes or something like that or we are trying to debate on that.

Chairman Hurd: Ok, and I only bring it up because on the plan there is a new building marked kennels so having had this conversation.

Mr. Walton: Could I respond to that I'm just everyone is aware as a matter of full disclosure there was a commercial kennel on our property that existed without complaint from the time I was a sophomore in high school which I ran and my sister ran after that and for maybe 10 years beyond that that kennel has been closed for 10 years we do not have any interest in having a commercial dog kennel there so I don't want that to be a hang up but there is a building marked kennel it's just there there's no dogs in it it's just used for storage.

Chairman Hurd: Ok, that's just why I wanted to bring it up cause we just had a conversation about kennels, and I don't want to hold that up. Ok, is that it for Commissioner questions on the first round? All right, we will move to public comments. I have seen no chat requests for comments, Planner Fruehstorfer no emailed comments on this item? Ok, if there is anyone so I will open the floor if there is anyone who wishes to speak on this item All right seeing none, I am closing public comments, bringing it back to the table. All right Commissioners any further discussions I feel like we have used up all of our discussions over the planning area 7 and the Milford Run and the everything else All right I am seeing no discussion and so Secretary Wampler we can move to the motion. And remember we have four.

Secretary Wampler: Right, okay the first one. I move that we recommend that City Council approve the annexation of 751 Paper Mill Road as shown on the Becker Morgan Group Walton Subdivision, Annexation, Minor Subdivision, Rezoning, Annexation, and Special Use Permit plan July 12, 2019 with the Subdivision Advisory Committee conditions.

Chairman Hurd: thank you, do I have a second?

Commissioner Silverman: So, moved, Silverman.

Chairman Hurd: All right, thank you Commissioner Silverman. Any discussion on the motion?

Chairman Hurd: All right, moving to the vote. Commissioner Stine.

Commissioner Stine: I vote yes.

Chairman Hurd: Thank you. Commissioner – lost my place here – Commissioner Wampler.

Commissioner Wampler: Aye

Chairman Hurd: Thank you, Commissioner Kadar.

Commissioner Kadar: Aye

Chairman Hurd: Commissioner Silverman.

Commissioner Silverman: Aye

Chairman Hurd: and I vote Aye as well. All right, and I realize I haven't been asking for reasons for the vote. Okay, that's my bad. So, let's try to do this for the rezoning. Let's move to the next oh I am sorry wait first motion passes. All right, to the second motion.

Secretary Wampler: I move that the Planning Commission recommend that City Council approve the rezoning of 751 Paper Mill Road from NCC S-Suburban to RE as shown on the attached Exhibit E – Rezoning Map dated January 26, 2021 and the Becker Morgan Group Walton Subdivision Annexation, Minor Subdivision, Rezoning, Annexation, and Special Use Permit plan dated July 12, 2019 with the Subdivision Advisory Committee conditions

Chairman Hurd: Thank you, do I have a second?

Commissioner Kadar: I'll second. This is Kadar.

Chairman Hurd: Thank you Commissioner Kadar. Any discussion on the motion? All right, moving to the vote. Commissioner Wampler.

Commissioner Wampler: I vote Aye with the recognition that this would be a welcome addition to the City, and I see no negative impact on any of the area around it.

Chairman Hurd: All right, thank you. Commissioner Kadar.

Commissioner Kadar: I vote Aye as well citing Commissioner Wampler's vote.

Chairman Hurd: Perfect, that is exactly how we were viewing it. All right Commissioner Silverman

Commissioner Silverman: I vote Aye, and I am in agreement with the Department's recommendations.

Chairman Hurd: Thank you. Commissioner Stine:

Commissioner Stine: I vote yes because I think this project lays the groundwork for any potential expanded Planning District 7 in future annexation of other homes in that area that would logically and hopefully follow.

Chairman Hurd: All right, and I vote Aye as well for the reasons stated in the Department report and those stated also by the Commissioners. All right property is rezoned. Next motion.

Secretary Wampler: I move that we recommend that City Council approve the 751 Paper Mill Road minor subdivision, as shown on the Becker Morgan Group Walton Subdivision, Annexation, Minor Subdivision, Rezoning, Annexation, and Special Use Permit plan dated July 12, 2019, with the Subdivision Advisory Committee conditions as described in the January 26, 2021 Planning and Development Report.

Chairman Hurd: All right, thank you. Do I have a second?

Commissioner Silverman: I'll second. Silverman

Chairman Hurd: Thank you Commissioner Silverman. Any discussion on the motion? All right, seeing none we will move to the vote. Commissioner Kadar.

Commissioner Kadar: I vote Aye in recognition of Planning and Development's Department report dated January 26 full agreement.

Chairman Hurd: All right thank you. Commissioner Silverman.

Commissioner Silverman: I vote Aye my reliance on the concurrence and the Department's recommendation report.

Chairman Hurd: All right thank you. Commissioner Stine.

Commissioner Stine: I vote Aye in concurrence with the other Commissioners response.

Chairman Hurd: All right thank you. Commissioner Wampler.

Commissioner Wampler: I vote Aye and in agreement with the position taken by the other Commissioners.

Chairman Hurd: and I vote Aye as well for the reasons stated in the Planning and Development's Department report. All right, that one closes. Ok last motion.

Secretary Wampler: I move that the Planning Commission recommend that City Council approve the Walton Subdivision, 751 Paper Mill Road special use permit for agricultural use as shown on the Becker Morgan Group Walton Subdivision Annexation, Minor Subdivision, Rezoning, Annexation, and Special Use Permit plan dated July 12, 2019 with the Subdivision Advisory

Committee conditions as described in the January 26, 2021 Planning and Development Department Report.

Chairman Hurd: Thank you, do I have a second?

Commissioner Silverman: I'll second. Silverman

Chairman Hurd: Thank you Commissioner Silverman. Any discussion on the motion? All right seeing none we will move to the vote. Commissioner Silverman

Commissioner Silverman: I vote Aye in concurrence with the Department's recommendation report.

Chairman Hurd: Thank you. Commissioner Stine.

Commissioner Stine: I vote Aye and I wanna thank Mr. Walton for preserving his family farmland I think it is wonderful.

Chairman Hurd: Ok Commissioner Wampler.

Commissioner Wampler: I vote Aye based on the recommendations of the Planning and Development Department.

Chairman Hurd: Thank you. Commissioner Kadar.

Commissioner Kadar: I vote Aye because there are no negative impacts on the adjacent nearby properties, and it does not conflict with any of the development patterns in the nearby area.

Chairman Hurd: All right, and I vote Aye as well for the reasons stated in the Planning and Development Report and those stated by the Commissioners. All right, motion passes.

Mr. Walton: Thank you everyone.

Chairman Hurd: All right, thank you. Hopefully that's the last we hear for a while. All right, oh look and we are starting to pull ahead of schedule a little bit. All right, that takes us to item 6.

6. Review and consideration of major subdivision special use permit and parking waiver for the property located at 94 East Main Street.

Chairman Hurd: All right, thank you. Hopefully, that's the last we hear for a while. All right, oh look and we are starting to pull ahead of schedule a little bit. All right, that takes us to item 6. Review and consideration of major subdivision special use permit and parking waiver for the property located at 94 East Main Street. All right, Director Gray are you taking this one?

Director Gray: Yes Chairman Hurd, I am thinking of a brief presentation I just lost my screen again I don't know what's going on here bear with me, again here we go okay well good evening again this land use application is a major subdivision special use permit and parking waiver for the property located at 94 East Main Street including a new subgrade parking structure with a 7-story 104 room hotel on the front and behind the Green Mansion building which is being preserved and 6 stories of residential apartments consisting of 48 two bedroom units over a ground floor of parking. This property is zoned BB central business district, and these uses are allowed in this zoning district. Given the importance and historically significant interest in the building known as Green Mansion I wanted to discuss this issue briefly. This building is included in a list of Newark's historic buildings and sites in Section 7-19c of the city Code. As an historic structure the entirety or a significant portion of its exterior architectural façade is protected from destruction without showing economic hardship. The Plan does preserve a significant portion of the historic Green Mansion structure and meets the city Code requirements for historic building preservation. In fact, at about 34 feet of the 70 ft deep building is being retained as part of the new structure and is incorporated into this plan. Additional details regarding this are included in the staff report. The proposed plan does conform to the comprehensive development of Comp Plan V and will not require any amendments for this project. This project includes a hotel and apartment that I just described which both require a special use permit approval in the BB district and staff feels that the proposed hotel and apartment use is expected to meet this special use permit requirement. Chairman Hurd has asked me to clarify when on the comments in the staff report under land use division in the SAC comments as conditions of approval where we indicate that this review assumes that the front and back structure are both considered the same building. I would like to clarify that as stated in the staff report on page 4 and confirmed by the Applicant in their SAC response letter dated December 1, 2020 that these two structures are considered one building. I would like to talk briefly about the parking waiver and that was also the subject of the response letter by the Applicant that was sent out this afternoon. The number of parking spaces required for this project is 210 spaces. The Applicant is requesting a parking waiver for a reduction in the size of off-street parking spaces and the number of off-street parking spaces as required by Code. The Applicant is requesting a reduction of off-street parking standards to reduce 16 parking spaces to compact parking spaces and the Applicant is also requesting a reduction of 39 parking spaces that are required by Code for a total of 55 spaces under the parking waiver code. Staff notes that a review of the parking waiver request is under the purview of Section 32-45 of the Code and a review criterion for the Planning Commission is found in this Section 32-45b2 and is described in the SAC Report. We had discussed at the last Planning Commission meeting and for expediency I will not read these criteria into the record, but I ask that the Planning Commission refer to this section and let me know if they have any questions regarding that. As indicated in the Applicant's parking waiver statement that is included in your staff report dated January 4, 2021 - still getting used to saying that - the waiver is due to the fact that the redesign now allows the City to access between the two parking lots currently managed by the City. That's found at Exhibit I. In addition to the parking waiver statement for this Section 32-45b9 the Applicant is required to pay the City a fee in lieu of their required parking spaces. The fee in lieu of the parking spaces may include a payment based on the fee schedule included in that section of the Code under 32-45b9 or the Applicant may pay what's called an in-kind service when donations granting of easements or right-a-way or similar parking approved

activities. The Applicant's parking waiver statement does not address this section of the Code, rather the Applicant addresses this Code section in the SAC response letter dated December 1, 2020, which is Exhibit J where the Applicants indicates the redesign now allows an access between parking lots controlled by the City which would not be allowed with the original design which is a tremendous benefit to the City and the citizens and therefore the fee in lieu should be waived. Staff concurs with the Applicant that the access to both sides of Lot 3 is a notable benefit to the City, but the Code does not allow for this requirement to be waived. So, the Applicant needs to satisfy the fee in lieu parking spaces provision per 32-45b9. So, staff calculates the fee in lieu payment of the 55-space parking waiver to be \$288,640. Rather than the fee in lieu payment staff suggests a fee in lieu comprised of the following of a 99-year parking access lease and City management of the 16 parking spaces on the northern edge of the property and to allow public parking in the hotel parking garage where there is availability and to install a parking countdown sign visible on East Main Street to notify the public of parking availability. Staff suggests the Applicant use passport parking software in order to be compatible with the City. I want to take a moment to talk about design review and this is at the request of Planning Commission Stine had asked us to expand upon the design review in light of the fact that the design committee is not meeting and has suspended their meeting so the staff reviewed this project and to look at how it comports with the Code for Chapter 27 appendix 13 the design review for downtown commercial properties and as well as the design guide downtown design guidelines and these review standards are included in the Section D which includes appropriateness of design elements and general architectural character. Exhibit J includes this review. This project meets the Code and guidelines for almost all of these provisions and they there are a couple of guidelines that they we have found that it doesn't meet that I will call your attention to and that is for pedestrian access and pedestrian connectivity and ADA accessibility whereby there doesn't appear to be pedestrian or ADA accessible access from East Main Street to the hotel the apartments and now that is from looking at the plan and perhaps the Applicant can talk about that a little further in their presentation. This proposed development meets all the requirements detailed in municipal Code of the City and because this special use permit and major subdivision plan with parking waiver with the subdivision advisory committee recommended conditions should not have a negative impact on adjacent nearby properties and because the proposed use does not conflict with the Comprehensive Plan V the Planning and Development Department suggests that the Planning Commission recommend approval on the major subdivision plan a special use permit for the 104 room hotel and a special use permit for the 48 residential unit apartments and the parking waiver and staff recommends approval that the Planning Commission approve the parking waiver and instead of the fee of the excuse me instead of the fee in lieu payment that the Planning Commission consider the 99-year parking access lease and City management of the 16 parking spaces and to allow public parking in the hotel parking garage where there is availability and to install the parking countdown sign visible on East Main Street and that concludes my presentation. Thank you.

Chairman Hurd: All right, thank you so much. I do just want to highlight two items from the one Code interpretation that say that the two towers in such is a single building is grounded in the building code and it is not a thing that we are going to be debating and it is going to be an accepted fact as part of the report and the other thing I just want to point out because this has

come up the height the 7 stories and the height is a result of the floor bonus the height bonuses that are part of the BB zoning and are not waivers or reliefs or grants or anything they are a part of the Code as its in there. All right, we will now move to the Applicant's presentation one thing I will just say, and you may be planning to do this to just hit on the highlights of the letter you sent because I am not sure that everyone has had a chance to read it thoroughly.

Applicant – Jeff Lang: Ok thank you Chairman Hurd. We actually have a slide presentation and I don't know who is controlling it I so we actually have a number of slides we wanted to go through so I don't I'm not sure that one of our last slides the picture you guys are all looking at right now there you go so I would like to thank Miss Gray for the nice summary of the proposed project redesign and here we are this evening myself obviously Chris Locke is here and Chris did send a letter of clarification or at least of interpretation of clarification on the parking waiver situation which we will get to later on in the presentation. We just wanted to bring you up to date on where we were obviously, we are back in front of you and hopefully of council in the upcoming weeks to discuss a redesign of the project and move to the next slide we will start talking about why we are here. So obviously we are all dealing with the issues of the pandemic we as a developer are not immune to the same problems that everyone else has in the world and we were starting to look at the viability of this project and as we started looking into our financing you know in the hospitality industry in general started thinking how we are going to build this building obviously we loved the original design we love the original scope but pretty much the office market fell apart which we had a large component of office space and obviously we have a hotel which many of us know not many people are travelling to now. So, we move to the next slide we want to talk about really our long-term commitment to the City, I mean we basically have a BB zone property in the middle of downtown many other developers have come in front of you and will continue to come in front of you as well as ourselves to some extent talking about the market conditions and what is really viable downtown. At this point in time a hotel is really not a viable business opportunity in the financing industry so what we decided to do is started to look at options for the redesign of this property knowing that we had a commitment to build a hotel. So, we started went down the road of okay can we redesign the existing structure we have? We had a structure that had 144 rooms 20,000 ft of office space a tremendous amenity decks a large parking garage it didn't seem feasible to do that. So as we continued to move through our options if we could move to the next slide now we started thinking about ok we got the Green Mansion we obviously wanted to maintain the historic structure and thinking about accentuating it because as we went through the last review process we did get a lot of comments as to should we redesign the old building to accentuate the Green Mansion should we eliminate the small building the three story building that is on the left side of the building that was approved. If we move to the next slide, we will look at direct comparison of what was approved a number of months ago and what is proposed now. So really what we did is scaled down the size of the hotel to the much more manageable size it is 104 rooms but still viable we had to go through a review with the Hyatt Organization because we have a franchise agreement with them so we couldn't just scrap the hotel without having discussions on where are we going to building one was there another location in town and or what type and size of hotel to meet a Hyatt place requirement you need to be between 95 and 110 rooms at a minimum so we were looking at a redesign foot print and said okay can we figure out a way to put this building in the front of the

site. We obviously then looked at what are we going to do with the back of the site we took the 20,000 feet of office space we talked about another structure and if you look at the next picture we basically went through a myriad of options of redesign and we just don't present to you the first thing that comes to our mind we basically start thinking about all these different scenarios what happens if we build you know the building to the left building to the right balconies no balconies we did have a lot of input from Hyatt we had input from our architects we had input from our structural engineers and we also had input from the community. So, if we move to the next picture we want to arrive at where we came up with you know the final project. So here is our site as you know it basically goes from 102 to Café Gelato. It is 1.15 acres it is an assemblage that took us Chris probably what 5 years to put together. If you all remember we actually ended up with the Green Mansion because we worked with Erin Cox and her family to relocate her onto Center Street and while we were doing that project 5 or 6 years ago. And then we acquired the old Abbotts shoe site. So, let's move to the next 2 slides really one at a time. This is the site plan of the original building. As you can see it is a large building it basically encompasses the entire property it is 7 stories front to back except for a 4-story little side to the left but really it had a parking garage it was a very large building. The next picture will show you how the buildings have really been reduced it is really two 7 story buildings on top of a parking garage, but the parking deck is really one story it is like a Plaza. Let's move to the next slide too we will also talk about and Miss Gray brought up the connection to lot 3 in the back. This was basically showing how the old building the original building blocked connection between Center Street side of the site and the site that is behind M&T. The next slide will show you how we created an opportunity to reconnect those portions of the lot truly for the benefit of many people in the City, the community in general, and also all the businesses behind all the buildings because the businesses out on the street rely on the customers to park in this lot and if it is confusing you go in the wrong lot you can't get to the right place this allows unimpeded access back again across this entire lot. Let's move to the next slide please. This actually shows you how the original building was placed up by the street, it was very close to the street because we were trying to match the Green Mansion setback. The next slide will show you how what we have done is basically eliminated the smaller 3-story building that was supposed to be a mirror image of the Green Mansion or a compliment to it and basically eliminated and created an open patio. So now we have a much wider and expansive open area out on Main Street, and it does accentuate all sides of the Green Mansion if you remember the old picture, it basically shows that one entire side of the Green Mansion was covered up by the new building. Let's move to the next slide. This basically gives you a comparison the building the project on the left is what was approved at a big, large 3-story building next to the Green Mansion. We were trying to architecturally mimic the Green Mansion with some of the details obviously it met with varying opinions as do all architectural design, but we have done now is actually really accentuated the Green Mansion you see all three sides of the Green Mansion obviously not this picture you can only see two, but it does create a great public open space and a great street scape for Main Street for users of that patio area. Next slide please. So, our project attributes are really we have an improved efficiency of design we basically have two buildings that are approximately 67 x 125 very logical to build very logical from a structural design perspective we have now accentuated the Green Mansion's presence on the street increased open space not only on the street but also throughout the entire site because we have a big open space between the two larger buildings in the back and then we also have

the connectivity of lot 3. Obviously, it is an ideal location we are all very familiar with we feel that the development of a hotel is still going to be a tremendous economic driver in the long run for our downtown area and obviously we still have the relationship with Hyatt which we are excited about bringing into Main Street. Next slide please. So Here is the ultimate redesign we actually as you saw in that other picture there is a number of gyrations to get to this point, so what we have done is try to mimic some of the coloring of the brick and obviously show you some different attributes we do have balconies on the front corners for some of the rooms the other thing we haven't talked about is the Green Mansion is now an integral part of the hotel design. Before it was actually going to be a freestanding building, we were trying to put some retail space in, and we weren't sure what we were going to do with the second and third floor. The first floor of the Green Mansion now is going to be the meeting space for the hotel directly connected to the lobby. The second and third floors are going to be suites, there is going to be 2 suites on each floor of the second and third floor of the mansion. So now you can actually go really stay in this old building which would be I think a great opportunity for many former University of Delaware alumni that come back to town many residents who want to stay in the building and people that historically live there just think they can come back you know 20 and 30 years later and stay in their old apartment for a night or weekend visiting their children that might be going to school here. Next slide. This just gives us a number of different pictures that shows you the other side of the building from probably about the Barnes and Noble location. Next one please. We can go to the next one also too. This gives us a scale from the side of the building up towards where say National Five and Ten if I am in the M&T parking lot I'll look over and I'll see the big open space between the two we have a nice Plaza area with some landscaping there nice pedestrian connection between the two buildings move to the next one please. This gives you a look at the residential building in the back you know nice simple construction clean lot of mimicking architectural details because one of the things that we have talked about is the long-term use of this facility we have it as residential units but if for some reason it needs to be rebranded or reused in a different form later it could be a condominium building it could also be an extension of the hotel. So, we wanted it to kind of look the same so that there is a common branding when you are up on that Plaza area. Next slide please. This just gives you another view of the street scape the nice Plaza area and how the entrances to the lower parking area are kinda hidden through some landscaping. Next one please. This just gives you a comparison of the old design versus the new design and how much more open it is. Next one please. This is the original slide that was up there when Miss Gray was giving her presentation this basically is the Plaza area between the two buildings. That's the main drop off for the hotel in the back when you come up to the Plaza this the nice pedestrian walkway with potential seating area out there you know for people visiting or just gathering after the COVID incidents we'll start gathering again one of these days. And also, next slide please, Plan considerations one of the other things we wanted to focus on in this design and took into long consideration was the entrance and access entrance and exit from Main Street because obviously we took out this huge redone Main Street project that was undertaken for 2 years. We didn't want to go and tear up the whole street again and change all our entrances so our original entrance our new entrance and our original exit and new exit are exactly the same so that is a great benefit we are not going to have to change the street at all we not going to have to change any of the lights we don't have to do any of that kinda stuff. We also obviously had to open access at the back in the city lot and amassing the building has been greatly

reduced. Next slide please. The Code compliances as Chairman Hurd brought up and also Miss Gray, I think we are Code compliant in all areas of this project except the parking component and our waiver really is less than 20% of the requirement. Next slide please. So overall we have 171 parking spaces we have enough parking adequate for the hotel use which is not only important to you as Commissioners, but it is also important to Hyatt and their brand I mean obviously you now a major brand is going to require a certain amount of parking and we have met their requirement. We also want to stress is that we do really need to control the 16 spaces in the back because it gives us the minimum of one parking space per residential unit which we feel is really a minimum in the market conditions at the present and we are obviously looking for a couple compact spaces and most of them are due to structural design issues with the columns coming down into the lower area and it is a significant reduction from the original design. We had 40 in the original design we only have 16 in this design. Next slide please. This is some of the stuff that Chris touched on in his letter and maybe he can review this in more detail with you.

Applicant – Chris Locke: Sure, so as I stated in my letter that you received this afternoon we are willing to pay the parking fee waiver and we calculated it as \$181,263 and the problem with the difference between us and the Planning Department is that we believe that the 16 compact sizes should be not part of that waiver fee for the reasons that I stated in my letter and also we had been granted 40 compact parking spaces without paying a waiver fee when we had the original proposal of the project. As Jeff pointed out those 16 spaces that the City would like us to give them a 99-year lease is really an integral part for the marketability of the apartment units and then of course the adaptability of that building later on if it does go to an owner-occupant or if the hotel business so warrants an expansion for a different type of hotel. Next slide please. One last thing I am sorry. The public access to the hotel garage. As we promise in our original proposal that was approved, we are willing to allow the garage to be accessible to the public we just want to control the management and maintenance of that parking garage rather than give it over to the City to manage. Next slide.

Jeff Lang: Lang: to jump back into the rest of the presentation, the fiscal implications, obviously it's a large project that is going to have a significant increase in tax base obviously due to the recent lodging tax that was passed a year or so ago I mean this is going to be subject to the lodging tax which will create a significant revenue source utility income ancillary business income obviously permitting and use fees and the other thing that we really want to focus on is a hotel is really going to spur additional business development on the street. We obviously seen a number of businesses have hard times in this pandemic and what we are hoping is that we all get through this pandemic and we start looking back to normal life again, but we also need to attract businesses we need to attract different types of people to our street again. Obviously, we have college students all year round they're here 9 months of the year I mean kinda all year round anymore but this business opportunity here I think is immense for the street. Next slide please.

Chris Locke: and just as Jeff states we do a different fiscal impact then maybe the Planning Department does so this shows you the revenue that was being created by the old Abbott's shoe and the old Green Mansion when they were in use. And then what you will see in the hotel and apartment use. Obviously, you will see a substantial increase in the gross utilities and talking to

City Department they realize about a 20% profit on utilities of course the lodging tax will be huge the property tax will be significant after the project is done so you will see there that even after the building permit phase you are going to generate per annum about \$229,000 there is a \$17 benefit to the City on an annum basis as the project is going forward. Next slide please.

Jeff Lang: So really to sum up the project obviously we think it is a superior hotel brand Hyatt we have a great local operator TKO who operates the Springhill right down the suite street knows the market very well. We obviously know our ownership group Chris, myself and a number of other local Newark people. We think that it is going to be a great addition to the street great taxable revenue and additional revenue sources for the street and for the City the interconnectivity and the really the project redesign and we didn't touch on it that much in the beginning, but the project redesign really allows this to be financed. In today's world of finance hospitality industry is pretty much you know on its ear right now and the office business is kinda like up in the air so the ability to get this project reapproved with a residential component is going to allow us to have a nice orderly project redesign and construction ability to ensure that it will be here for many many years. Next slide. That's obviously the nice patio deck we talked about and I think you have one more slide at the end. So obviously our presentation is finished, and we are here to answer any questions. Thank you very much.

Chairman Hurd: All right, thank you so much. I am going to exercise the Chair's prerogative to extend the meeting until 9:30 I'll get that out of the way. All right, we will begin questions with Commissioner Stine.

Commissioner Stine: Thank you. The residential units at the Hyatt Place are they apartments for geared towards students?

Chris Lang: Well as I am sure Commissioner Stine you know apartments under the Federal Housing Act cannot be geared towards any particular group so the apartments are 2-bedroom apartments and will be available who may want to lease them in the marketplace.

Commissioner Stine: Ok fair enough. This is being modeled after the Hyatt Place in Dewey? I take you have been there, and you have seen that operation?

Chris Locke The Hyatt Place in Dewey is you know another Hyatt brand hotel and it is in Dewey, but I don't quite understand that it is designed after that it is not designed after that no.

Commissioner Stine: So, the Hyatt Place in Dewey Beach has luxury condominiums for sale coupled with the Hyatt hotel, so the luxury condominiums have the benefit of upscale you know Hyatt amenities, so I was just wondering if there is no market for that here.

Jeff Lang: Yeah, of design of the Hyatt Place is really more of a prototypical design you know as far as the typical there is one in the Riverfront this newly constructed Riverfront in Wilmington. It is about 110 room hotels in Wilmington it has a nice you know normal lobby area has its small little lobby bar has a breakfast area fitness center pool all those kinda things those are the things

that are provided in the typical Hyatt Place prototype which is what this building now would be more similar. The Hyatt Place in Dewey is more of a resort assemblage in the site is so large that they needed to do other things on the site and that's how they put the condos in the back of it and they have a restaurant big banquet facility in that facility.

Commissioner Stine: I was really excited to see the project come before the Commission cause I do try to stay in my lane, and I have a very extensive background in hotel management, so I am really excited about this project. One of the things that I did was I did I was a hotel general manager for over 20 years and I managed resort hotels and a result of the seasonality of those hotels we were required to or we used the J1 Student Program to bring workers for four months out of the year under the J1 Program and we provided housing for about 125 students in each of two of our resort hotels in a separate building very similar to this arrangement that you are proposing and my experience told me that the students mixing with the guests created many issues for the guest experience. So, I am just wondering if the balconies of the apartments facing the balconies of the hotel might make for a bad guest experience at your hotel.

Chris Locke: Yeah, we do have balconies in some of our other buildings such as 132 E. Delaware and Center Street Loft and what we do is the balconies as such is that you really can put two chairs and a table and you know we really have had no problems with our tenants using the balconies for exactly that purpose sitting you know with a friend maybe having a conversation and that's about it so we haven't had those problems. We do have a very good management team in place so that if we ever do have someone that is not adhering to the rules and regulations of that balcony use we come down pretty hard on them I think it is a fair point that you raise and we will manage that obviously we want that guest experience to be wonderful as you know being a former hotel manager it is all about customer reviews and ratings and getting those stars so it is a legitimate concern and we will definitely address it if it ever becomes a problem. I think you will appreciate this one of things we are most excited about is this project is that use to Green Mansion. You know in the original proposal The Green Mansion as Jeff said was just going to be kinda there on its own now it becomes an integral part of that life blood of the hotel the conference rooms are now on that first floor and these rooms that will be both on the second and third floor well now people will actually be able to use and enjoy the historical significance of the Green Mansion rather than just being a mausoleum.....We are very excited about connecting it.

Jeff Lang: I do think it is a good point about the balconies that Chris touched on the one plus is that because we do own both structures we are not going to potentially have as much conflict if it was an apartment building owned by someone differently we wouldn't have as much control over the process but now we will and obviously if it directly impacts negatively impacts the hotel we are obviously gonna address that and we have actually started thinking about that just from a design perspective I know that Chris mentioned it is a smaller area and I think the area is only 3 x 7 so it is not like that balcony is you know large enough to fit I mean....could what happens if somebody certain people over the next thing you know there they are screaming yelling about having guest coming into hotel. It would definitely be a point of concern. So, I think it is a great point he brought up that.

Commissioner Stine: Yeah, I think you can my experience tells me that you can almost count on it. You know I mean I think it is something that you are definitely going to have to address. Where do the commercial deliveries where do they come in? How does the truck drop off you know food and beverage or?

Jeff Lang: So, there is an option obviously you can get a certain size truck up the ramp and around up onto the Plaza area because of the design if you pull up the site picture on slide 9 you will be able to see how you pull a truck up you turn and there is a loading area and then you pull back down and pull back out to the street. So, if you had a tractor trailer you can't do that but if you had a typical box truck or most of the deliveries come to hotels, we been talking to our hotel management companies' linens and things like that they come in smaller trucks. We don't have an extensive food and beverage operation here, so we don't have to worry about a tremendous amount of food and beverage coming in so really gotta deal with linen and the hotel business...in the hotel business delivery system more than I do. But we discussed that at length with them we actually talked about with Hyatt, and they didn't seem to have concern over that component of the process.

Commissioner Stine: So, is that vestibule area where the loading area is designated is that a guest entrance or is that a back of the house entrance?

Jeff Lang: No that is a guest entrance. The loading area the kitchen is in the back left over by the stairs so they would come in and they would bring any kind of food in there the employee area is over there too so they would come right in there and drop off linens and things so there is gonna be some back of the house in the back of the building but obviously you are probably gonna take the deliveries at an earlier time of the day than your typical guess is going to try to check in and you can check in obviously by pulling below and going if you are a guest you can go pull downstairs and park and come up into the building where those elevators are. Those elevators if you are slide 9 you see the elevators at the stair there, they go all the way down to the parking area so if you are down to the parking area there is a small lobby elevator lobby there so you can go into that elevator lobby and come right up into the.... over the hotel. So, it is going to be an education to some extent, but it is like I think with today's hotel guests you send them out you know a welcome packet when they get their reservation, and it helps them how to park where to park and obviously other things about Newark that they are going to want to know when they come to visit.

Commissioner Stine: and so, the reason my bigger concern is are those parklets existing or are you putting those in?

Jeff Lang: In?

Commissioner Stine: yeah, at the street

Jeff Lang: They are already there. They are park of the redesign of the street, so they have already been installed.

Commissioner Stine: I don't know about you but everyone I see has got tire treads all up and down I just don't know how trucks maneuvers out of that out of your spot with those, those parklets there. Cars can barely do it.

Chris Locke: Larger...routed trucks because we have other commercial tenants on Main Street, they kind of figured out where to park on Main Street a lot of them will pull off onto Center Street or they will do their deliveries early in the morning at 7 a.m. 6 a.m. so they kinda of figure out where best to park the truck and do the delivery.

Commissioner Stine: I was going to suggest that maybe you don't add those if that was something you were adding to allow some a truck to pull over and load and unload and go upstairs but it looks like he is going to have some limitations with those existing parklets. Ok, so trash compactor area, is that does that go in and out is that go in and out is that on the city is that taking away any City parking spaces in that location?

Jeff Lang: It is part of the resign of the lot, so this project has another life of its own as it relates to portion of the lot, we actually already did some of this work associated with the previous approval, so we relocated a transformer at a significant expense eliminated an island recreated the active points for the trash compactor because the City Parking Department did have an issue with all these different miscellaneous trash locations all throughout the back of the lot back there. So, we worked with City staff and Miss Gray will obviously be aware of this you know the trash compactors intent to really handle a number of different facilities back there. It is technically on a portion of our property and a portion of the city property, but we have actually worked out an arrangement though to redesign that whole lot for them.

Chris Locke: I think currently I believe four trash cans that large cans _10 yarders? ____ that would be removed because of the compactors. So, you pick up those spaces.

Commissioner Stine: Yep, great thank you. And the 48 apartments in the parking calculation there is one space per apartment?

Jeff Lang: Yeah, there is that minimum one space per apartment there is actually an extra 9 spaces I believe so some of the units end up with two spaces but there is at least one dedicated space it is not a double space for each apartment.

Commissioner Stine: Ok

Jeff Lang: So, if you see under the building the apartment building there is a couple of double spaces that's actually just makes it able for if you rented apartment 301 you might get two spaces but if you rented 306 you only get one space. So, it'll be more dictated by how many people in the unit who needs a space more than whoever doesn't need a space and we have it in other facilities around Newark and it tends to work if they are related to each other. If Chris and I live together we can manage two parking spaces, there but if you know I have a different apartment I can't expect the guy to move his car because I want to move my car. So, we worked that out

and we know that we found I should say that it is very important to have at least one space per a residential unit downtown at a minimum because it is very hard to rent the units that don't have any spaces. We do have a couple of older buildings that still do not have any spaces and they tend to be the hardest units to rent in our portfolio.

Commissioner Stine: That's interesting to hear given the desired couple parking from apartments so that in your opinion having parking makes the apartment more valuable? More marketable?

Chris Locke: More marketable yeah it is really a tale of two cities so to speak. You know when these older buildings were first built there was no requirement for the parking. But then about a decade ago 12 years ago we saw a request by the City Council to stop putting parking in for all the apartments and what that has now created is, is the market almost entitlement of having parking in their apartment. Ideally and I was on a committee with Commissioner Hurd and with Director Gray, ideally, we would love to get that to the point where we can decouple it but right now market wise, we think we need at least one space per apartment.

Commissioner Stine: Ok, I think that is it for me. Thank you.

Chairman Hurd: All right thank you; I am going to interrupt briefly to seek the Commission's approval to extend the meeting to 10 o'clock so that we hopefully can complete this agenda item and the following ones which would be lovely to close out. Do I see any disagreement with that? Ok, all right, so by acclamation we are extended to 10 o'clock. All right, Commissioner Wampler.

Commissioner Wampler: Yeah, where do I want to start, I just want to I think that one of the things that people didn't like about the original plan that the structure was really massive and I like the design the way it now I do I guess I need to hear I just now read the letter that we got and it looks like the 99-year leasing agreement is not under consideration and they have a different calculation so I would like to get I would like to get some information from I guess from Mary Ellen and other people what how that changes what we want to do about the parking waiver because that was a big contingency that we were placing on it.

Solicitor Bilodeau: This is Solicitor Bilodeau I have a question along those lines for Jeff and Chris, you said that you know you are allowing access to our both the lots in the back there. Now would that require an easement for us to have an access.

Jeff Lang: No, we would not require an easement.

Solicitor Bilodeau: Yeah, cause I was thinking that you know under parking waiver your letter says you'll pay \$181, and the parking waiver statute does allow reductions for easements and access agreements so possibly the waiver could be somewhere along the lines of 181 in access agreement for that back lot and allowing the public to use that parking lot but not manage your control of it at all. So that was just my thought.

Chairman Hurd: I think Commissioner Wampler to your concern I share them in some ways as well from our previous conversations about applying sort of external City required conditions on the parking waivers so I think that that is something we should be make sure that we are having a discussion about when we get to that point about sort of the granting of the waiver and conditions upon it and where we land on that.

Commissioner Wampler: So, you want a later discussion and so we are actually taking a vote on part?

Chairman Hurd: Well, I think it is worth asking the question like you can ask the question is the Applicant you know what you are willing to provide or do and I think that they have answered most of that.

Commissioner Wampler: Well, I guess what I am really getting at is I am okay if instead of having the...and all that if they are just will to pay the waiver, I think the big issue is we calculate the waiver to be the fee to be \$288,000 and they calculate it to be \$180,000 so that is over \$100,000 difference and

Chris Locke: Commissioner Wampler the delta on that is due to the 16 compact parking spaces. We are being charged \$6,711 per space even though we are providing the space. That is why I put in my letter that our original plan we actually got approved for 40 compact parking spaces without paying a waiver fee. And since we are providing it, we think we should not have to pay that fee and as I said in my letter we could have gone not providing as many spaces and paying less of a fee. We could redesign it and not have the 16 compact fees and say have 8 more regular parking and we would ask for a parking waiver of maybe 47 units in total and that fee would be substantially less. So, we are just saying we are asking to be recognized that we are providing more spaces by using those compact so therefore we shouldn't be penalized. The ideal of the parking waiver fee way back when in the 90's when it was passed was to charge the developer a fee if he was not provided a parking space and then really the intent of that was that money was supposed to be put in a security lock box to eventually build a city parking garage someday. But of course, that didn't happen those fees were put into the general fund and used to general operate. But that was the intent of paying these parking rates. We are providing the space we're just doing a 9X17 or 8x18 instead not providing the space at all.

Commissioner Wampler: No I understand your position and I understand your calculation what I am saying is if we are not going to do anything about the an agreement on the 99-year lease then that goes back to having a fee and you calculate the fee and we calculate the fee would have very different figures and I want to make sure that we look at how these calculations were derived and which one is going to be used whether are you anticipating whether the City is going to just recalculate and use your figure or is the City saying no we have done the calculations and if you are willing to pay the fee and not get into the 99-year agreement then the fee is the original fee. It is a big difference you know for the \$1,000 bucks I'd say we'd just skip over that but then when we get to talking about the parking waiver that amount of money is a lot of money and I think we need to see which figure we are actually talking about.

Chris Locke: I think it is a very valid point Commissioner Wampler and we only received the report at I think 2:30 – 3 o'clock on Friday and we had to digest all those comments and then respond, and we tried to respond as quickly as possible. We are a little confused because as I said in our original proposal, we had more compact parking spaces and we were not charged the fee and now we are being charged the fee for less compact parking space. So, we were a little surprised when we saw that. We thought we were going to have to pay for the 39 parking requirements that we did not meet but we didn't think we were going to have to pay for the reduced size of the parking spaces from 9x18 to 8x18 and 9x17 which were going to call by one sq foot here and it seems you know that is a lot of money for one square foot per parking space it's about \$107,000 difference, I think.

Chairman Hurd: And I'll just add I am not sure how much we need to get into the calculation of the fee as much as we get into the granting of the waiver with or without conditions.

Commissioner Wampler: That was really my question. Let me go here real quick. When we get to the part about the parking waiver or we just going to vote on whether we recommend that there is a parking waiver and let the City figure out what the fee is going to be, or do we need to address what the money is going to be and if we don't need to address the money then I am more comfortable with it.

Director Gray: This is Director Gray if I could interject. Code indicates that there is for a parking waiver that there is a fee in lieu and the fee in lieu either needs to be a payment or basically what we would term an in-kind so the difference is Mr. Lock is correct is the 16 spaces so in looking at the Code I do not see an exception for a space reduction for when under the parking waiver so that is something that we missed in the first plan and in looking at the Code so that is kind of where not kind of that's where staff is in looking at the Code provision that Mr. Lock had articulated in his letter is correct and articulating the Code provision under 32-45b he was actually correct in saying that that's the provision. Now in that provision that is the parking waiver provision so as so our interpretation in reading that is that it is a parking waiver and for parking waiver there needs to be a fee in lieu so that is kinda of where we are, and I would certainly defer that interpretation to Mr. Bilodeau if there is any other questions on that. So that is how staff arrived at that at that delta between the hundred between the fee Mr. Lock came up with and the fee that staff came up with. Thank you.

Chris Locke: and this is my third consecutive planning commission meeting and so I am going to talk about you know we do talk in our letter about the exception in 32-4a88 that it specifically says that when you ask for parking standard waiver 9x18 to something else it allows it excepting it to be the zones districts to where the parking plan options submitted as per approval pursuant to 32 45 b and I state in my letter those criteria which we clearly meet and as Mr. Bilodeau eloquently opined in his legal opinion in January when there is an ambiguity in the Code that ambiguity goes in favor of the developer. I think here the fee was strictly for those and if you look at the historical debate of this provision it was to have developers pay when they did not provide the parking space. It was not when a developer is providing a parking space, but that space is not 9x18 and 32-4(a)(88) clearly gives exception to that when you are in the BB district,

they had the intent of saying hey look yeah, we want all our parking spaces 9x18, but we also intend the BB district they need to change that a little bit and therefore we want to add that section allowed.

Chairman Hurd: Okay we may be getting ahead of our self but what I am hearing partly is that we may as a Commission do this in two pieces and say we will for example we would approve the 39 space waiver the 39 spaces not being provided if I am looking at the maps right I am not ___ and separately a size waiver basically for the 16 compact spaces and that sort of breaks it into two pieces so that then the City can say ok we calculate the fee in lieu for the 39 and the size waiver is basically a size waiver not a parking a provided parking waiver. And that might split the baby effectively. All right, did you have any further questions Mr. Wampler?

Commissioner Wampler: I do not, thank you.

Chairman Hurd: Ok, thank you. Commissioner Kadar.

Commissioner Kadar: Yes I am not going to dwell on the parking waiver I do have a question about parking however but first of all let me state that I would think that we would somehow consistent with the comments that our solicitor said earlier that we would have some agreement that would allow unfettered access between the two lots across the 16 space divide and your first inclination was to say no we are not going to put anything in writing and I have a concern about that but you can work that out at some point in time. The question I have is on page 9 of the City's presentation we talk about the 99-year parking lease and I don't want to dwell on that, but I want to dwell on the next paragraph that says allow public parking in the hotel parking garage when there is availability and install parking countdown visible to East Main Street to notify the public of availability. Who determines availability?

Chris Locke That would be based on use of the hotel so each day we will know exactly how many rooms are rented and each room gets one parking space so we would change that counter everyday knowing the availability. So clearly in January we'll have lot more parking spaces available probably in the summertime as well but other times we may not. So that is changed on a daily basis and it is very easy to do, and we have more problems complying with that recommendation.

Jeff Lang: So one of the other thing I want to point out is in our previous approval we had our hotel managers here and they will tell you that most people don't check into hotels until later in the day so you check in the hotel at 3 or 4 and you check out many times at 8 in the morning so this parking facility would be very underutilized between 9 in the morning and 3 in the afternoon which is a great time to encourage public use for the business development or business community...and especially for lunch convenience . So, we will wanna do that we will wanna do that for the benefit of the local business community many of which are our tenants funny enough. So, we are going to be motivated to do that whether we are required to do it or not. We are more than willing to do that, and we want to comply with providing the space when available.

Commissioner Kadar: Ok so essentially you would reserve parking spaces in the underground parking garage for actual guests at the hotel plus reservations that you have on hand and those would change about check-in time which is 4 o'clock, is that right?

Jeff Lang: that's correct.

Commissioner Kadar: Ok, you would manage that, and you would adjust the parking sign out in front of the hotel.

Jeff Lang: Exactly right, yes sir.

Commissioner Kadar: Ok, I'd like to see that in writing.

Jeff Lang: Yeah, we are in agreement to do that. We don't have a problem with that.

Commissioner Kadar: All right, that's all I have. Thanks

Jeff Lang: Thank you.

Chris Locke Thank You.

Chairman Hurd: All right thank you. Commissioner Silverman.

Commissioner Silverman: I am going to start with the parking. To start with ... the ugly side of this discussion, ... is the same as I said in a previous review of application [141 Main St.] at Lovett and Main Street. I don't think he is planning Commission should be involved whose going to manage whose going to buy and provide equipment whose is going to sweep up the parking in the afternoon... that is not a purview of the Planning Commission. We deal with granting a waiver; the mechanics of how that waiver is met, is a contract between the City, City Council and the Applicant ... so something needs to be done on that point. Now on the good side. I like this proposal. I think it is a significant improvement over the other proposal. One of my colleagues already mentioned the mass of the building. If I am living in the apartment units behind the hotel and I am looking to the northwest, that is going to be one heck of a view looking up White Clay Creek Valley. Something that most people don't get to see in Newark, I have been on the top of a hundred-foot aerial ladder in the back parking lot. It is kinda an incredible view. ~~of the~~ I like integration of the original building into the activity of the hotel. And the thing that I like most is, Tom if we can go back to the second to the last slide that shows what was described as the Barnes and Noble street view, there we go, yup, that one. A lot of thought went into this public area. With the original proposal I like the open public area that was part of the hotel. I think the raised patio is going to be the place to meet in Newark for outdoor activities. It answers some of the questions that have been brought up by the public with respect to conflicts with outdoor dining sidewalk use ... do you really want to be right next to automobile exhaust? The landscaping that is shown in the front of the building extends the existing retaining wall. It acts as a visible screen which hides the entrance to the underground parking. The adjusted position of the hotel being

set back from the original building completely breaks up the linear view that exists with a lot of Main Street. I recall the last time we were worried about the 22 ft set back of the front of the building from the edge of the curb line. ~~Here~~ Now, there is plenty of open space. Its publicly visible and publicly available. So, I like the proposal. I like the Applicant's proposal. I heard the word condominium mentioned with respect to the residential units in the back. The only thing I don't like about this proposal ... I don't like the idea of restricting the resident use to two-bedroom units...and if I have the opportunity later tonight and I may carry this over to the next meeting I have some thoughts on the two-bedroom standard that exists within the BB district that is used as a bonus. But all in all, once the parking issues are worked out, I do intend to vote in favor of this project, referring back to the Applicant's slide that lists projects attributes, they are some of my reasons. Thank you.

Chairman Hurd: All right thank you. I will also echo that I think that this I think giving it a second chance I think you have come up with a better project in terms of matching the relationship to the street all of those things. I will just sort of say cause this hasn't really been covered but the pedestrian accessibility in general accessibility you know for those using mobility devices I am not seeing how that is quite being addressed and if that is something you are able to discuss.

Jeff Lang: Sure, yes, it is actually a good point. I think one of the pluses about and if we can go back to the site plan which is on slide 9 because of the way that the Green Mansion sits up it is very hard for us to build a building that is down low and have the Green Mansion kind of you know it's kinda sitting out there by itself. So, we had to pretty much raise the building and allow access around the side of the building so to get if you are handicap you would come up the part the sidewalk by 102 and you would actually cross into the sidewalk where the vestibule is in back of the building. So that is how you would get into the building from the street if you were handicapped and trying to access the street because the issue would be because if you came out on the patio you would just have steps to get there. So, you do have access if you pull downstairs to go in the elevators and come back up to the first floor level and then back up the back and then down and we do have an easement already existing in place with the 102 property which we happen to own cause it was required as part of our other project approval and we were actually using that similarly for our ADA compliant fee to get access to the street. So, it is a very similarly designed as how we had it before funny enough.

Chairman Hurd: It is just that when I am looking at the site plan there are steps in that sidewalk along 102 there are two sets of steps before you get to your access way across the driveway. ...path...

Chris Locke Yeah there is a ramp on that side of 102 and then we will have a depression ADA compliant so that they can cross over to the sidewalk on this property.

Chairman Hurd: Yeah, I see it says existing handicap ramp but there are also steps showing there.

Chris Locke: There are no steps.

Jeff Lang: Yeah, there are no steps.

Chris Locke: I just shoveled the snow there a couple days ago.

Chairman Hurd: Ok, then you are going to need to fix the drawing because right now it looks like the only way to get in there is to go up the driveway so

Chris Locke: Yeah, we will correct that then because there is an ADA compliant ramp that there and accessible.

Jeff Lang: Councilman Hurd does it say steps at the bottom of that.

Chairman Hurd: well, it's just a horizontal line across the sidewalk that are shown on other places as being steps.

Jeff Lang: So those horizontal lines up here are the ramp that is basically creating a new ramp that would be depressed on the 102 it is right across from the parking spaces in the back of the hotel.

Chairman Hurd: Ok, graphically that needs to be cleaned up because you know you kinda go up and then there is steps.

Jeff Lang: Oh yeah, it's actually that's probably a denotation of a ramp unfortunately it looks like steps.

Chairman Hurd: ok all right so in that case then that does kinda get you and assuming that you have space to get around the transfer box it looks like maybe though with some work to the sidewalks you can get to the apartment building as well.

Jeff Lang: There is going to have to be an ability to get to the crosshatch ramp right there its actually looks like a brick cross walk it takes you over from 129 to 128 and then takes you down the ramp.

Chairman Hurd: ok, cause that was a concern of mine is that it seems kinda of inhospitable.

Jeff Lang: Well I agree with you we actually struggled with this in our design trying to figure out how to do it because we wanted to have the nice patio out front if we put a big ramp out front then ruins the patio you know you have a 40 ft switch back so this because this already existed and we were using it for the last design we actually just said well why don't we just reconnect with it and that's how we had to do it.

Chairman Hurd: ok

Commissioner Silverman: Mr. Chairman

Chairman Hurd: yeah, Commissioner Silverman

Commissioner Silverman: You are referring to the area looking at the drawing ~~now~~ where contour 128 comes across on the right-hand side of my screen.

Chairman Hurd: I am not looking at the grading plans I am looking at the first sheet which sort of the overall plan.

Commission Silverman: Yeah, that's what's in question, yeah, that does appear to be steps that should simply be clearly marked ramp ADA compliant ramp.

Chris Locke: Right, we'll make the changes.

Chairman Hurd: Let me see what else. This may be an issue of the rendering that wall that you've got separating the driveway underground and the driveway above to my eye it sticks out so far that you can't quite see the second driveway entrance. I do see on the drawing a note about directional sign.

Jeff Lang: Right so we haven't cleaned it up on the rendering, the architect took some liberties with the height of that wall that wall has to be a stepped wall, so it actually clearly shows you that you have two options and not you know...and then you don't know what you are doing behind it.

Chairman Hurd: Yeah, if it were more the height of the wall across the front that would be more

Jeff Lang: Yeah, I think you are right I think that it needs to be pushed back a little bit in steps as it goes up away from the main street.

Chairman Hurd: Ok

Jeff Lang: That a good point the rendering guy...

Chairman Hurd: You are looking at it and going right there... Did you have I mean the parking people had also talked a little about maneuvering inside around the parking on the main level on that plaza about the fact that sort of you pull into this lane and if you didn't find parking you had to basically try to U-turn or back up or do something with more of a response to that issue?

Jeff Lang: I think what's going to happen is that if you are a hotel guest and you come in here you actually would drop off or pick up someone due to some convenience parking maybe during check-in and then you would have to pull back down and go around the street to pull into the garage. Inconvenient but the other way to do it would be to change flow of the traffic which means we would have to redo the entire traffic flow and DelDot would probably have all kinds of concerns about it that why we kept the flow the same exact way that it is already done.

Chairman Hurd: Ok

Jeff Lang: So, I think as you become a guest later on or a second visitor you are going to not even pull up to that deck and loading area in the plaza you going to actually pull right underneath the building cause you know that that is where you should park.

Chairman Hurd: So, you expect most of the plaza parking is apartment building?

Jeff Lang: The plaza not so that why there is a planter there and there is actually going to be bollards there so all of these front 20 spaces are dedicated for the hotel.

Chairman Hurd: Ok

Jeff Lang: The other 10 spaces you actually don't access from this front Main Street at all. It is bifurcated meaning you have to come off of Center Street to get into the parking for the apartment building. So, the if you in the apartment building you have segregated parking the spaces you use is the spaces that are under the building the 10 spaces out in front of the building that are in front of the hotel and the 16 spaces along the back so if you count all those up it ends up adding up to like 57 spaces which is the 48 one for each unit and the 9 extra.

Chris Locke: So those 10 spaces in that plaza will be designated to apartment 207 so those people know space is available because I am not there.

Chairman Hurd: ok yeah there may be a plan that shows that more clearly but it is at least on the overall plan that that's not quite clear that there is the parking is zoned that way so that may also why the parking department has some issues with sort of the new ring in there. Yeah, I think to your point though if the flow is reversed then you could you know come in the way we used to come into lot 3 go past the vestibule come out back on the main street zip up and go under the underground we would actually lead you to the thing instead of having to go down the street turn around come up Academy and give it another shot so

Jeff Lang: Yeah, it's kind of inconvenient but I think after you understand it and we send out information to hotel guests they gonna its kind of like going to a more urban hotel and you go ok well where am I going to park you do your research before you get there not just show up and go oh, I should have thought about this we got here.

Chris Locke: Also, DelDot wanted us to go this way because they wanted to take off how we used to have a traffic light there and people would weave there to get out of that hole.

Chairman Hurd: Okay thank you. Yeah, we can't fight DelDot very well. All right well that does it for me for questions for the Applicants. Any further questions from the Commissioners before we move to public comments. Commissioner Silverman did you have a question.

Commissioner Silverman: No

Chairman Hurd: Ok, all right we will move to public comment. I do not see any requests at the moment for public comment Tom you actually have no emailed comments ok I will open the floor then for anyone who wishes to unmute reminder you have 5 minutes comments must be addressed to the Commission and must be germane to the topic. If you are on the phone *6 will unmute yourself and then I can call on you. Do I see anyone. All right I am not seeing anyone asking for public comment so oh someone is coming in.

Tom Wampler: Hello, I am not a sir I am Tom Wampler the city is out in front of my house doing something to the electrical and our power is out so I have been listening over the phone but I have no connection so I will continue on the meeting with my phone but when it is my turn to talk if I will unmute myself I didn't see how to do that and how do I mute myself again. *6 again?

Chairman Hurd: Maybe *6 again

Tom Wampler: Yes, ok yeah at first, I tried this I'm glad you saw it but

Chairman Hurd: If not just keep your line open and I'll just call on you

Tom Wampler: ok, yeah maybe I'll just do that I'll just be real quiet.

Chairman Hurd: Ok, the excitement of our virtual meeting

Tom Wampler: Yeah, all of a sudden it just crashed.

Chairman Hurd: that's fine, ok, so, Commissioner discussion. Any we can go around, or we can just does anyone have further comments or discussion? OK, I will just say one thing then...previous conversation and I think that this was highlighted in the conversation for 141 East Main last month and the month before I am I think in agreement that our conditions for parking waivers shouldn't necessarily include City requested negotiations I feel like we can grant the parking waiver we can have conditions on it and that could be things like in this I do actually agree with Mr. Lock and his letter that it should be conditions that are kind of agreed upon to some extent with the outcome and so in this particular case you know the Applicant had already in the previous proposal offered public use of the parking garage and the parking area was going to put out you know a countdown of availability counter I think mandating making a condition about leasing and shared use and management I think is outside our purview and I feel more comfortable saying here is the parking waiver there is a fee associated and the City and the Applicant can have a negotiation outside of our realm about how that fee is satisfied and whether it is through cross actions agreements or in some cases the lease or the parking management or such I think we are getting bogged down in that conversation and at times feeling like we have to grant the waiver so that we can get the shared parking agreement and you know feeling like we are kind of being not quite held hostage but being that we are now part of the negotiation and forcing the Applicants into positions that they may not be ready to do. So that is my little soap box on that. Any further discussion or shall we move to the motion. All right, I don't see

anything. So, Commissioner Wampler are you in a position where you can read the motions? I lost him again. Commissioner Wampler

Commissioner Wampler: I think I am back if you can hear me, I am back.

Chairman Hurd: I can hear you are you going to read the motions, or do you need me to do that?

Commissioner Wampler: I can do that it keeps cutting in and out but maybe we can do this. All right, I move that the Planning Commission recommend that City Council approve the Green Mansion, 94 East Main Street Major Subdivision Plan as shown on the Kairnes and Associates Special Use Permit Parking Waiver and Major Subdivision Plan dated September 8, 2020 and revised January 27, 2021 with the Subdivision Advisory Committee conditions as described in the January 29, 2021 Planning and Development Report.

Chairman Hurd: Thank you, do I have a second?

Commissioner Silverman: I'll second.

Chairman Hurd: Thank you Commissioner Silverman. Any discussion on the motion? All right, seeing none we will move to the vote. Commissioner Kadar

Commissioner Kadar: I approve based on the fact that it meets the Comprehensive Plan and there are no building changes required and the design in my opinion is a superior design.

Chairman Hurd: Thank you. Commissioner Silverman.

Commissioner Silverman: I vote aye and because of the reasons just cited by my colleague and in addition it has no negative impact on adjacent and nearby properties.

Chairman Hurd: All right, thank you. Commissioner Stine.

Commissioner Stine: I vote is yes, I appreciate the design, I hope to see it converted to condominium ownership in the future, but I wish the best of luck and thank you beautiful design.

Chairman Hurd: All right, Commissioner Wampler

Commissioner Wampler: I vote yes for all the reasons already listed.

Chairman Hurd: All right and I vote Aye as well for the reasons stated in the Planning and Development Report and those by the Commissioners. Motion passes 5-0. All right moving to the second motion.

Commissioner Wampler: All right, I move that the Planning Commission recommend that City Council approve the Green Mansion 94 East Main Street Special Use Permit for a 104-room hotel

as shown on the Kairnes and Associates Special Use Permit Parking Waiver and Major Subdivision Plan dated September 8, 2020 and revised January 27, 2021 with the Subdivision Advisory Committee conditions as described in the January 29, 2021 Planning and Development Report.

Chairman Hurd: thank you do I have a second?

Commissioner Silverman: I'll second.

Chairman Hurd: Thank you Commissioner Silverman. Any discussion on the motion? All right seeing none we will move to the vote. Commissioner Silverman.

Commissioner Silverman: I vote yes for the previously stated reasons.

Chairman Hurd: thank you. Commissioner Stine.

Solicitor Bilodeau: this is the Solicitor. For a special use permit if you really say the three grounds at the top of page 5 of the report so when you are talking special use permits you should base it on those grounds.

Commissioner Silverman: Ok, this is Commissioner Silverman, I will go back to page 5 and my reasons are enumerated on page 5 of the recommendation report dated January 29, 2021 specifically that the proposal will not affect adversely the health or safety of persons residing and working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware. Paragraph b) be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware. And paragraph c) be in conflict with the purposes of the Comprehensive Development Plan of the City.

Chairman Hurd: Thank you. Commissioner Stine.

Commissioner Stine. I vote Aye and I concur with Commissioner Silverman.

Chairman Hurd: thank you. Commissioner Wampler

Commissioner Wampler: I vote for all the already stated reasons.

Chairman Hurd: thank you. Commissioner Kadar.

Commissioner Kadar: I also vote Aye for all the stated reasons.

Chairman Hurd: and I vote Aye as well for the reasons stated previously. Motion carried. All right Item C.

Commissioner Wampler: I move that the Planning Commission recommend that City Council approve the Green Mansion 94 East Main Street Special Use Permit for a 48-residential apartment as shown on the Kairnes and Associates Special Use Permit Parking Waiver and Major Subdivision Plan dated September 8, 2020 and revised January 27, 2021, with the Subdivision Advisory Committee conditions as described in the January 29, 2021 Planning and Development Report.

Chairman Hurd: thank you do I have a second?

Commissioner Silverman: Commissioner Kadar will you do the honors?

Commissioner Kadar: Absolutely, I second.

Chairman Hurd: thank you. Any discussion of the motion? All right moving to the vote. Commissioner Stine.

Commissioner Stine. I vote yes.

Chairman Hurd: Solicitor Bilodeau for brevity can we say for reasons stated in the report? Or do we need to state them out loud?

Solicitor Bilodeau: I would just say state them out loud right now because yeah.

Chairman Hurd: ok, better safe than ok, sorry Commissioner Stine.

Commissioner Stine: Ok, am I saying yes because the Applicant has demonstrated that the proposed use does not conflict with the purposes of the Comprehensive Development Plan?

Solicitor Bilodeau: That's one they are on page 5 of the report that is one of the three progs.

Commissioner Stine: ok I am sorry. I thought that was under Special Use Permit I jumped ahead to parking waiver.

Chairman Hurd: You can just read the screen they are on the screen.

Commissioner Stine: Ok I can do that. Because it does not adversely affect 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 and within the State of Delaware it is not detrimental to public welfare or injurious to property or improvements within the City of Newark boundaries one mile of the City of Newark boundaries and within the State of Delaware and is not in conflict with the proposed purposes of the Comprehensive Development Plan

Chairman Hurd: All right, thank you. Commissioner where am I Commissioner Wampler.

Commissioner Wampler: I vote yes for the already stated reasons.

Chairman Hurd: Thank you. Commissioner Kadar.

Commissioner Kadar: I vote yes for the reasons stated by Commissioner Stine and those in the Planning and Development Department

Chairman Hurd: Ok, Commissioner Silverman.

Commissioner Silverman: I vote yes for the previously stated reasons.

Chairman Hurd: and I vote yes as well for the reasons stated previously by the Commissioners. Motion carried. All right. Last one.

Commissioner Wampler: Ok for the last one I am going to drop conditions a, b, and c and refer to a waiver for 39 spaces and a size for 16 spaces if that's agreeable?

Chairman Hurd: We can start there and then see where we are.

Commissioner Wampler: ok, with that in mind, I move that the Planning Commission recommend to City Council approval of 39 space parking waiver for 94 East Main Street with a size waiver for 16 spaces.

Chairman Hurd: Are we saying 16 additional spaces. And then Director Gray you had comment.

Director Gray: If I may just to interject and I know that the staff report says recommend that's the staff recommending the Planning Commission has the authority to has the ultimate authority to approve deny or approve with conditions the parking waiver, so you are not recommending you are doing one of those three.

Chairman Hurd: Oh, okay

Director Gray: just for clarity

Chairman Hurd: thank you.

Commissioner Wampler: I'll restate that if people understand it instead of the 55-space parking waiver I am saying a 39-space parking waiver a waiver for 39 spaces and a size waiver for the 16 spaces that will be there but will be smaller than standard.

Chairman Hurd: Ok, now in the motion you said did you say that the Planning Commission will approve, or did you say recommend?

Commissioner Wampler: I am withdrawing my first motion and I am going to make a new motion.

Chairman Hurd: ok, yeah this is the one that is different than all the others for us.

Commissioner Wampler: Yeah, ok, my current motion is that the Planning Commission approve a 39-space parking waiver and size waiver for 16 additional spaces for 94 East Main Street.

Chairman Hurd: All right thank you do I have a second?

Commissioners Silverman: I'll second.

Chairman Hurd: Thank you. Any discussion on the motion? And I will lead off I will add these I'll add to this the conditions that the Applicant has basically volunteered for the previous ones which is making parking available parking available when possible, in the hotel parking and providing an informational sign to customers.

Chris: We agree with that Commissioner.

Chairman Hurd: Ok Cause I think that that is a piece of sort of you know for me at least why I would be willing to grant a waiver that there is some value coming back to the City for the lack of it.

Commissioner Stine: ok Solicitor Bilodeau

Solicitor Bilodeau: Did you also want to add the payment of \$181,000?

Chairman Hurd: So, if the math is right, I mean we could put that in, but I would think that the payment of the fee isn't that more of an administrative affect? That is partly what I am trying to stay out of is to say that we are granting the waiver in the Code is the math for calculating the value of that waiver, but I sort of don't want to lock it down let's say I want to just say 39 spaces and then you know Department Applicant work it out.

Solicitor Bilodeau: Well the problem is that you know this is really a decision of the Planning Commission this is not a recommendation so I think we do need to lock it down somewhat better so I think maybe we I think what I would suggest is what was suggested earlier we make two motions the first would be a motion for the 39 spaces for the \$181,000 fee in lieu and then a second motion for the 16 spaces size waiver if you will for possibly for the parking...or something along those lines you know for the parking lot not the parking lot in the back but the access to the parking garage.

Chairman Hurd: ok, you feel that is cleaner?

Solicitor Bilodeau: I do

Chairman Hurd: Ok, Commissioner Silverman you looked like you had a comment?

Commissioner Silverman: There was another element that was discussed here with respect to value added by cross access agreements which apparently have not been part of the discussion. So, we are talking about dollars are we talking value, there was another element that was brought into the discussion I have no idea how to handle. I can't put a value on it.

Chairman Hurd: Right , and that point was one of the reasons why I was like I don't want to put a dollar value necessarily in the approval I want to say you know that 39 spaces has a dollar value and ...as in that negotiation... unless this is not how it is going to work the City in that negotiation can say all right of that 186 or 181 you know the cross access agreement is worth this much and there is the horse trading and such going on and everyone is happy but it may be that is not functionally how it is going to happen this is where I am not sure.

Commissioner Silverman: Mr. Bilodeau can we leave the dollar amount open and simply state a fee or however it is referred to in the Code to be determined by the City? To recognize that there is some kind of exchange involved either goods or value or dollars?

Planner Tom Fruehstorfer: Historically parking waiver agreements have had a price it's been part of the agreement part of what is discussed in Planning Commission part of what is agreed to. They have a dollar amount to them and that what that's what has been approved. Approving parking waiver and this is how it is being paid for. That's how it has been done historically.

Commissioner Silverman: I happen to side with the Applicants since I know a little bit of the history and there was to be a lockbox that these fees were to go into to pay for parking or pay or parking building that is a 30-year-old notion and it is a habit I don't think should be continued.

Chairman Hurd: Ok, all right, I am more comfortable putting a fee in lieu and a dollar value based on the fact that is sort of the precedent of the decision process and I don't want to rock the boat too much right now I just want to kind of bring it up at a higher level just sort of like what do we need to approve and what sort of outside of our purview and is negotiation and such. Ok, Commissioner, Secretary Wampler are you prepared to oh wait so we motioned it and seconded it and amended but no one seconded my amendment. So, I withdraw my amendment Secretary Wampler are you prepared to withdraw this motion and restate it as two parts?

Commissioner Wampler: Oh yeah, I think that is fine. I do have a question and that is what the staff's position on the difference in those figures is because the recommendation originally was for \$288,000 and we are now talking about \$181,000 and I am comfortable putting that figure in if everyone agrees that that's the correct figure but if the staff thinks that that's still not correct figure than I don't think that we should put that in and accept it if there is something wrong with it.

Commissioner Stine: I think there is something wrong well I would like clarification because in in Mr. Lock's letter you refer to the cost the fee as \$6711 per space and yet when I do the math of the original \$288,640 and divide that by 55, I come up with \$5248 per space so is there a difference between a full-size space and a compact space in terms of the fee.

Planner Tom Fruehstorfer: It is not as straight dollar.

Chairman Hurd: It is not a one to one, yeah.

Planner Tom Fruehstorfer: There is a certain percent of this the fee paid for the first 5 and a certain another percent is being paid for the next 10 for a certain number and then beyond that certain amount... and it is different for residential and commercial also If you look in the exhibits and the parking waiver stuff you will see the parking waiver calculation.

Commissioner Stine: Can we agree that if the 16 spaces don't need to be.

Tom Fruehstorfer: The number is correct I was one dollar off assuming...pay for the 16 spaces in the spreadsheet I made so yeah that's more the 55.

Commissioner Stine: Ok so are we agreeing that Mr. Lock math is correct \$181,263?

Director Gray: So, this is Director Gray so if you are not counting the 16 spaces the \$181,263 is the correct calculation for the 39 spaces utilizing the Code.

Chairman Hurd: Ok, I think that is what we were looking for is just too sure that staff agrees.

Director Gray: Yes, we calculated it using the table in the Code and that we do affirm that's correct and concur with that number. We don't concur that I just restate my interpretation that I articulated previously, and I defer to Mr. Bilodeau on that. So, there we are.

Chairman Hurd: Ok, think we are ready Secretary Wampler?

Commissioner Wampler: For the parking waiver 39 space parking waiver we want to include that the, the fee associated with that is \$181,263 right, 263 yeah. For the 16 waivers in size for the 16 spaces we are not including any dollar value?

Chairman Hurd: At the moment no.

Solicitor Bilodeau: This is Solicitor Bilodeau that section the parking waiver Section 45(b) the very last sentence says that in developing your costs for these parking waivers it may include you know the Applicants in-kind services land donations granting of easements or right of ways or similar parking improvement activities that the Commission may consider in discussing so that second part of the motion for the 16 small spaces could be based upon the Applicant can't even say Applicant anymore their offer for parking improvement activities and granting access to the back lot.

Chairman Hurd: Yeah, I like that cause that then says there is essentially compensation being provided for that waiver of size and it is access to the hotel garage by the public and not directly a fee in lieu.

Commissioner Wampler: and Mr. Chairman along that list if I recall correctly the Applicant said that they worked with the City with respect to removing standard truck away dumpsters freeing up parking spaces, so it sounds like additional parking was created by the removal of truck away dumpsters?

Chairman Hurd: Also true, ok, all right, feels like we are at a point. Let's roll on the first half of the one, Secretary Wampler.

Commissioner Wampler: All right, well Let me start by saying that I withdraw my previous motion.

Chairman Hurd: All right thank you.

Commissioner Wampler: and I now move that the Planning Commission approve a 39-space parking waiver for 94 East Main Street with the associated cost of \$181,263.

Chairman Hurd: All right, do I have a second?

Commissioner Wampler or Silverman: Second

Chairman Hurd: Thank you. Any discussion on this motion? All right seeing none we will move to the vote.

Commissioner Silverman: Public?

Chairman Hurd: we don't need public comment on motions.

Commissioner Silverman: Ok, getting late.

Chairman Hurd: Yes. Commissioner Wampler

Commissioner Wampler: I because I think this is the correct calculation for that number of spaces and because I think the redevelopment of the project is moving in the right direction, I vote yes.

Chairman Hurd: All right, thank you. Commissioner Kadar.

Commissioner Kadar: I vote Aye because I don't see any negative impact on the adjacent nearby properties and because the proposed plan doesn't conflict with the development pattern in my area.

Chairman Hurd: All right, thank you. Commissioner Silverman.

Commissioner Silverman: Aye for the just previously stated reason.

Chairman Hurd: Thank you. Commissioner Stine

Commissioner Stine: I also vote Aye for those reasons previously stated.

Chairman Hurd: and I vote Aye as well for the reasons previously stated by the Commissioners. All right, second part.

Commissioner Wampler: Ok for the second part I move that we approve a size waiver for 16 spaces parking spaces for 94 East Main Street in consideration for the access to parking and the access between the two parking lots which we now have.

Chairman Hurd: Ok, do I have a second?

Commissioner Silverman: If we can add to that the at the already incurred costs by the Applicant with respect to handling trash removal and dumpsters etc.

Chairman Hurd: Are you asking to make that part of the original okay.

Commissioner Silverman: Yeah, that is good and I'll second.

Commissioner Wampler: I am happy with that.

Chairman Hurd: Ok, any discussion on the motion? All right, seeing none we will move to the votes. Commissioner Kadar.

Commissioner Kadar: I approve, I don't see any reason not to do that given the fact that access is provided between the two parking lots. Thank you.

Chairman Hurd: Thank you. Commissioner Silverman.

Commissioner Silverman: I vote yes for previously stated reason.

Chairman Hurd: All right, thank you. Commissioner Stine.

Commissioner Stine: I vote yes in that the Applicant is providing in-kind services of granting an access between the two parking lots and also providing much needed public parking when and also for creating more parking by in the trash issue in those parking lots.

Chairman Hurd: All right, thank you. Commissioner Wampler

Commissioner Wampler: I vote yes for all of the previously stated reasons.

Chairman Hurd: All right, thank you and I vote yes as well for all the previously stated reasons and especially since I don't think the compact spaces will have a negative impact on the project or the neighborhood. All right, motion carries. All right, I am looking at the clock and I was thinking hey we need to get through the last few things and information stuff, but it is 10:30

Chris: Commissioner we just to say thank you for the Commission's time and appreciate their support.

Chairman Hurd: You are very welcome.

Jeff Lang: Thank you all very much.