

1 CITY OF NEWARK
2 DELAWARE

3
4
5 PLANNING COMMISSION
6 MEETING MINUTES

7
8
9 MEETING CONDUCTED REMOTELY
10 VIA GO-TO-MEETING

11
12 MAY 4, 2021

13
14 7:00 P.M.

15
16 Present at the 7:00 P.M. Meeting:

17
18 **Chairman:** Willard Hurd, AIA

19
20 **Commissioners Present:**

21 Karl Kadar
22 Alan Silverman
23 Allison Stine
24 Jennifer Wallace
25 Tom Wampler

26
27 **Commissioners Absent:**

28 Stacy McNatt, PE

29 **Staff Present:**

30 Paul Bilodeau, City Solicitor
31 Mary Ellen Gray, Planning and Development Director
32 Thomas Fruehstorfer, Planner
33 Mike Fortner, Planner
34 Katie Dinsmore, Administrative Professional

35
36 Chair Will Hurd called the Planning Commission meeting to order at 7:00 P.M.

37 Chair Hurd: Right on time, alright. Good Evening everyone, and welcome to the May 4th, 2021 City of
38 Newark Planning Commission Meeting. This is Will Hurd, chair of the Planning Commission. We are
39 following the state and council directives on remote meetings and holding this meeting on the GoTo
40 Meeting platform. Our goal is to support the participation of everyone in this meeting, Katelyn
41 Dinsmore the department's Administrative Professional will be managing the chat and general meeting
42 logistics. At the beginning of each agenda item, I will call on the related staff member or applicant to
43 present first. Once the presentation is completed, I will call on each commissioner in rotating
44 alphabetical order for questions of the presenter. If a commissioner has additional questions that they
45 would like to add afterwards they can unmute themselves and I will call on them to make it clear who is
46 speaking next. Otherwise please keep yourself muted to prevent background noise and echo. Just try
47 avoiding talking over other people so that everyone listening in can hear clearly. Once it is open for
48 public comment, we will then read into the record comments received prior to the meeting followed by
49 open public comment. If members of the public attending tonight would like to comment on an agenda
50 item during the meeting, they should send a message through the chat function to me with their name,
51 district, or address and which agenda item they wish to comment on. The chat window is accessed by
52 clicking on the speech bubble icon on the top bar. For those attendees connected to the meeting only
53 through their phone, I will call on you separately and you can press *6 to unmute yourself. In
54 accordance with the governor's declaration on remote meetings everyone giving public comment needs

55 to identify themselves that rule also applies to applicants and other members of the team. So, I will be
56 asking you to give your name and spell your last name if it is a challenging last name. So that the person
57 doing the minutes can do accurate minutes. We will follow public comment with further questions and
58 discussion from the commissioners and then the motions and voting by roll call. Commissioners should
59 articulate their reasons for the vote. If there are any issues during the meeting, we may adjust these
60 guidelines if necessary. So, to begin with item one...oh I forgot the (audible). I got this lovely gavel and
61 I've never used; I never remember to use it. So, item one, Chair's Remarks....

62 **1. Chair's Remarks**

63 Chair Hurd: Just a note that there's an adjustment to the agenda. We are removing item 5, review and
64 consideration of Transportation Improvement District project list. My understanding was that it's not
65 ready for this meeting, but we hope to see that soon. Because the TID keeps coming up in a lot of things
66 that's going on around town; Comp Plan and all of that stuff. Alright, that takes us to item two, the
67 minutes.

68 **2. Approval of the Minutes of the April Commission Meeting**

69 Chair Hurd: We have in front of us meeting minutes from the April 6th, 2021 meeting. I had submitted
70 some comments, Alan had submitted some comments. Do I have any other comments or corrections
71 for the commissioners attending? Alright then seeing no action I move to call the minutes approved
72 with the comments by acclamation. Ok, that takes us to item 3...

73 **3. Review and consideration of Major Subdivision and Comprehensive Development Plan** 74 **Amendment for property located at 1501 Casho Mill to demolish the existing office building to** 75 **construct a 3-story building with office and apartments on the first floor in addition to** 76 **apartments on the second and third floors**

77 Chair Hurd: Review and consideration of Major Subdivision and comprehensive Development Plan
78 Amendment for property located at 1501 Casho Mill to demolish the existing office building to construct
79 a 3-story building with office and apartments on the first floor in addition to apartments on the second
80 and third floors. Director Gray, are you leading off?

81 Director Gray: Yes, Chairman Hurd, I am.

82 Chair Hurd: Ok.

83 Director Gray: I will have a brief presentation, and to minimize echo, as Commissioner Kadar indicated, if
84 everyone could mute while I'm talking, that might help minimize the echo. So, Commissioner Silverman,
85 you are still (inaudible) and Commissioner Hurd. So hopefully that will help this time. Hopefully, am I
86 echoing now? Oh, there's Mr. Paul Bilodeau.

87 Solicitor Bilodeau: Mr. Bilodeau just got beamed in by Mr. Scott

88 Director Gray: Awesome

89 Solicitor Bilodeau: Had a little problem with the di-lithium crystals but we're all good now.

90 Director Gray: Ah, Scotty got it. I just went back a couple generations. Sorry I apologize. Welcome Mr.
91 Bilodeau, we just got started on 1501 Casho Mill, I was just going to launch into my presentation, my
92 brief presentation. So hopefully, am I echoing now? I'm still echoing.

93 Chair Hurd: I think it's your room

94 Commissioner Kadar: Mary Ellen, it seems like the mike on your headset is not really picking up your
95 voice, it's coming in from a distance.

96 Director Gray: Ok, how about now?

97 Commissioner Kadar: Nah, it's still the same

98 Mr. Fruehstorfer: It's fine, I can hear her fine just sounds a little muffled, but we can understand you
99 fine.

100 Director Gray: Ok, I apologize. I will soldier on. This application is, as Chairman Hurd indicated, is for a
101 major subdivision special use permit and comprehensive development plan amendment for the
102 demolition of the existing structure. Built in the floodplain and the construction of a three-story mixed-
103 use structure. The structure includes commercial space and two residential units on the ground floor

104 and twenty-three residential apartments on each of the upper floors. For a total of 48 units. My brief
105 presentation is going to hit the highlight of the Planning and Development report, focusing on issues of
106 zoning, the flood plain, comprehensive plan 5 amendment, and the special use permit. The existing
107 zoning for the parcels is BLR, Limited business residential and special flood hazard area. The current use
108 is approved in the BLR zoning district, but it should be noted that a recent change in the FEMA Flood
109 Insurance Study of New Castle County revised January 20th, 2020, adjusted the FEMA regulated flood
110 zone from approximately the South West edge of the existing structure to the parking lot on the North
111 East side of the parcel, resulting in the entire existing structure being located within the regulated
112 floodplain. Adding this use in the special flood hazard area is not allowed, the current use is
113 grandfathered in its current location. The applicant is proposing to demolish the existing single story
114 commercial structure and replace it with a three-story mixed-use structure in almost the same footprint.
115 The new structure has a slightly smaller footprint and is slightly more separated from the floodplain,
116 floodway. And will be constructed on a few feet of fill to elevate the ground floor 18 inches above the
117 base flood elevation. The ground floor will include 19,387 square feet of office space and two
118 apartment units. The second and third floors will each have 23 apartment units for a total of 48
119 apartment units. (Audible) apartments include 22 two-bedroom apartments, 6 one bedroom, and 20
120 studio apartments. The existing parking lot will remain unchanged, except for restriping. No changes
121 are proposed on the Christiana River parcel. Regarding this Christiana River parcel, the applicant will be
122 donating this parcel to the Parks and Recreation Department and the City. A cash in lieu of land per
123 Chapter 27 appendix 6 of the City code for open space. Thus, creating a continuous new space quota for
124 the city. Regarding zoning and the flood plain border, it should be noted that the City of Newark's
125 zoning code does not allow the construction of commercial and residential structures as proposed in this
126 plan, the special flood hazard area, for the FEMA regulated floodplain. As such, the applicant is
127 proposing regarding the site to raise the area of the proposed building location above the base flood
128 elevation which is the elevation of floodwater in the event of a 1 percent chance (audible) event
129 commonly referred to as a 100-year flood. Regrading on the flood plain requires a special use permit
130 and I will discuss that here in full detail in a minute. The City of Newark has required the applicant to
131 submit their plans to FEMA for review to verify that the proposed plan will indeed remove the building
132 location from the special flood hazard area. FEMA has issued a conditional letter of MAP revision
133 otherwise known as a (audible) indicating that they agree that if the site is developed as proposed, they
134 would revise the flood plain boundaries and the constructed building would not be in the regulated
135 floodplain. As proposed, when constructed this structure will not be located in the special floodplain
136 hazard area. Regarding the Comprehensive Development Plan, the proposed plan does not conform to
137 the Comprehensive Development Plan by and will require a comprehensive development plan
138 amendment to change the designation. This property is included in planning section E, in the COMP
139 plan, and which currently calls for the commercial or commercial use. The proposed uses of commercial
140 and residential apartments are considered mixed urban. And the Comp plan must be admitted to reflect
141 these changes. Regarding the special use permit, the City of Newark municipal code prohibits most
142 construction in a special flood hazard area. The code only outright allows agricultural use, recreational
143 use, (audible) gardens, open space, minor excavation, grading, minor accessory structures. The only
144 substantial structures allowed in special flood hazard areas are public works and utility related
145 structures. Also included as the conditional use's grading of land, if it can be shown through a detailed
146 engineering study, that the grading will not result in increased flood heights (audible) The applicant has
147 conducted such a study, which has been reviewed and verified by City Staff. As simply (audible) in
148 undeveloped stream floodplains, to raise a new structure above the flood level, might not be desired
149 development the subdivision proposal is demolishing an existing structure that's completely located in
150 the special flood hazard area in danger of flooding in the event of a 1 percent chance storm. He is
151 proposing to, filling up, it is proposing that fill ups would raise the new structure, the similar footprint
152 and further away from the floodplain. Above the base flood elevation and significantly reducing the risk
153 of flood damage. Additionally, it is removing other soil in the floodplain to increase floodwater storage
154 to balance the loss of storage resulting from the fill when they bury at the new building. The project
155 includes the fill of soil and a special flood hazard area which requires a special use permit approval. We
156 will need two approvals regarding this. The special use permit approval under section 32-78, which has
157 the three requirements to not adversely affect the health or safety of persons, be detrimental to the
158 public welfare, injuries to properties, and conflict with the purposes of the Comprehensive Development
159 Plan. And the proposed mixed-use structure is expected comply with these code divisions. Additionally,
160 section 32-96-83 indicates that a (inaudible) issue onto the special use permit and the special flood
161 hazard area. City Council shall in addition to requirements that I just mentioned consider the following
162 and there is a long list that I will not articulate. But it is in your report on pages 5 and 6 sections,

163 subsections A through N. It's been determined that the applicant and verified by city staff that the
164 proposed construction will not significantly increase flood heights or velocity. The ground floor of the
165 proposed structure will be elevated at least 18 inches above the base flood elevation, so there is no
166 danger of materials being swept downstream on impact. To the projects (audible) sanitation system
167 during the flooding. The plan is reducing floodwater storage and does not increase the water surface
168 elevation. The applicant has submitted their plans to FEMA for review and received a conditional letter
169 of MAP revision indicating that FEMA agrees that the proposed construction elevate the proposed
170 structure out of the regulated floodplain. (Audible) So in conclusion, the proposed development meets
171 all the requirements detailed in municipal code and because the special use permit and major
172 subdivision plan and the Comprehensive Development plan amendment, would the Subdivision Advisory
173 Committee recommended conditions should not have a negative impact on adjacent neighborhood
174 properties and because the proposed project does not conflict with the Comprehensive Development
175 Plan, Planning and Development department recommends that City Council revise the Comprehensive
176 Development Plan, to change it to mixed urban, or partially mixed urban recommend approval for the
177 special use permit for grading of lands in the floodplain, and to recommend approval for the major
178 subdivision plan for apartments. Now, we do have one additional recommended reason that Mr.
179 Bilodeau had suggested for the special use permit; and that the project also complies with the criteria
180 set in Section 3, 29-683 that I just articulated. So, when we get to that point in the motions, we can
181 certainly add that in there to the planning commissioners. So, to concur, that concludes my comments
182 then.

183 Chair Hurd: Alright, thank you Director Gray. Do we know if the applicant has a presentation that they
184 wish to make?

185 Director Gray: Yes, they do.

186 Mr. Rhodunda: Evening Mr. Chair, my name is William Rhodunda, I'm on behalf of the applicant we
187 would like to make a presentation.

188 Chair Hurd: Thank you. Could you spell your last name for the record please?

189 Mr. Rhodunda: Yes, Rhodunda is R-H-O-D-U-N-D-A.

190 Chair Hurd: Alright, thank you very much. Take it away.

191 Mr. Rhodunda: Thank you, here tonight, We're in the same conference room with the engineer, Scott
192 Parker, from Duffield Associates. The owner representative, Lou Romano is also here, the
193 representative from Laborie LLC, the owner of the property. Plus, I want to thank Director Gray for her
194 detailed analysis of this project; we'll be covering a lot of the same territory, but we appreciated her
195 detailed evaluation and her agreement with us that this is a code-compliant plan, but it does need
196 certain approvals. This is a redevelopment project proposing to knock down the current building so
197 therefore you have a major subdivision review tonight. As the director mentioned, there is a special use
198 permit required to be obtained for this project; and we'll go into more detail with our PowerPoint
199 presentation but essentially there is a floodplain existing on this property, there has been, that
200 floodplain has been expanded in 2020, so it does cover the large majority of the property. And just from
201 the outset I want to note that the current building that's been in place was slightly into the old
202 floodplain that existed before 2020. And the current building is 100 percent in the floodplain under the
203 mapping in 2020. The proposed building will not be in the floodplain, it will be elevated significantly so
204 the proposed building will not be in the floodplain. As I mentioned this a redevelopment project
205 proposing 48 apartments and 19387 square feet of office space. We've worked very closely with Planner
206 Fruehstorfer and also director of Parks and Recreation, Spadafino; and you'll hear in a few minutes that
207 this proposal includes a 1.75-acre land donation to the City of Newark because as you'll see in a few
208 moments this property abuts existing City of Newark park with the Christiana stream that runs through
209 our properties. So, part of this, part of our plan would be to turn the deed over to the City of Newark,
210 the 1.75 acres; so that park can be extended. My understanding is that there's already a trail that the
211 public uses there and it will be a nice addition to the park system. At this time, if we could just go
212 through the PowerPoint presentation, I understand I'll be getting assistance from staff. If we could
213 please turn to the next page of the PowerPoint presentation. As you can see on the first slide that we
214 have here, of the properties of 1501 Casho Mill Road, which is right off of Elkton Road it's right at the
215 intersection there. Just south of South Main Street. As you all know being familiar with the property,
216 and we're talking not too far from city hall, this property is surrounded by an apartment complex to the
217 south, a very large shopping center to the south, an apartment complex across the street, and then you

218 have a multitude of different types of residential housing in that immediate area. But there are some
219 green spaces in that area and that is the park area with the Christina stream that runs through that area.
220 If you could turn to the second slide, please. This slide shows the existing building as you can see right
221 at the intersection of Casho Mill and Elkton road, there are two lots that are part of this project, lot 4
222 and lot 5. Combined, are about 6.8 acres of land. You can see the existing building as it is today, you
223 can see at the bottom of the page, the Christiana river runs to the South of the property. The next slide
224 shows some of the existing conditions, and I want to point out, because I think it's important here is that
225 we're not changing the actual paved area that exists today with this project. The green spaces that you
226 see on the slide above Elkton road, those green spaces will not be (audible) because we're not
227 increasing paving. We're utilizing the same paving. You will hear later that we increased the number of
228 parking spaces but that increase of parking spaces is related to the restriping, not adding additional
229 pavement. So, these green spaces that you see here, they will remain as they are. The next slide are
230 more pictures of the existing conditions; you can see the picture on the bottom lower corner is up
231 against to the to be park area, and those green spaces will remain of course. The building as you can see
232 from the outside does not look as obsolete as it is on the inside, because as I stated earlier with the
233 revised FEMA floodplain, this building is 100 percent in the floodplain. If we could go to the next slide,
234 please. The next slide shows the latest record plan that we were able to locate regarding this property;
235 it's a 1987 record plan that showed, an approved plan that showed 23,000 square feet of office building
236 and 235 parking spaces. That plan called for an impervious area of 3.1 acres. That's different from the
237 existing conditions; there happens to be a slightly larger office building existing today, much less parking
238 under 53 parking spaces today in the smaller impervious covered area; which is similar to the
239 impervious coverage area of the proposed plan. So essentially that 1987 plan called for extensively
240 more impervious coverage that what is called for with the proposed plan. And the next slide shows you
241 our proposed plan; there's no, as I indicated previously, there's no proposed increase in parking lot area.
242 We are able to secure 19 additional parking spaces via restriping of the parking lot, but we do not need
243 to increase the paved area on the property. As I mentioned earlier, there are 48 apartments and 19,387
244 square feet of office being proposed; and the building footprint is 21,674 square feet. And the number
245 of parking spaces is 172. The next slide shows a comparison between the 1987 record plan, which is the
246 latest plan on record, to the proposed record plan and the purpose of this slide is to show a 20 percent
247 reduction in (audible) from the 1987 record plan. So, this plan is a more environmentally friendly plan
248 than the last record plan in 1987. The next slide is the site plan that shows the layout of the building as
249 you can see, we have the building right in the middle of the parking area, but it's surrounded by nice
250 landscaping including trees that were along Elkton road and Casho Mill road. And of course, there's
251 landscaping around the building itself. Of course, you've got several acres of wooded area at the back
252 end of the property that will not be disturbed at all. So, it's a quite heavily landscaped area and there
253 will be no reduction in trees that exist in the area behind the parking area. The next slide is the
254 elevation of what would be facing Casho Mill Road. It's a really nice, if we could go to the next slide that
255 shows that this building is actually (audible) of three different types of brick. There's a charcoal grey
256 trim around the building, there's a light red brick, a black brick accent, and I'm sorry four types of brick;
257 a medium red brick and a dark red brick. On this blown-up portion of the building which is a portion of
258 what faces Casho Mill Road you can see in the right, the description of the types of brick. So, the owner
259 wanted to put a very nice product at this location, and I believe that this is a representative depiction of
260 what he intends to build at this location. But with a significant amount of brick intermixed with some
261 siding and the charcoal grey trim, it's a very attractive building, and it's certainly a building that is far
262 above the minimum standards that would be otherwise be required for a building of this type. The next
263 slide shows what faces Elkton road and if we could just skip to the next slide, because that shows a
264 portion of the building on the right side of this slide you can see how the architect laid out the charcoal
265 grey trim, the medium grey siding, the light red brick, the black brick accent, medium red brick, and dark
266 red brick. So again, it matches the side that faces Casho Mill Road I think it's a product that, at least a
267 high standard that I believe the City of Newark and the Planning Commission's expect from new
268 development. And this is certainly bringing it into modern times over what exists there today. And as
269 you'll hear multiple time throughout this presentation, this building will not be in the flood plain
270 because it will be elevated up. At one point our client had considered trying to use the existing
271 foundation, which would have been a much more cost-effective way to construct this building because
272 we're essentially building in the same footprint but ultimately to meet the standards and to obtain the
273 FEMA approval letter we received for the project, it made more sense to completely demolish the
274 existing building and elevate this building slightly so it would not be in the floodplain unlike the current
275 building. The next slide shows some of the details regarding the parking. There are 161 parking spaces
276 are required for this project; we have 172 spaces and as I stated before, we're not increasing the paved

277 area on the site that exists today. There are 34 bicycle parking spaces required by code, important to
278 the analysis of this project versus what is there today. There's a net reduction in traffic, a net reduction
279 of 306 daily trips. This calculation was determined by DelDot standards existing there's 846 average
280 daily trips based on the current use of the building. The proposed average daily trips are 540 based on
281 48 apartments and general office use versus medical office use, so this project actually has reduced
282 traffic versus what had been used up until recent times. There are some traffic improvements being
283 done as a result of this project, to Casho Mill Road and the next slide shows you what those
284 improvements are. What these improvements include are a left hand, if you're on Elkton road and
285 coming on to Casho Mill road, there's a left turn lane being added (inaudible) from the center. If you're
286 coming from Casho Mill road towards Elkton road, it's a right turn lane being added there. So even
287 though there's less traffic, we're creating a safer situation for people coming into this development. The
288 next slide shows the pedestrian and bike access to the property. I mean, clearly, we want this to be a
289 pedestrian and bicycle friendly development. Large changes that there will be students living here as
290 well; as you can see in that area, there's large crosswalks at the intersection and also sidewalks that are
291 all connected, so it's very pedestrian and bicycle access friendly. The next is a little harder to see in
292 detail, but I know you're all familiar with this area of Newark. We do need to see a change in the
293 comprehensive plan for mixed use versus the commercial designation it has at this time. And you can
294 see within half a mile of going south there's a major shopping center and a major apartment complex.
295 There is a park area, as you can see the stream meanders through that area, to the north of the property
296 there is all sorts of mixed-use residential housing from apartments to single family homes. Well, it
297 (audible) certainly the perfect area for a redevelopment mixed use project. We do need the special use
298 permit because the construction of this building would be in an area that without being elevated would
299 be in the floodplain. And what I mean by that, if you're looking at this slide, you'll see the green area is
300 the pre 2020 FEMA 100-year mapping area. And so, through 2020 the existing building was slightly in
301 that floodplain. I do want to point out for the record that there have been major 100-year storms in
302 1996 and 1999, and this property did not flood during those 100 year plus storms that occurred in 1996
303 and 1999. The way that FEMA designates floodplain is done through a system that they know, and they
304 extricate from general statistics, but it would be impossible for them to study every single individual site.
305 And that's how you end up with situations like this. In this particular case what happened is there's a
306 pre-2020 floodplain that was at the lower end of the property off of the stream. Post 2020, the FEMA
307 100-year mapping took the floodplain much closer to Casho Mill Road. Our building is in the area of the
308 100-year floodplain as it's been modified to move closer to Casho Mill Road, but because we're
309 elevating the building, demolishing the current building, we're elevating it by I believe 18 inches we'll
310 get to that slide in a moment, the building itself will be considered not in the floodplain as already
311 explained by Director Gray. The next slide goes into some of the details about what Director Gray was
312 speaking about. It says a special flood hazard area, potential risk of a 100-year storm. There have been
313 two 100-year storms in 1990s this did not affect or actually get to the current building. So, we don't
314 expect any issues at this property; the owners certainly not ones to invest the millions of dollars
315 required to build this building if there was any risk of that. As mentioned by Director Gray, we did
316 receive a conditional letter of MAP revision. They call that the Kolmar letter. Stating that if the building
317 was elevated, it would not be inundated by a base flood if fill was placed on the parcel, and after
318 construction we will have to go back to FEMA and establish and prove that we did what we said we
319 would do. Which is obviously part of the process because we don't want the building to be threatened in
320 any way by flood issues. The next slide is more details related to the raised (audible) for elevation to
321 meet the City of Newark code requirements; the baseline area is 101.5 feet, and the existing finished
322 floor area is 101.6 feet. The proposed first floor area in the proposed building is 103.2 feet. So very
323 important factors to keep in mind as you consider the fact that this is in a floodplain and the natural
324 question would be is there a carryover or spillover effect on adjacent properties? And the answer to
325 that is no. There is no net fill in the floodplain which means that the water that would come into the
326 floodplain would still be able to come into the floodplain the way that it would without the building
327 being constructed there. So essentially, there is no net fill here. Therefore, there's no adverse impact
328 downstream in the event of a flood. We do have stormwater management bioretention facility on the
329 property that's proposed to meet current regulations and reduce runoff. I mentioned earlier that we
330 had been working with the Director of Parks and Recreation regarding the property because the
331 Christina river does travel just off of or on our property. Excuse me, in the wooded area, which will not
332 be disturbed by this project. Along with this approval, we're seeking a proposed dedication of 1.75 acres
333 to the City of Newark of the stream and valley area. The benefits of this dedication would be connect
334 existing quarters along the Christina river, promotes and provides direct access to trail networks, we
335 understand there's a trail already in use there that the city would then include in their parks system and

336 then maintain that. the system with the trials in the area for the benefit of the citizens of Newark. The
337 next slide is just a slice of the Comprehensive Plan for what the uses are in the area. But we believe that
338 this use is very consistent with the comprehensive plan. There're other commercial and other
339 apartments right in that immediate area. Immediately to the south we do have the large apartment
340 complex and then a large shopping center. But we do believe that this fits neatly into what's in that
341 surrounding area. It's a perfect fit actually, for a mixed-use plan because in that immediate area within
342 half a mile to a mile you've got virtually every conceivable use in that area. Ok, our next slide is just
343 again the site plan of the proposed project. We certainly would like to entertain any questions that you
344 have around the project. Mr. Parker is here from Dunfield to answer any technical questions and the
345 owner's representative is also here; we're happy to answer any questions regarding the project, we're
346 happy to answer any that you may have.

347 Chair Hurd: Alright, thank you Mr. Rhodunda, I can't pronounce your name I'm sorry. Thank you, alright I
348 will take, we will begin commissioner comments for either the department or the applicant. And I will
349 begin with Commissioner Kadar.

350 Commissioner Kadar: Good Evening. I'd just like a little bit of clarification if you would on the floodplain.
351 Now, I've heard you say several times that because you've elevated the building, it's no longer in the
352 floodplain. Well, I think that's a little misleading it's still in the floodplain. The issue is that it's now
353 higher and it's not subject to actual flooding, but the building structure is still in the floodplain. As I'm
354 looking at the drawings here, at the elevations, the limit of the floodway which I assume on your
355 drawings; is that the FEMA 2020 or is that the old number? Anyone?

356 Mr. Parker: That's correct, that's the FEMA 2020.

357 Commissioner Kadar: Ok, so is that technically where the water would be?

358 Mr. Parker: So technically, I don't know if you have a good (audible) turn your speaker back on.

359 Mr. Rhodunda: Yeah, go back to the drawing with the pink and green flooding areas.

360 Mary Ellen: And just for the record, could you please announce yourself when you're speaking? Thank
361 you.

362 Mr. Parker: Sure, Scott Parker for the record.

363 Chair Hurd: Thank you.

364 Mr. Parker: If you go back a couple more slides here, I can help explain them. How about two more?

365 Mr. Rhodunda: I think it's further back, there you go, right there, stop, stop there, with the pink and the
366 green. Ok the green would indicate the old floodplain and the pink would now indicate FEMA's 2020
367 floodplain.

368 Mr. Parker: Correct.

369 Commissioner Kadar: Well, I'm looking at the map here and this is the drawing that you provided, it's
370 called the grading plan, is that correct?

371 Mr. Parker: Correct

372 Commissioner Kadar: It's one of the packets that you provided. The old floodplain at the limit of the
373 floodway, was at about 98 feet, 97.8 somewhere around there. And the other side of the building along
374 Casho Mill road, which is now part of this pink area, it indicates that the height of that is I want to say
375 100, 101 somewhere around there?

376 Mr. Parker: Right.

377 Commissioner Kadar: Ok so that's a two-foot increase in the floodplain height and you're only raising the
378 building 18 inches.

379 Mr. Parker: Right.

380 Commissioner Kadar: Sounds like to me that's still underwater.

381 Mr. Parker: Ok, so let me help walk you through maybe what you're seeing here. If you see those
382 diagonal lines that go from the bottom of the screen up to the top of the screen, you'll see there's a
383 dashed line and there's several of them as you go across the property from left to right. So, on the left

384 side of the site that's a base flood elevation of 102 elevation. And then on the right side of the site,
385 that's a base flood elevation of 101 elevation, so the base flood elevation for the 100-year storm
386 actually goes from 102 on the west side to 101 on the right side. So, as you look at where the building is
387 itself that ranges from around the 101.5, I'd say to almost 101.6 in the base flood elevation. We're
388 raising the finished floor of that building to 103.2. So currently the floor is 101.6 which is pretty much
389 right at that base flood elevation and the way that FEMA constitutes a building in the floodplain is if the
390 lowest adjacent grade next to the structure so that outside grass that touches your foundation if that's
391 lower than the base flood elevation, then they consider the structure to be in the floodplain. If you
392 were to raise that outside grade above the floodplain then they consider the building to be outside the
393 floodplain.

394 Commissioner Kadar: Ok but let's be clear though. The building is still located in the floodplain. You're
395 not moving the building, it's still (audible) you can't change that.

396 Mr. Parker: Correct

397 Commissioner Kadar: (audible) high enough to not be impacted by water rise.

398 Mr. Parker: Correct

399 Commissioner Kadar: Alright, good, and good clarification.

400 Mr. Parker: Thank you.

401 Chair Kadar: Alright, other than that, I see no other critical comments it was a good presentation and the
402 project.

403 Chair Hurd: Has commissioner McNatt joined us? Alright, doesn't look like it, so we'll move to
404 commissioner Silverman.

405 Commissioner Silverman: I find this plan acceptable for review. I like proposal, with respect to the
406 floodplain, floodway, flood fringe, without getting tied up in vocabulary, we're dealing with an area that
407 hypothetically in a computer model done by somebody who knows in what country, says 1 percent of
408 the time your feet are going to get wet in the parking lot. This project is not located in an active area
409 that floods. The probability of that is extremely, extremely low. So, we're really dealing with a use
410 that's within a fringe of the floodplain. With respect to that comment, does Duffield have any
411 calculations on the square footage of the property that is being altered that is not under the foundation
412 of the building? Because I think it's de minimus with respect to altering the parking area the landscaping
413 and everything around the building. That would be one question that would be very interesting: that
414 we're replacing a building for a building. With respect to the dedication to the City, there's been a lot of
415 talking about the parcel. Is it parcel 5 that's specifically shown on the drawing? The one to the
416 Southwest of the buildings? Question anyone.

417 Mr. Parker: That, the building is on lot 4 and that the dedication is on a portion of Lot 5, not the entirety
418 of Lot 5.

419 Commissioner Silverman: Ok, that I was confused on that, so it's contained within Lot 5. Thank you on
420 that. With respect to the offering on the mixed uses, I find that highly desirable; mixed use is the trend
421 within the City of Newark as was pointed out by the applicant there is substantial commercial to the
422 southwest of this property, so the City in effect is not losing commercial potential here. I applaud the
423 applicant for thinking in the direction of the work that has been done by the rental committees and the
424 housing committees in Newark. I'd actually like to see more efficiency units and one-bedroom units. The
425 efficiency units that are in Newark are generally associated with work that was done in the 70s and 80s
426 and sometimes back in the 60s. It's a very very desirable rental unit particularly for people who are
427 starting up and downsizing. We have scads of two-bedroom units that are fostered by provisions in the
428 code. So, this is a very very desirable residential use that's being proposed by the applicant. The
429 donation of the property to the City to fill out the parkland and the trail system is extremely admirable.
430 Again, that's very rare in the applications we see before us and I'm going to shift more over to the public
431 safety side. With respect to the mixed use, normally police departments and law enforcement agencies
432 enjoy having a site used 24 hours a day; there's simply less crime. People are there, there's activity.
433 With respect to having a commercial unit or an office unit that would simply shut down at 5 o'clock and
434 simply create spaces for mischief in the dark shadows. Also, with respect to line 440 in the report
435 produced by the department, there is one reference to fire to the fire department connection location
436 must be laid out. Fire Protection plan submittal with the CIP; this plan has been around for a very long

437 time it's been hanging fire for two or three years at least. I spoke with a representative from the local
438 fire company with respect to reviewing this plan, and they would like assurances that the fire
439 department connection when it's located on the face of the building would be located in such a manner
440 that it would be visible from paved surfaces, would be directly accessible from where a fire engine
441 would stop again on those paved surfaces as far as parking layouts go; and would not be hindered by
442 landscaping or such things as assist rails with handicap parking. So, in other words the fire company is
443 looking for a very accessible fire department connection, a clear shot. And I see a head nodding, I'm
444 sure you know exactly what I'm talking about with respect to the site design, since one was not shown
445 on the building. As for the rest of my comments...I notice that the fire hydrant location that exist on the
446 site are being maintained, there is no indication that there's any additional fire hydrants. And even
447 though there's dead end hydrants, they're very short distances from rather large I believe 8- and 10-inch
448 water mains. So again, they're more than adequate to serve this particular use. But I...in summary I think
449 that the mixed use is very appropriate for this corner, the offering of efficiency and one-bedroom units I
450 think is highly desirable, and the only other critique I have and it's just a personal thing; I think that the
451 building is very dark and foreboding. In color, for sitting where it does; everything around it is light and
452 airy and open green space, and here's this darkish building sitting on the corner, that's just a personal
453 preference, but just an observation. Thank you that's the end of my comments.

454 Chair Hurd: Alright, thank you. Commissioner Stine?

455 Commissioner Stine: Thank you Chairman Hurd before I make any comments, I would just like to ask
456 Solicitor Bilodeau if I have a conflict. I am working on probably the one and only development project
457 I've done in my 18-year career, and I'm representing the seller of a certain parcel of land in Wilmington
458 Delaware. And Mr. Rhodunda is involved in that project in representing the developer the contract
459 purchaser of that property. So, I just wanted to make sure that I'm ok to be participating in this
460 conversation.

461 Solicitor Bilodeau: Thank you Commissioner Stine, for the record Mr. Rhodunda is everywhere so he's
462 hard to avoid. His brother lives two houses from me, so you see his brother's out there right now
463 looking at me. No, I'm joking, I'm joking.

464 Commissioner Stine: So, you have more conflict then I do.

465 Solicitor Bilodeau: No but thank you for that but I and as long as you feel you can deal with this
466 objectively and professionally like you always do, I have no, you may proceed.

467 Commissioner Stine: Ok great, thank you so much. And thank you for the presentation Mr. Rhodunda. I
468 coming to you from six feet above sea level, so I have no real questions about the flood plain issues I
469 understand them better than anyone; I'm currently at sea level in Rehoboth Beach Delaware. So, I'm
470 going to, I understand those, and I appreciate that presentation. My question is on these drawings that
471 we were given, and this might be a really silly question, but what does this black line represent? Is this a
472 wall? Or is it just a part of the drawing? What is this black line across the bottom of each of these
473 pages?

474 Chair Hurd: So that heavy black line indicates the grade

475 Commissioner Stine: The grade, ok.

476 Chair Hurd: The topographic profile and everything below, it's just a way to visually anchor the
477 rendering.

478 Commissioner Stine: Ok, I couldn't tell by this, because it's so dark, I couldn't tell if there was a courtyard
479 or something sitting behind it?

480 Mr. Parker: No, as Mr. Hurd mentioned that's an indication of the grade.

481 Commissioner Stine: Ok, so there's no, I got excited because it looked like a common area, maybe an
482 open space, no?

483 Mr. Parker: No, no it's not.

484 Commissioner Stine: Ok. Alright, other than that I guess, I agree with Commissioner Silverman; I was a
485 little disappointed by the darkness of the project. It looks a little out of place for that location, but I'm
486 not an architect, so I'll leave that up to professional people, but thank you that's my only question.

487 Mr. Parker: (audible) we'll talk about that comment, thank you.

488 Chair Hurd: Alright Commissioner Wallace?

489 Commissioner Wallace: Thank you. So, I have, first of all I would like to reiterate comments made by
490 Commissioner Silverman. I am pleased to see this project has one bedroom mostly one bedroom and
491 efficiency studios. I think there is a need for that in Newark. Number one and number two, I think it will
492 attract a different kind of tenant. You know it possibly still going to attract students because there is a
493 high demand for that, but you know it's definitely more attractive to beginning young adults, young
494 professionals, families just starting out and I think there is definitely a lack of this type of rental in
495 Newark. I also want to add a potential coffee shop tenant would definitely get a lot of business in this
496 particular area a lot of that side of Newark is very residential. So, if you want to go out walking on a
497 Sunday morning get a coffee get a paper, you know it can be a long walk to downtown. So, this a
498 definitely very well located to add that type of rental tenant. Let's see, I want to ask a few questions
499 about the elevation and how that works. I'm not an engineer, I'm not close to it so if someone from
500 Duffield can explain to me how this would be elevated, I'm assuming it will be a combination of grading
501 of land in addition to some a taller foundation. But yeah, please explain to me what that means to be
502 elevated and out of the floodplain.

503 Mr. Parker: Sure, thank you for your question Ms. Wallace. So, we did a grading study on this property
504 and I think one of the slides showed it was kind of a mix of blue and red on the property. Where we
505 looked at what that base flood elevation was, and we did proposed grading so that the outside that
506 building where the grass meets up against the building is higher than that base flood elevation. So, we
507 looked at ADA routes how to get that to work with the grading essentially the existing building would be
508 demolished, the existing slab the concrete slab for the building would be removed and the actual grades
509 will be raised by earth. And then you would have a slab on top of that, that would be 18 inches above
510 that base flood elevation for that top slab elevation. So, you know, we looked at, the main thing we
511 tried to do with this, which we were successful in is having no net fill. And I know you probably have a
512 hard time understanding how we can raise the building but not have additional fill on this property.
513 Where we were able to, we reduced the footprint of the building so the existing building was about
514 2,600 square feet bigger than the proposed building footprint. So, we kind of pulled back that
515 southernmost end of the building that's closest to the river there. We pulled that back and provided a
516 stormwater retention facility; so, a bioretention facility that will have plantings in it that we'll be sending
517 roof drains to manage stormwater per DENREC regulations. And that is the depression in the area that
518 offsets the increase in field that we're adding to the building. So, I hope that explains some, if you have
519 any further questions, I can...

520 Commissioner Wallace: I do, yes and that does. So, an additional question, and again I'm not an
521 engineer, not even close, but if there were to be a flood on the property. How would that negatively
522 impact that grading?

523 Mr. Parker: Alright so, the parking lot itself if it were in a 100-year storm event and this is per FEMA's
524 model, again not necessarily what in actuality will be the case during in a 100-year storm event; but in
525 their model parking lot would have some flooding in it, it would be outside the floodway which is you
526 know is the fast and moving part of the river. It would be more in standing water, one foot or less
527 outside of that floodway. The building itself would be higher than it and the grading around the building
528 would be higher than the 100-year storm. So, you could be outside this building on the stoop and still be
529 higher than FEMA's 100-year model, which generally tends to be conservative.

530 Commissioner Wallace: Ok. And additionally, what about that flooding, are there any regulations or
531 restrictions around, how long would any flooding event be expected to have standing water? So, you
532 know in a sense individual in the building would be stranded.

533 Mr. Parker: Right, that's a tough question. Obviously, it depends on the type of storm, how long it's
534 going to be raining after the storm, the intensity of it. I mean, it would be a guess on my part that you
535 know.

536 Commissioner Wallace: But that's not something that FEMA weighs in on, (audible)

537 Mr. Parker: No, generally we get the duration of flooding there's a lot of factors that go into that. I'm
538 sure there are models somewhere that we don't see, they could get that information in their HECRAS
539 models or something like that. But we see the mapping that gets portrayed as the limits of that model.
540 Not necessarily the (audible) of it.

541 Commissioner Wallace: Ok. And then, it sounds like FEMA is also not interested in associated facilities
542 like dumpsters and things like that; strictly the FEMA flood plain regulations just have to do with for the
543 goal structure. Is that correct?

544 Mr. Parker: Right, right that's there (audible) we will for the asphalt

545 Commissioner Wallace: Ok. Thank you I think that's all my questions for you. I have some additional
546 comments, you know I do have concerns about this location, but I think that there's already a building
547 there that probably fare as well if there were a flood. And I think that the stormwater controls that
548 currently exist on the property are probably not the most ideal, and I think that the associated
549 stormwater improvements you know can add to this property. And I think that's all I have for now.
550 Thank you.

551 Chair Hurd: Alright, thank you. Commissioner Wampler?

552 Commissioner Wampler: Thank you, just a couple clarifications I'd like to make. In the elevations, the
553 one that is called the front elevation, that's along Casho Mill Road. And I my question is, the elevation
554 that will be seen from Elkton road, is that the left elevation?

555 Mr. Parker: Mr. Wampler I'm not sure that I understand your question. If you're looking at the plan
556 view itself, overhead the right side of that building would be facing Elkton road. So, if you were standing
557 on Elkton road looking at the building in the presentation that's where it says...

558 Commissioner Wampler: No, I know on the aerial views that's clear. I'm saying on the elevation, the
559 color renderings that we have, which of those is it the left or the right that would be facing Elkton Road?

560 Mr. Parker: Oh, I understand, in your packet.

561 Commissioner Wampler: Yeah.

562 Chair Hurd: I believe the front elevation is the one facing Elkton Road.

563 Commissioner Wampler: No, I think the front elevation is facing Casho Mill.

564 Chair Hurd: It says Casho Mill mixed use building as the title that is the direction.

565 Mr. Parker: The smaller one faces Elkton road; I don't have that exact one in front of me I'll try to pull it
566 up.

567 Chair Hurd: Oh ok.

568 Commissioner Wampler: It seems to me that if you turn the drawings around so that you're looking at it
569 with Casho Mill road as the building fronts on Casho Mill road then looking at it from that direction the
570 left-hand side of the building there would be left elevation is what we'd be seeing from Elkton road. I
571 just wanted to make sure that I was understanding that.

572 Mr. Parker: I just pulled it up in front of me and I actually think...

573 Chair Hurd: I think from looking at it the one labeled right elevation faces Elkton road.

574 Mr. Parker: Right, that's what I was seeing as well. I completely agree with how that would be confusing

575 Chair Hurd: I'm using that tower element mostly as the marker. Yeah.

576 Commissioner Wampler: Ok thank you. A couple of other questions, one is the commercial space in this
577 building, is there any indication that any of the existing commercial tenants that're in the current
578 building would be tenants in the new building?

579 Mr. Rhodunda: So, at this point, because they were office tenants, a number of them left due to Covid.
580 And because this plan was hopefully going to go forward, if not (audible) tenants to sign long leases so
581 essentially probably not, though it may be a possibility that they might come back but at this point we
582 don't think so.

583 Commissioner Wampler: Ok I just know a lot of people that use the services that were in that building
584 and it would be nice if they could remain there, but it's nothing that you really have control over, I
585 guess.

586 Mr. Rhodunda: Right.

587 Commissioner Wampler: And my third question, is the parking lot is essentially going to be unchanged,
588 it's going to be restriped so it's more efficient, but it is in the floodplain so that means if there were an
589 actual flood that any cars parked there would be under one or two feet of water that's my
590 understanding, is that right?

591 Mr. Parker: That's right, cars would be in the floodway fringe, the fringe of the floodway but yes that's
592 correct.

593 Commissioner Wampler: Ok I just wanted to verify that. My last question is regarding the 1.75 acres
594 that are going to be donated to the City. You had a slide in your presentation where to the south of the
595 building, there was a portion that was in green. Is that the actual area that's going to be?

596 Mr. Parker: Correct, yes that's the 1.75 acres.

597 Commissioner Wampler: Yes, the green (audible) that's to the south of the building and it goes along the
598 river?

599 Mr. Parker: Correct you see it's kind of hard to see, but the river goes through that portion, and there's
600 that trail existing on the...

601 Commissioner Wampler: (audible) when you're showing this, I was making the assumption that that was
602 the land that was going to be donated, but you didn't say that, so I thought I'd point that out. And that's
603 all my questions thank you.

604 Chair Hurd: Alright thank you Mr. Wampler. I have no further questions or comments on the
605 presentation or packet. So, we will move to public comment; Director Gray have we had any public
606 comment submitted prior to the meeting?

607 Director Gray: This is Director Gray, Chairman Hurd, we have not.

608 Chair Hurd: Ok, I have received no chat requests for comment. But I will open the floor for anyone from
609 the public that wishes to comment on this agenda item. Alright seeing no action, public comment
610 section is closed. We will bring it back to the table. So, I guess we'll go around one more time with
611 commissioners just for any final questions or comments regarding this application before we move to
612 the motion. I will begin with Commissioner Silverman.

613 Commission Silverman: I have no additional comments.

614 Chair Hurd: Alright thank you. Commissioner Stine?

615 Commissioner Stine: I have no additional comments, thank you.

616 Chair Hurd: Thank you, Commissioner Wallace?

617 Commissioner Wallace: I do have an additional question, and this has to do with cars in the parking lot.
618 Is the FEMA status something that has to be communicated to both residential and commercial tenants?
619 I'm not sure who can answer that, if it's the applicant or...

620 Mr. Parker: It retains to the building regardless of the tenant. But for flood insurance rate purposes,
621 they'll have to get, whether they have insurance for the building today, they'll have to modify that.

622 Commissioner Wallace: Sorry, just for clarification, so are there tenants maybe living in the apartments
623 or you know who may be renting commercial properties that are going to be unaware of the potential
624 flooding status and have their car parked there.

625 Mr. Rhodunda: The owner has indicated that he will certainly advise all tenants of the situation so that
626 they're aware of that. In the unlikely event that something was to occur, the tenants would be advised;
627 because the owner does not want to be in a situation where people are caught off guard. So, they how
628 exactly that will occur is something that we need to work out, but I'm sure we will find a way to put into
629 writing to all tenants that this is in the floodplain and in the event of a major storm they need to be
630 cautious.

631 Commissioner Wallace: So, Mr. Bilodeau if you are there?

632 Solicitor Bilodeau: Mr. Bilodeau, yes, I am here

633 Commissioner Wallace: Ok, is that the type of thing that could be potentially added to a special use
634 permit when it comes before council? That tenants must be, this must be communicated to tenants, the
635 status of the floodplain.

636 Solicitor Bilodeau: Sure. You can put conditions on a special use permit. Possibly it could be that some
637 sort of language that Mr. Rhodunda and I could agree to that would be in each either commercial or
638 residential lease. That would be in bold letters, notifying the commercial and residential tenants of the
639 risk. So yes, that condition could be a part of the special use permit.

640 Commissioner Wallace: Ok, thank you Mr. Bilodeau.

641 Solicitor Bilodeau: You're welcome.

642 Commissioner Wallace: And that's all I have Mr. Chairman

643 Chair Hurd: All right thank you. Commissioner Wampler

644 Commissioner Wampler: If this were a piece of undeveloped land in the floodplain contiguous to open
645 space, I think I would feel very differently about it. But I think that the proposal here of leaving the
646 amount of paving the same, elevating the building so it's less likely to flood and going to mixed use
647 where there's going to be additional housing, I think it's a much better use of that piece of property than
648 the current building that's there. I'm in favor of it, I think it's a really great idea.

649 Chair Hurd: All right thank you. Commissioner Kadar?

650 Commissioner Kadar: I have no additional comments, thank you.

651 Chair Hurd: All right, and I am also in agreement with many of the previous comments. I think that a
652 mixed-use building at this location is going to be valuable, and I think that the apartment mix is also
653 going to be useful. I think being within walking distance of a shopping center is useful for people that
654 may be having more economic issues, maybe only have one car and you could be able to physically walk
655 to the services as opposed to having to be able to drive so I think it's nice to support that walking area.
656 And I appreciated the little half mile, one mile that I diagramed to kind of emphasize that, that was very
657 useful. Alright, that is I believe all of the commissioners commenting, any further discussions or
658 comments for the commissioners before we move to the motion? Alright I'm seeing none. Secretary
659 Wampler, would you start with the first motion please?

660 Commissioner Wampler: Certainly, I move that the Planning Commission recommend that City Council
661 revise the Comprehensive Development Plan 5 land use guidelines for 1501 Casho Mill Road from
662 commercial to mixed urban as shown in the packaged exhibit F1 dated April 27, 2021.

663 Chair Hurd: Thank you, do I have a second?

664 Commissioner Silverman: Second, Silverman.

665 Chair Hurd: Thank you Commissioner Silverman. Any discussion on the motion? Alright, seeing none I
666 will move to the vote. Please do recall that for comprehensive development amendments and the
667 special use permits we do need to articulate our reasons for our votes. So, I will begin with
668 Commissioner Silverman.

669 Commissioner Silverman: The mixed use is very appropriate and very compatible with this particular
670 area. The redevelopment adds an economic benefit to the area and I'm generally in favor of the various
671 mixed residential apartment types. Thank you.

672 Chair Hurd: Ok thank you (audible) we got there.

673 Commissioner Stine: I vote in support based on the information provided in the Planning and
674 Development Department report and the comments of Commissioner Silverman.

675 Chair Hurd: Thank you, Commissioner Wallace?

676 Commissioner Wallace: Yes, I will be voting in favor as well. And I will go with Commissioner Silverman's
677 comments...I would also like to add that I think that there stormwater improvements here. There's
678 already a building here that's already in the floodplain but I think the stormwater improvements are
679 going to be an overall benefit to the City.

680 Chair Hurd: Ok, Commissioner Wampler?

681 Commissioner Wampler: I think that is a better use of this piece of property, I think that the attention
682 that's been paid to the current situation regarding flooding and I think it's something that I could
683 approve, so I vote yes.

684 Chair Hurd: Ok, Commissioner Kadar?

685 Commissioner Kadar: I think that this is, I vote aye. I think that this is a positive redevelopment of the
686 existing property and in my mind is entirely consistent with the stated objectives of the Comprehensive
687 Plan.

688 Chair Hurd: Thank you. And I vote yes as well for the myriad reasons already stated and also because
689 the zoning does support this use and it's simply amending the map to be in compliance. Alright, Motion
690 carries 6 to 0. Moving to Motion number, or letter B on the Special Use Permit

691 Commissioner Wampler: Because it should not have a negative impact on adjacent and nearby
692 properties and because the proposed plan does not conflict with the development pattern in the nearby
693 area and based on the April 28, 2021 Planning and Development report and the May 4th, 2021 Planning
694 Commission Meeting, I move that the Planning Commission recommend to City Council to approve 1501
695 Casho Mill Road's special use permit for grading of lands in the flood plain as shown in the Dufield
696 Associates Major Subdivision and Comprehensive Development plan stated March 22nd, 2019 and
697 revised December 30th, 2020 that the subdivision advisory committee conditions as described in the
698 April 28th, 2021 Planning and Development Report.

699 Chair Hurd: Thank you, do I have a second?

700 Commissioner Wallace: I do.

701 Chair Hurd: Thank you Commissioner Wallace.

702 Solicitor Bilodeau: Mr. Wampler, would you also be willing to add a condition that the leases for the
703 commercial and residential tenants have a warning about the parking lot being in the floodplain?

704 Chair Hurd: Ok Solicitor Bilodeau that would be part of our amendments to the motion. Which I was
705 about to open up.

706 Solicitor Bilodeau: Right.

707 Chair Hurd: Alright, so any discussion on the motion? Commissioner Wallace?

708 Director Gray: Excuse me Chairman Hurd, this is Director Gray. Also, Solicitor Bilodeau had
709 recommended that possibly the project also the other reason the project complies with the criteria set
710 forth in Section 32 968 subsection A through N as referenced in the Planning and Development staff
711 report dated April 8th on pages 5 and 6. Solicitor Bilodeau would you like to (audible) also be added as
712 well?

713 Solicitor Bilodeau: Yes, I would. Please.

714 Chair Hurd: All right, so yes there are additional determinations for special use permits in the special
715 flood hazard area that we just need to make sure that we reference or consider. Alright, I believe we're
716 back to you Commissioner Wallace.

717 Commissioner Wallace: Yes, I just wanted to propose an amendment to include wording that
718 recommend that City Council add a condition to the special use permit with regard to notification of the
719 floodplain status.

720 Chair Hurd: Ok, Alright, I believe I understand that amendment, do I have a second?

721 Commissioner Wampler: I second.

722 Chair Hurd: Thank you Commissioner Wampler. All right so voting first on...any further discussion on
723 wait we'll have to vote this amendment first then we'll move to any further discussion.

724 Commissioner Wampler: Do we, as long as we're adding things, do we want to add the references that
725 Paul's referring to? As an amendment?

726 Chair Hurd: Do we need to add those references to the zoning code required in the motion or just be
727 part of our consideration for the approval?

728 Solicitor Bilodeau: They can be part of when you list your reasons while you are voting that it could be
729 within that.

730 Chair Hurd: Yeah. Because those are considerations, they're not...

731 Solicitor Bilodeau: Yeah, the standard 3 for the special use permit plus this (audible).

732 Chair Hurd: Commissioner Wampler it was more of an advisement that there are additional conditions
733 for looking at when you're looking at special flood hazard areas and work special use permits within
734 those. Alright so voting on the amendment to include language within the leases advising residents or
735 tenants of the flood hazard I'm going to start with...so Commissioner Stine?

736 Commissioner Stine: I vote aye.

737 Chair Hurd: Thank you. For this one we don't need reasons because it is an amendment to the main
738 motion. So, we'll be returning to the main motion after this. Commissioner Wallace?

739 Commissioner Wallace: Aye.

740 Chair Hurd: Commissioner Wampler?

741 Commissioner Wampler: Aye.

742 Chair Hurd: Commissioner Kadar?

743 Commissioner Kadar: Aye.

744 Chair Hurd: Commissioner Silverman?

745 Commissioner Silverman: Aye.

746 Chair Hurd: Thank you, and I am Aye as well. Amendment to the motion passes. Returning to the main
747 motion, any further discussion or amendments to the amended motion? All right, seeing none, we'll
748 move to the vote. Commissioner Wallace?

749 Commissioner Wallace: I'm here I had to unmute. So, I vote in favor because I do not think that the
750 special use permit will adversely affect the health and safety of persons residing and working within City
751 of Newark boundaries or within one mile of the City of Newark boundaries and within the State of
752 Delaware. Also, I do not believe that it will be detrimental to the public welfare or injurious to property
753 or improvements within the City of Newark boundaries or within one mile of the City of Newark
754 boundaries and within the State of Delaware. And that it is not in conflict with the purposes of the
755 Comprehensive Development plan of the City. Additionally, I do not think that it's, I think it is in
756 compliance with the requirements set forth in Section 32-78 for the FHSA (audible).

757 Chair Hurd: All right, thank you. Commissioner Wampler?

758 Solicitor Bilodeau: Excuse me, the 32-93-83 those are the other (audible).

759 Commissioner Wallace: Ok sorry I was looking for the numbers and Ok.

760 Solicitor Bilodeau: That's ok, that's why I'm here.

761 Commissioner Wallace: What he said.

762 Chair Hurd: All right, thank you. Commissioner Wampler?

763 Commissioner Wampler: Yeah, I think this is going to a better use of the property. I think the idea of
764 elevating the building which would require a special use permit for the grading is an improvement, so I
765 vote yes.

766 Chair Hurd: All right thank you, Commissioner Kadar?

767 Commissioner Kadar: I vote aye for all the reasons stated in the April 28th, 2021 Planning and
768 Development department report.

769 Chair Hurd: Thank you, Commissioner Silverman?

770 Commissioner Silverman: I vote yes for all the reasons in the previous discussion in addition the
771 applicant has demonstrated that the traffic impact in this area would be virtually unchanged with

772 respect to the commercial property that's already there. And they've made the effort to move the
773 building further away from the floodway.

774 Chair Hurd: All right, thank you. Commissioner Stine?

775 Commissioner Stine: I vote yes for all the reasons stated by Commissioner Wallace.

776 Chair Hurd: All right thank you. And I vote yes as well for all the reasons previously stated by the
777 Commissioners. Alright, that Motion passes.

778 Commissioner Wampler: Because it should not have a negative impact on adjacent or nearby properties
779 and because the proposed plan does not conflict with the development pattern in the nearby area, I
780 move that the Planning Commission recommend that City Council approve the major subdivision plan
781 for apartments and offices as shown on the Dufield Associates Major Subdivision Comprehensive
782 Development Plan amendment plan dated March 22, 2019 and revised December 30, 2020 with the
783 Subdivision Advisory Committee conditions as described in the April 28, 2021 Planning and Development
784 Report.

785 Chair Hurd: Thank you, do I have a second?

786 Commissioner Silverman: Second, Silverman.

787 Chair Hurd: Thank you very much. Do I have any discussion on the motion? Commissioner Stine, yes?

788 Commissioner Stine: There was one issue that I forgot to bring up earlier, which was under the fiscal
789 impact in the April 28th report. Does the fiscal impact, I think that it had stated that it was based on a
790 different project? Are those numbers correct, and the name of the project is incorrect?

791 Chair Hurd: Oh.

792 Commissioner Stine: If under the line number 55, I had made notes there.

793 Chair Hurd: 265 yes, it does say Green Mansion. So, we just want to be sure that the numbers...

794 Commissioner Stine: Right, so are the numbers correct? The 29,250 more than the estimated net revenue?

795 Mr. Fortner: Mr. Chairman, this is Mike Fortner, Tom's mike isn't working but he says the numbers are
796 right, but the label is wrong the Green Mansion.

797 Commissioner Stine: Great, thank you. Thanks Mike.

798 Chair Hurd: All right, we are back to the motion any discussion or further? Alright seeing none, I will
799 move to the vote. Who am I up to? Oh, there we go, Commissioner Wampler?

800 Commissioner Wampler: I vote aye based on all of the comments made by the commissioners during the
801 previous two motions.

802 Chair Hurd: Thank you. Commissioner Kadar?

803 Commissioner Kadar: I vote aye as well for reasons stated on lines 535 and 537 of the April 28th Planning
804 and Development department report.

805 Chair Hurd: All right, thank you. Commissioner Silverman?

806 Commissioner Silverman: I vote aye based on the previous comments, the Commissioner's discussion,
807 and the department's report.

808 Chair Hurd: Thank you. Commissioner Stine?

809 Commissioner Stine: I vote aye based on the recommendation of the April 28th Planning and
810 Development Department report.

811 Chair Hurd: Thank you, Commissioner Wallace?

812 Commissioner Wallace: I vote aye for reasons previously stated.

813 Chair Hurd: Alright thank you. And I vote aye as well for the reasons stated in the department report
814 and for the commissioners. Alright, motion carries. And that is the item, thank you gentlemen, thank
815 you for joining us.

816 Mr. Rhodunda: Thank you very much.

817 **4. Review ad consideration for amendment to Chapter 32 Section 32-45 (b) BB central business**
818 **district off street parking option subsections 5,6. And 8**

819 Chair Hurd: All right, that takes us to item 4; Review ad consideration for amendments to Chapter 32
820 Section 32-45 (b) BB central business district off street parking option subsections 5,6. And 8. Director
821 Gray is this you to start off?

822 Director Gray: This is Director Gray, and yes let me pull up my presentation here. (audible) windows
823 open. Just had it before....ok. So, a little bit of background, this will be a brief presentation, a little bit of
824 background here. Section 32-45 B6 so indicates that within 45 days the City Council may also review,
825 modify, or deny the Planning Commission's approval, disapproval, or approval with conditions upon the
826 recommendation of a member of Council, Planning Director, and or the City Manager. For this code
827 provision, excuse may review the parking waiver. For this code provision, Mayor Clifton on January 7th,
828 2021 requested that the City Council review the Planning Commission decision made at the January 5th,
829 2021 (audible) parking 142 and 136 East Main street. The City Council denied this project's parking
830 waiver at their meeting on February 8th, 2021. In doing so the project in effect was also denied. As a
831 result, the project did not (audible) before Council, so the parking waiver was denied. There was a
832 discussion between this project's legal counsel and our City's Solicitor regarding the code section 32-45
833 B8. This section indicates that a project cannot be considered for two years if the parking waiver is
834 denied and so, proceed ambiguity in the code language in subsections 5 and 6 of the code section. So,
835 Katie, if you could pull up exhibit B, please? That would be the next, oh Exhibit A sorry; that would be
836 the next page, or the second page. Upon discussion with the City Solicitor, the City manager, and City
837 staff, the recommendation is to revise and clarify subsections 5 and 6 and subsection 8. And that
838 subsection 8 once revised would be similar to 32-79 G; and this section states that if after due
839 consideration a proposal for rezoning or annexation is denied, such a proposal cannot be eligible for
840 reconsideration for a period of two years after final action by the Council except by a favorable vote of
841 three fourths of the Planning Commission or Council. Instead, the Planning Department proposes that
842 the vote for reconsideration be a simple majority given that a parking waiver vote does not equate to a
843 rezoning vote. Furthermore, this amendment be retroactive. That concludes my brief presentation and
844 Katie do we have Exhibit A to pull up, the proposed language so we can have a better look at it?

845 Miss. Dinsmore: Yeah, let me pull it up really quick, just a second.

846 Director Gray: Thank you.

847 Chair Hurd: While we're waiting Director Gray and Solicitor Bilodeau, am I right in thinking that this is
848 the only section in the Code other than the, so the rezoning has the ability to be reconsidered is the
849 parking waiver the only other one that didn't have a reconsideration option?

850 Solicitor Bilodeau: Commissioner that is my understanding, that this is like the rezoning. I haven't seen
851 any others that I'm aware of.

852 Chair Hurd: Ok.

853 Solicitor Bilodeau: In speaking with John Tracy and Council for the applicant, he made some arguments
854 that may be a stretch a little bit, but he was saying that the way the current code is written, they never
855 appealed, the Planning Commission granted their parking waiver, but they didn't appeal it. The Council
856 appealed it, so his argument was that the two-year hiatus if you will, should not apply to them because
857 they never appealed any decision, so it was a bit of a stretch but still, I think the two year, the thought
858 was the two-year hiatus if the parking waiver is eventually denied may be a bit harsh.

859 Chair Hurd: Ok, I just wanted to be sure there weren't any other sections we should be considering as
860 part of this sort of effort. Still waiting on the document, looks like yes.

861 Director Gray: I'm emailing it now; I don't have the ability to share that I know of. So, let's see.

862 Commissioner Silverman: Well, I have a question for Mr. Bilodeau.

863 Chair Hurd: Ok, Commissioner Silverman?

864 Commissioner Silverman: Mr. Bilodeau we found that the City often uses the Parking Waiver as leverage
865 in negotiations with a property owner. Who's going to pay for gating, what spaces are going to be
866 available, we've seen this in several other projects. Is it appropriate that the City has a veto over the
867 parking waiver? There's nothing in the code that talks about how it's appealed, it appears to be the
868 exclusive jurisdiction of the Planning Commission, and now this puts the Council in a position of really

869 having an upper hand that's it's "my way or the highway" with respect to any negotiations, with respect
870 to land use, and parking.

871 Solicitor Bilodeau: Well, the way the code is written now Commissioner is that, in the end, I think it was
872 always the understanding that the parking waiver was within the purview of the Planning Commission
873 and nobody ever really noticed that one little provision that allows the Council to review parking waivers
874 made by the Planning Commission. I think this and the one on 141 East Main were the first two I think
875 ever where a member of Council availed himself of the ability to review that decision.

876 Commissioner Silverman: Does this smack of contract zoning?

877 Solicitor Bilodeau: I don't know if its "smacks" of contract zoning. It's, I mean the parking waiver's
878 always been a way of working with developers and that it in lieu of paying money if you don't have
879 enough parking spaces, real estate is donated, or you know easements are granted. So yes, it is
880 something where there are conditions to get the development through, but I believe in most cases are
881 reasonably related to the development being considered.

882 Commissioner Silverman: Thank you.

883 Chair Hurd: Thank you. Ok, we have the document up so let me go around the horn here.
884 Commissioner Kadar?

885 Commissioner Kadar: Yes, since we're writing code here, I'd like to point out a couple of wording issues
886 that don't quite fit right. Line 14, "less than what the application sought in the application". I think that
887 should say what the applicant sought in the application. I don't think the application sought anything in
888 and of itself. Correct?

889 Chair Hurd: Correct.

890 Commissioner Kadar: Ok. Then on line 22, "Council may also request the city council also review"
891 redundant, get rid of one of the also; the second one would be preferable. And then on line 31 "for a
892 parking waiver cannot" it should be a parking waiver for the same property cannot be considered for a
893 period of two years. Add the word for. That's it, other than that I don't have any issues with what's
894 being recommended here.

895 Chair Hurd: Alright thank you, Commissioner Silverman?

896 Commissioner Silverman: I have no issues with what's being proposed.

897 Chair Hurd: Alright thank you. Commissioner Stine?

898 Commissioner Stine: I have a lot of questions. So, I'm trying to understand exactly what you're asking
899 me to approve. So, the Daneman projects, we did approve a parking waiver for the Daneman projects,
900 meaning the Planning Commission approved a parking waiver for the Daneman project.

901 Chair Hurd: Correct.

902 Commissioner Stine: As I recall it was a fairly benign request, it went to City Council and City Council
903 enacted or adopted this little-known clause in the Code somewhere and they denied the parking waiver
904 that the Planning Commission had approved.

905 Chair Hurd: Correct.

906 Commissioner Stine: So, they we did not disapprove an application...

907 Chair Hurd: So that's why there's and/or in there.

908 Commissioner Stine: Ok. And (audible) subsequently disapproved on appeal. But they weren't on
909 appeal. How can you be and/or and be on appeal?

910 Chair Hurd: Correct. So, you just hit on something that I noticed as well. I think a tighter reading and I
911 think the current version of the code doesn't use the word appeal directly in the applicant's actions, but
912 the new language does. I kind of feel looking at this that this is only for if the applicant appeals the
913 decision and is rejected then they're barred. But if the Council reviews the action, then that doesn't
914 count as an appeal. And so, they would not be barred. So, I would almost say that a tighter reading of
915 this would say that the applicant is not locked out for two years by that provision. But I'm not the City
916 Solicitor but I will say that this language may clarify, but we may also want to look at that and say do we
917 keep the language about appeal in there and sort of what's the intention.

918 Commissioner Stine: Yeah, what's the intention because under what I'm reading here. So, if the
919 application was disapproved by the Planning Commission, which it was not, and or subsequently
920 disapproved by the City Council on appeal. So, that does not apply in this 132/136 Main Street scenario,
921 correct? Because it was not an appeal.

922 Chair Hurd: So, in this particular example I'm just saying from my reading, the only place that they use
923 appeal, and they don't use it directly in item 6, sorry item 5. They say that the applicant may request
924 the City Council's review the application, item 6 also says that Council may also review, modify, or deny.
925 Neither of those sections use the word appeal. But I would say that the word appeal as we generally
926 understand it, is usually by the denied party asking for a reconsideration, in this case it would be the
927 applicant.

928 Solicitor Bilodeau: So, Commissioner Stine, the reason for the first part of the clause, and it is in the
929 instance where the applicant applies for a Parking Waiver from the Planning Commission gets shot down
930 and then decides ok, I'm not going to move forward with this application, I'm just going to start over
931 from scratch, and it doesn't go to Council for further consideration.

932 Commissioner Stine: Ok.

933 Solicitor Bilodeau: So, I was just trying to catch that instance where the development never makes it to
934 Council the first go round because it was shot down by Planning Commission. If that makes any sense.

935 Chair Hurd: Sorry, Solicitor Bilodeau which item were you speaking about?

936 Solicitor Bilodeau: Like Line 29.

937 Chair Hurd: Aright, so I think that the challenge here is while the 131 project highlighted this issue. I
938 don't want to use this it as the sole basis for why we are redefining and rewriting the code. So, we're
939 taking this opportunity to go, there seems to be a barrier to continuing or having the project reexamined
940 when there was no action by the applicant. But I guess I will turn to Solicitor Bilodeau and ask you your
941 opinion on the words "on appeal" in item 8. And does that change the reading of this or the
942 enforcement or the interpretation of this?

943 Solicitor Bilodeau: Well, we could when we go because the Council has the right to review, modify, or
944 deny the Planning Commission's approval. Which in my view an appeal, I think we could change the
945 word appeal and on line 30, "disapproved by City Council on this application to review, modify, or deny"
946 we could put that language in there instead of appeal if that would make more sense.

947 Chair Hurd: Let's come back to it, I'm just trying to understand the words and the intention. Hang on
948 Commissioner Silverman. Did you have something to add to this?

949 Commissioner Silverman: Yes.

950 Chair Hurd: Ok.

951 Commissioner Silverman: I think we may be simply missing a comma on Line 30. If it read "disapproved
952 by the city council, (comma) on appeal" that would answer your question, it's usually the applicant who
953 appeals. A subsequent application for parking on the same property cannot be...two thoughts,
954 disapproved by the Planning Commission and or subsequently disapproved by Council, (comma) on
955 appeal I think that answers the circle we're going in here.

956 Chair Hurd: Ok. My first thought was get rid of "on appeal" and just say that if it was disapproved by
957 both, then the applicant has (audible) can ask for majority vote.

958 Commissioner Silverman: That works.

959 Chair Hurd: That was both options. I'm just trying not to insert too much in here...

960 Commissioner Stine: No, that helps a lot. That's where I was getting tripped up.

961 Commissioner Hurd: Yeah.

962 Director Gray: (audible) this is Director Gray.

963 Commissioner Hurd: Yes, Director Gray.

964 Director Gray: Is it possible complication would be on Line 30 two words, to take out the two words "on
965 appeal".

966 Chair Hurd: I'm just throwing that out as a possibility, we come back around.

967 Director Gray: I'm just highlighting it right now, (audible) taking notes.

968 Chair Hurd: Yes, that was my suggestion, to remove the uncertain, well not uncertainty, but ambiguity
969 about which action, because it says that, well I don't know. It doesn't say which action triggered it but
970 what seems to really matter is that City Council disapproved the application.

971 Commissioner Stine: Yeah, that would help. The other, on Line 31 is there a word missing there? So, if
972 an application is disapproved by the Planning Commission and or subsequently disapproved by City
973 Council, a subsequent application for a Parking Waiver the same property...

974 Chair Hurd: Yes, Commissioner Kadar had added a "for" in there.

975 Commissioner Stine: Oh, sorry, I missed that.

976 Chair Hurd: That was his comment.

977 Commissioner Stine: Ok, so I understand we're not speaking specifically about any one project but it's
978 the only one I can wrap my head around because it's like you said, it's what triggered this conversation.
979 So, in this case of 130 in the Daneman project, under this proposal, 4 Council members would vote to
980 allow a new application to be considered. Has the Daneman project under this current language, have
981 they been told they can't come back for two years, is that what's happened?

982 Solicitor Bilodeau: They were told that they can't come back and actually Commissioner Stine, once the
983 Parking Waiver was denied there was no further voting by Council because you know, their application
984 wouldn't work without the parking waiver.

985 Commissioner Stine: Ok, so that, so they were told that now they can't come back for two years, so
986 what this proposed amendment would do would say this project or any other, not just the Daneman
987 project but 4 Council members could now vote in favor of allowing a new application to be considered.
988 Would that then go back to the Planning Commission?

989 Solicitor Bilodeau: Yes, it would be a brand-new application.

990 Commissioner Stine: A new application. So that comes, that's what says it comes back to the Planning
991 Commission...

992 Director Gray: This is Director Gray. I am not sure about that Solicitor Bilodeau. That if a plan already
993 was in, I believe it would have to do with where the plan review was and what process. So, in the
994 Daneman project case, if the plan was already reviewed and recommended by the Planning Commission
995 and there weren't any changes, and let's say this language went through and Council voted to review
996 the application, I don't see any reason why it would have to, why this application would have to go back
997 to Planning Commission for review if there weren't any changes.

998 Solicitor Bilodeau: It says allowing a new application in the wording.

999 Director Gray: Ok.

1000 Solicitor Bilodeau: And then I think it's pretty obvious with any new application that the applicant is
1001 going to have to make some I don't want to say radical changes, but they're gonna have to, they're
1002 gonna have to change up whatever they were seeking for a parking waiver if they want to have any
1003 success a second time. You know I would think that the new application, new considerations as to what
1004 type of parking waiver is being asked for it would go back to the Planning Commission.

1005 Director Gray: (audible).

1006 Commissioner Stine: Ok and thank you Director Gray. I guess my next question is do they have to go
1007 back through entire process over again? Or are they just coming back with a new parking waiver
1008 application?

1009 Solicitor Bilodeau: Well, well I think that the building they're proposing to build will determine the type
1010 of parking waiver they're going to be asking for.

1011 Commissioner Stine: Well, they could in theory propose the same building, but they could change like
1012 from two-bedroom apartments to four-bedroom apartments to one-bedroom apartments to like right?
1013 They could change the configuration of the building to effect the amount of parking that they need.

1014 Solicitor Bilodeau: Right.

1015 Chair Hurd: Right, but that would still be a new application because it's a new, basically it's a revised
1016 project so I believe it would go through the Planning Department's process again; it would go through
1017 SAC, it would come to Planning Commission, it would then go on to council. The reason I have here, the
1018 reason we have to do this is the property itself is barred from any applications for two years.

1019 Commissioner Stine: Right.

1020 Chair Hurd: So that's why we have to sort of say you know and maybe they say I'm going to resubmit the
1021 actual project all over again. Same thing, that could be their discretion, but I think that, and I guess I
1022 wanted to check. Is this language taken directly from the rezoning's consideration? Because I can't find
1023 that section right away.

1024 Solicitor Bilodeau: (audible) The rezoning will require a 3/4ths majority of Council and which is 5.2
1025 members which I think you would round up to 6. So, it would be, it's quite a high bar for someone to
1026 come back for a rezoning with a 3/4ths majority.

1027 Chair Hurd: Ok, I meant the language about whether it had to be a new application for rezoning or
1028 whether they could have the original application reconsidered.

1029 Solicitor Bilodeau: So, is the word new?

1030 Commissioner Stine: Yeah, that's my point too. The argument is that it's what do we say? It should be
1031 reduced to 50% and not 3/4ths because...because why, do we say it does not equate to a rezoning vote?
1032 It's a parking waiver vote. So that's my question are they just coming back with a parking waiver
1033 application or is this an entirely new application in which case how do you make the argument that it
1034 only 50% versus 3/4ths.

1035 Chair Hurd: Right, my reading for this is that they would come to council with an action saying we would
1036 like to have a new application be considered for this property. I don't know if they need the application
1037 or they just need to say, like, we would like to be reconsidered and they get a vote that allows them to
1038 proceed with the application process. Am I understanding the application process correctly Director
1039 Gray or do they actually need to bring? Because I don't see them going to Planning Commission not
1040 knowing if Council is going to...

1041 Commissioner Stine: Right, so the 50% is just will you give us permission to put in a new application?
1042 That requires 4 council members.

1043 Chair Hurd: That was my understanding.

1044 Commissioner Stine: (audible) back to square one, I guess that's my bigger question. Is that an undue
1045 burden to send them all the way back to square one because of a parking waiver issue.

1046 Chair Hurd: Possibly. Commissioner Silverman, you had something to add here?

1047 Commissioner Silverman: Yes, I might use the word reconsider. I'd like to see that word in here. I think
1048 that clarifies do you go back all the way, do you go back part of the way, can Council decide what pieces
1049 it wants reviewed by Planning Commission. I think it should rest on the actual application. With respect
1050 to Mr. Bilodeau, I can see circumstances that do not involve much of anything physical cross access
1051 agreements that the owner says, no I'm not going to give you, no I'm not going to operate a public
1052 parking lot in my building. And Council says well, you're not part of solving our problem, we're not
1053 going to let you move forward. And I think that this is extremely important because it also effects or it
1054 runs with the property. The applicant can't simply sell his or her property to someone else, and they can
1055 just start over. There are a lot of holes in this, there are a lot of incomplete pieces in this.

1056 Chair Hurd: Ok, thank you. Commissioner Stine, do you have anything further? Sorry Director Gray, we
1057 had asked you some questions so let's.

1058 Director Gray: Yes, so you had asked me a couple questions and then you kinda moved on, so. I think it
1059 would be helpful for me to answer those questions. For the record.

1060 Chair Hurd: Yes.

1061 Director Gray: (audible) so the question was whether the Section 32-79 included the 3/4ths language or
1062 what language and what did 32-79 say. If you look at the memo I included in your report, it's quoted in
1063 there and it's very brief. If after due consideration a proposal and I do have in parentheses for rezoning

1064 or annexation, that is not in the code. I put that down in parentheses for emphasis because this is under
1065 the provision for annexation so that that part is not in the language. Is denied such proposal cannot be
1066 eligible for reconsideration for a period of two years after final action by the Council except upon the
1067 favorable vote of 3/4ths from Planning Commission or Council. Now, and then we go on to explain the
1068 reasons for changing the language. So, the to answer some of the comments that just occurred when
1069 you asked me that question, and now, and Commissioner Silverman's point is well taken, and that goes
1070 back to my comments previously. I think there are some scenarios that there will be plans that subplans
1071 should go back to the Planning Commission. And some can go right from a vote in Council and that's
1072 why I believe the language for the rezoning has Planning Commission or Council in it. Because then
1073 again there might be some changes to a plan that I think 141 East Main is a really good example. That
1074 the applicant made changes that triggered it going back to Planning Commission. Let's take 268 East
1075 Main Street. They are making some changes to the plan that is not triggering it to go back to Planning
1076 Commission. So, I just put that (audible) for consideration. Thank you, Chairman Hurd.

1077 Chair Hurd: Ok, thank you. Commissioner Stine, are we good? Are you set?

1078 Commissioner Stine: No, but I'll move on from me to hear what the other Commissioners have to say,
1079 maybe it will become clearer to me.

1080 Chair Hurd: I understand. Alright, Commissioner Wallace?

1081 Commissioner Wallace: Thank you, so I agree a lot of what's been said, and I've appreciated a lot of it. I
1082 personally do not think that this proposed added text is clear enough. And I think while it might be
1083 attempting address one problem, it could be creating other problems. Also, I do think it makes sense to
1084 make a change from having a basically a super majority of Council to you know bring it down to a
1085 majority for the Parking waiver only. But I think that is complicated by the fact that if in changing the
1086 parking waiver the applicant needs to change the project. So, I do think, and I think it needs to be
1087 (audible) out more. And it could be this other wording that Director Gray references in Section 32-79G
1088 including Planning Commission or Council. And I think there's some ambiguity there that an applicant
1089 could you know who makes that determination and the applicant (audible) one or the other. So, I'd also
1090 like to add that I'm not necessarily in favor of making this retroactive, that feels very much like
1091 legislating for a particular project or client. And that's just something I'm generally not in favor of. I
1092 don't know if I've added anything particularly helpful, except that I would, I think I'm agreement with
1093 the other Commissioners that have spoken, I just think there's too much ambiguity here.

1094 Chair Hurd: Ok, thank you. Commissioner Kadar? Wait did we do Kadar, we did. Commissioner
1095 Wampler?

1096 Commissioner Silverman: Well to interrupt we need to extend, it's after 9:00.

1097 Chair Hurd: You're right we do. Exercising Chair's prerogative to extend to 9:30. And now,
1098 Commissioner Wampler.

1099 Commissioner Wampler: Well, I'm actually in favor of what we're doing here. I do agree with Jen that
1100 there's a possibility since it's retroactive that the changes are being made for the benefit of a specific
1101 project. But I also believe that they never appealed it, so in once sense it doesn't really apply to them by
1102 the letter of the way this is written. So, I just wanted to my main question is when we vote on this, do
1103 we want to include the little changes we made in the wording, or are people not ready to vote on this,
1104 they feel it's too ambiguous to move on?

1105 Chair Hurd: That will be my question to the Commission once we're through our first loop here about
1106 do, we have something we can actually vote on or is there still open issues, because that is common to
1107 this. So, is that all of your comments, questions Commissioner Wampler?

1108 Commissioner Wampler: Yes, it is.

1109 Chair Hurd: Ok, I'm going to move to public comment. Director Gray have we had any public comment
1110 submitted on this item?

1111 Director Gray: This is Director Gray, no we have not.

1112 Chair Hurd: Ok, I see...the only member of the public I see is the recorder. I'm still going to open the
1113 floor to public comment for item 4...alright seeing no action closing public comment and bringing it back.
1114 I guess I'm going to say that my sense here that items 5 and 6, there's some typographic issues but
1115 otherwise they're really solid. It's really just item 8 that we're having the most discussion about. And I

1116 would agree that there is still some ambiguity and still some uncertainty about kind of what's the
1117 process, what does this trigger.... how do you trigger this, how do you go and get the majority vote for
1118 approval of something? You know (audible) I'm looking at the language for the rezoning and I think
1119 there's some parallels but there's not quite enough because of a rezoning proposal usually is about a
1120 symbol, I'm going to rezone from this zoning to that zoning. And I could come back and say I would like
1121 to do that, and I would like to be reconsidered. You know it's...for parking waiver there's more
1122 complexity to the application because it's very dependent on the circumstances of the building and the
1123 proposal. It's not just a matter of coming back and saying nope I still want the parking waiver. You
1124 know it's like well, (audible). So, I guess what I'd like to put out there for the consideration of the
1125 Commission is to send this back to staff and the Solicitor incorporating our comments and seeing if we
1126 can get a clearer, less ambiguous, more focused maybe is the word, item 8 that would make it easy for
1127 especially for an applicant to look at that and go ok, Planning Commission approved me, Council denied
1128 me, what am I doing. What's clearly, you know, clearly define what the next step is. So, I guess I will go
1129 around to the Commissioners and see if that agrees with your thoughts, or if you would like to take it to
1130 a vote tonight. And I will begin with Commissioner Silverman.

1131 Commissioner Silverman: I still think this needs some more work. I have a question for Mr. Bilodeau.
1132 The kinds of things that are usually included in parking waivers, would that be the equivalent of a deed
1133 restriction if we're talking about a land development plan or even zoning; it would be voluntary on the
1134 part of the applicant. That's my question to you.

1135 Solicitor Bilodeau: Well, there's a couple different parking waivers. One is just where you're paying
1136 financially for the number of parking spaces. And then code allows for other types of considerations in
1137 lieu of paying cash such as allowing managed parking or allowing easements cross access. So yes, there's
1138 deed restrictions, things along those lines, those are all part of possibly part of considerations in lieu of
1139 paying the cash.

1140 Commissioner Silverman: Because I can see where a circumstance would be that the parking waiver
1141 might have been turned down or rejected by Council because they didn't think it was enough money.
1142 Everything else worked, but for some reason the Council thought that represents too little money and
1143 they want more. How do we tell an applicant to go all the way back to square one and submit a new
1144 plan? That sounds like a negotiation between the City and the applicant before building permits issued.
1145 So, I too would like to see this go back for some additional thought. Well, that's my comment.

1146 Chair Hurd: Alright thank you. Commissioner Stine?

1147 Commissioner Stine: Is there a subsection 7 that is relevant to this conversation, or no?

1148 Chair Hurd: Hold on I just had that here...

1149 Director Gray: This is Director Gray; I'm pulling it up now. It's a race between Will and I.

1150 Chair Hurd: Item 7 says "applications for off street parking standard reductions may be considered in
1151 conjunction with applications for rezoning or subdivision approval". So, it's just, there's a number of
1152 items about referring to reductions of off-street parking standards, and (inaudible) is just one of them.

1153 Commissioner Stine: Ok. I feel like if we think it's unclear, then an applicant would find it unclear and I
1154 think it will be, setting aside the issue with the Daneman project, I think it would be an undue burden to
1155 send somebody back to square one if they have, over a parking waiver. Over a parking waiver
1156 negotiation, just like Commissioner Silverman said; cause it is a negotiation. I'd like to see it really clear
1157 as to what the process would look like and I'd like to send it back to staff with those comments and
1158 maybe revisit it at our next meeting, if possible.

1159 Chair Hurd: Ok. Thank you, Commissioner Wallace?

1160 Commissioner Wallace: Yes, I am in agreement I think 5 and 6 were ok, but it seems like number 8 needs
1161 some more work. I'd like to see it go back to staff then come back to Commission.

1162 Chair Hurd: Ok, thank you, Commissioner Wampler?

1163 Commissioner Wampler: Well, I think it's pretty clear in section 8 that we're talking only about a parking
1164 waiver not the entire project, but I'm perfectly comfortable with people taking another crack at it. So, I
1165 would have no objection to that.

1166 Chair Hurd: Ok, Commissioner Kadar?

1167 Commissioner Kadar: Yeah, I look at section 8 and I don't have as much confusion as most people seem
1168 to be having here. The section is relatively clear and like Tom, I agree it is talking specifically about the
1169 submission of a new parking waiver application, not a new application for the project. Now why would
1170 someone have their application rejected, and then get 4 Council members to approve them to resubmit,
1171 then resubmit the same application? I don't understand that, they would be modifying that application
1172 to some extent, hopefully to gain positive parking waiver. So, I don't have as much problem with that in
1173 this paragraph as everyone else seems to have. It's relatively clear to me. Again, I'm not Paul and I'm
1174 not a lawyer.

1175 Chair Hurd: No, I appreciate that because you point out that we keep talking about the application for
1176 an off-street parking standard reduction...(audible) that just needs to get worded in there.

1177 Commissioner Kadar: Now let's not forget this entire section is proposed amendment to Chapter 32
1178 section 32 to 45 off street parking requirement section.

1179 Chair Hurd: Right.

1180 Commissioner Kadar: It's got nothing to do with special use permits, or project approvals. We're talking
1181 specifically about parking waivers.

1182 Chair Hurd: Ok, so I hear you on that. I don't know if that changes anyone's mind or if we would still
1183 prefer to have a cleaner version.

1184 Commissioner Kadar: I don't want to be the one to hold up doing that if everyone else is more
1185 comfortable with that. But as I said earlier, I don't have an issue with this one either. So, I'll go along
1186 with the group and we can look at it again maybe next month? With a little bit cleaner version.

1187 Solicitor Bilodeau: So, a couple questions for the clarifications. Now the language that Mary Ellen quoted
1188 with the 3/4ths, that allowed for either 3/4ths of the Planning Commission or Council to vote for it to
1189 come back. I hadn't really heard anything, that Planning Commission wants to have that vote to bring
1190 back a parking waiver. So as far as I could tell, the Planning Commission is ok with the 4/7 voting with
1191 the Council taking that vote? Is that?

1192 Chair Hurd: Solicitor Bilodeau, that is my sense as well. I think the majority was well received. I think
1193 Director Gray's point and I think Commissioner Wallace touched on this too or I think it was
1194 Commissioner Wallace. Sort of who considers it because we're sitting here, (audible) Planning
1195 Commission or City Council so it could be just approved by just the Planning Commission, so if I wanted
1196 to submit a new application, I should come to Planning Commission because they were the ones who
1197 disapproved the initial application. So, I'm feeling like some of that language from the rezoning, needs
1198 to get back into it can go to one or the other groups. Probably based on who rejected it last; and
1199 therefore, who has to reapprove the new application.

1200 Solicitor Bilodeau: Ok, I get that next question, so as far as the question of whether we make someone
1201 start from scratch or not just trying to think out loud is to possibly that, if the Planning Commission's
1202 voting on it then they're obviously going to have to start over from scratch or go back to the Planning
1203 Commission.

1204 Chair Hurd: Well, I think Commissioner Kadar brought up a good point. That while we're using the word
1205 application, I think we should be understanding that this is an application for a parking waiver. And we
1206 did see that 141 came back to us, or no we had continued it, that's right, it wasn't a reapplication. It may
1207 be very depended. What changed in the application to make it new? Was it as Silverman pointed out,
1208 did they get an agreement to use a different parking lot or a cross access agreement? Something that's
1209 something that's sort of independent of the building's structure and use. Ok that's one thing; if they said
1210 yeah, we took a floor off ok that's a new project anyway. Planning Department's not going to let them
1211 just take a floor off come back and keep going, it's going to come back as a revised application. So, we
1212 may not need to say...

1213 Solicitor Bilodeau: Some sort of language as determined by the Planning Director goes...

1214 Chair Hurd: Yeah, it gives staff some sort of discretion as to who looks at this to say yes, we're going to
1215 reconsider this application whether it's revised or amended or new.

1216 Solicitor Bilodeau: Ok

1217 Chair Hurd: Ok. Director Gray, do you feel you have enough direction to take the second round at this?

1218 Director Gray: I defer to Solicitor Bilodeau

1219 Chair Hurd: Well, you and Solicitor Bilodeau working together of course.

1220 Solicitor Bilodeau: We are a tag team, yeah.

1221 Director Gray: Yeah, I'm looking at my notes...I think I just have a statement here, but you can't have it
1222 be specific enough for every situation. You have to have it balanced to we can have some
1223 interpretation. But you can't have it so specific to account for every scenario. So, I feel that some of this
1224 discussion is that some of what is being asked for will result in language that is not good code language.

1225 Chair Hurd: Ok

1226 Director Gray: So, we just need to keep that in mind. And I totally get that we want to be specific, and
1227 we want to be clear, and point taken, but I think we need to keep in mind we can't write code for every
1228 scenario. So certainly, Solicitor Bilodeau and I will go back and come back with some revised language
1229 based on this discussion, thank you.

1230 Chair Hurd: Ok, thank you. Commissioner Silverman, yes?

1231 Commissioner Silverman: I think Mary Ellen hit on a very important point here, and I think we might be
1232 able to put some subparagraphs in here that if the reconsideration of the parking waiver involves
1233 physical changes to the site or to the building, that's one path with respect of going back to the Planning
1234 Commission or not. If the changes deal with the non-physical items that Mr. Bilodeau spoke about, fees,
1235 who's going to operate, or as you Mr. Chairman said, I can come up with an agreement with a contract
1236 with a private parking agency adjacent to the site for the number of parking spaces that I need; that's
1237 kind of a different animal. Nothing changes with the building, there are external factors that I altered
1238 that now makes it a workable project with respect to meeting the parking requirement. So, I don't know
1239 in whether doing a rework of line 29 number 8. That might be two avenues to explore and keep it
1240 general enough as the Director said that we don't come up with a list of specifications that people
1241 wonder is these inclusive or exclusive?

1242 Chair Hurd: Right, ok. Thank you for that. Alright so we seem to have an agreement on that. I will move
1243 on from that item. Can I get Commissioner approval to extend the meeting to 10 o'clock so we can
1244 finish informational items, new business, and public comment?

1245 Director Gray: Chairman Hurd?

1246 Chair Hurd: Yes, Director Gray?

1247 Director Gray: I believe we need a motion for this, this is an action item.

1248 Chair Hurd: (audible) Ok, I guess other times before we've just sort of...

1249 Director Gray: Chairman Hurd, I didn't hear any of that, sorry.

1250 Solicitor Bilodeau: Yeah, I lost it too.

1251 Chair Hurd: I'm back on sorry, sorry that was my fault. Secretary Wampler do you feel ready to form a
1252 motion for Director Gray? Is he asking for this to be revised and resubmitted by staff?

1253 Commissioner Wampler: Sure. I move that the proposed changes to Chapter 32 section 32-45 Off-street
1254 Parking Requirements Section B, BB Central Business District. Off street parking option subsections 5, 6,
1255 and 8 be returned to staff for rewording based on the discussion we've had with the Commission.

1256 Chair Hurd: Alright, do I have a second?

1257 Commissioner Silverman: I'll second, Silverman.

1258 Chair Hurd: Thank you very much, moving to the...any discussion on the motion? Alright moving to the
1259 vote, Commissioner Silverman.

1260 Commissioner Silverman: Aye.

1261 Chair Hurd: Thank you, Commissioner Stine?

1262 Commissioner Stine: Aye.

1263 Chair Hurd: Commissioner Wallace?

1264 Commissioner Wallace: Aye.

1265 Chair Hurd: Thank you, Commissioner Wampler?

1266 Commissioner Wampler: Aye.

1267 Chair Hurd: Commissioner Kadar?

1268 Commissioner Kadar: Aye.

1269 Chair Hurd: And I vote Aye as well, thank you. Alright, now, because my microphone was turned off. Do
1270 I have any objections from the Commissioners for extending the meeting to 10 o'clock so we can finish
1271 the last 3 items on the agenda? Alright, seeing none, we are extended. This takes us to item 6 which
1272 would be Informational items, which would be the Comprehensive Plan Review update by Planner
1273 Fortner.

1274 **5. Informational Items (These items are for informational purposes only)**

1275 Mr. Fortner: Alright, how're you doing? I'll be really quick; we had a meeting our April meeting which
1276 was on April 29th. At that meeting we looked at revised additions to the first, second, and third chapters
1277 including the community profile; so, it included a lot of census updating. And we set our next meeting,
1278 because our next meeting was scheduled for close to Memorial Day weekend, so it's going to be on June
1279 3rd at 7:00 via GoTo Meeting. That concludes my report I'm open to any questions.

1280 Chair Hurd: Yeah, I'll just comment; I think Planner Fortner did a good job brining in a lot of updated
1281 demographic and other information (audible) in such which does show some interesting trends going
1282 on. Obviously, lots of things we'll need to consider in the COMP Plan Review. Alright. Any questions?
1283 Alright, Director Gray time for your big moment here.

1284 Director Gray: Director Gray, did I give the (audible) report last month?

1285 Chair Hurd: I think so. I think it's in the minutes.

1286 Director Gray: Ok.

1287 Chair Hurd: I mean I know Council's been kind of quiet because to the election and such...

1288 Director Gray: I couldn't remember because I kept some of the April 4th stuff in. Yeah ok, so this will be
1289 shorter. So yes, Council was on as Chairman Hurd mentioned, Council was on a break between March
1290 23rd and April 22nd on April 26th the Planning Commission related items was the second reading for the
1291 Notification ordinance which reduces the advertising time of 18 days to 10 days, and that was adopted.
1292 Upcoming Council planning related items on Council meetings includes May 10th, we just finished the
1293 packet for that; that's 141 East Main Street. And second (audible) first reading for the setback in the BB
1294 zone. Also (audible) yes, last night's Council meeting was the American Rescue Plan discussion. Newark
1295 is slated to get a little over 17 million dollars. The details are still coming out from the Feds regarding
1296 the specifics; there are still some general guidelines on how the money should be spent. Staff has been
1297 working a lot on this. On a list of things and there was general a specific, I came up with a specific list,
1298 but the discussion last night was on general, and to get a general direction from the council on long use
1299 projects but kind of taking more of a ten thousand (audible) level. One of the, a couple items regarding
1300 the Planning standpoint, that would, were discussed last night actually two things. One and I know this
1301 doesn't jazz too many people but Jeff, is our data management system, is to get a new one because our
1302 current one is a challenge. So that would be super cool if we could get that the second is zoning; we
1303 have a number of people helping us out with our zoning ordinance changes we have a number of zoning
1304 ordinance changes in the pipeline. One, just kind of go through them just very briefly. The parking
1305 regulations for the consultant on some recommended changes we'll hopefully be getting Council here
1306 just on the general discussion of that in the next couple of months. After 2021 we have some zoning
1307 changes regarding the rental rental workshop recommendations. One is if there's no zoning the other
1308 property code updates, the other is accessory dwelling units. The other thing that has the code changes
1309 that have been discussed and I believe we discussed this with Planning Commission a while back; and
1310 Council has discussed this, no they haven't discussed this, excuse me council has discussed it. Is looking
1311 at revising the (audible) so there was discussion last night about bringing resources to bear to that
1312 effort. Our consultant as well, looking into bring in some additional albeit possibly temporary under
1313 contract staff to help with that. Because there's just not the effort of bringing in a consultant there's
1314 additional workload of managing that consultant and all the work that comes with that. So, we had a
1315 discussion about bringing on additional or possibly contract staff. So, that was part of that discussion last

1316 night that was helpful to share. Chairman Hurd mentioned the TID Meeting, TID Prioritization or TID
1317 issues there our TID meeting on April 14th, they're looking to come to the Planning Commission possibly
1318 in July on the TID project, the Transportation Improvement District project list. Let me kind of jump to
1319 this here. Our tentative agenda for June so that agenda for June is filled up at the moment; the
1320 annexation for Otts Chapel Road and Elkton Road, a special use permit for a cell tower at 200 White
1321 Chapel road, another cell tower like the big one at 1325 Cooches Bridge, so that agenda's pretty much
1322 filled up. So, I would be looking at having the discussion with the project list if the TID worker finishes
1323 that up, this coming month in July; possibly having another meeting in July. Not sure, it just depends
1324 upon how the agenda shape up. So, I don't know if Chairman Hurd would be interested in having
1325 another meeting in July, we'll see how the agenda for July shapes up. So...we have not gotten in any
1326 new land use projects, we've received revised plans for 268 East Main, and we've reviewed them, and
1327 we need some additional information from the applicant before that gets on the Council agenda for
1328 review. Working with applicants on the projects we currently have in house. I think that's pretty much
1329 pretty much covers it. Thank you, Chairman.

1330 Chair Hurd: Alright, Thank you much. The last thing in the informational packet is the set of slides from a
1331 presentation I went to about a week and a half ago led by the IPA out of UD. A lot of good data about
1332 trends and I think some for me at least, were the recommendations at the end. I haven't looked like
1333 deeply into them, but some of the things might have application to the COMP plan and some of them
1334 might be things that we're thinking about or possibly start to incorporate into some of the zoning stuff
1335 we're looking at for residential and other sort of adjustments and changes as we're moving forward. So,
1336 it was a good presentation because it's like we know things are shifting, and he had some data to back
1337 up kind of how things are shifting, especially retail and office seem to be the two that are there's shift
1338 on. But then residential; there's a lot of demand that's not currently being met and that of course is
1339 effecting prices and availability and that's we're seeing that here of course that we can start to make
1340 some impact to. Alright, thank you, so that closes informational items. Do any of the Commissioners
1341 have anything for new business?

1342 **6. New Business**

1343 Chair Hurd: No, ok alright, we're going to close new business, any general public comment?

1344 **7. General Public Comment**

1345 Chair Hurd: Director Gray, have we received any written comments prior to the meeting for general
1346 public comments.

1347 Director Gray: This is Director Gray Chairman Hurd, we have not.

1348 Chair Hurd: Alright, would anyone from the public like to comment on items not on the agenda related
1349 to the work of the Planning Commission? Karl, you're unmuted, did you have a question or comment?

1350 Commissioner Kadar: Nope

1351 Chair Hurd: Ok, just checking. Alright, if there is no public comment, we are closing item 8. That
1352 concludes our agenda, so we are in recess, or we are closed I can't remember what the word is.
1353 Adjourned, thank you it's been a long day.

1354

1355

1356